

United States Senate

WASHINGTON, DC 20510

December 5, 2017

The Honorable Eric D. Hargan
Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Secretary Hargan,

We write to strongly oppose the Departments of Health and Human Services, Labor, and Treasury's interim final rules (IFRs) published on Friday October 13, 2017.^[1] The IFRs allow employers and universities to interfere with their employees' and students' access to necessary, preventive health care and to roll back policies that have protected women's health and rights, as well as saved women billions of dollars over the past five years. Instead of reversing this significant progress for women – which it did without appropriate input from the public – the Trump Administration should reinstate the protections that allow women to control their own health care and economic security.

Under the Affordable Care Act (ACA) health plans are required to cover preventive services, including birth control for women, without out-of-pocket costs. This requirement has helped 62.4 million women have coverage for birth control.^[2] As a result, they have been able to make decisions about their reproductive health care that strengthen their economic standing and allow them to decide if and when to start families.

Contrary to claims in the background section of the IFRs, Congress was abundantly clear that to fulfill the goals of ensuring comprehensive coverage of preventive care, better health for women, equality for women, and ending discrimination against women in health care, it intended to increase access to preventive care, including contraception, for women. Congress specifically included the Women's Health Amendment in the ACA to ensure that the legislation would end the "punitive practices of insurance companies that charge women more and give [them] less in a benefit" by guaranteeing women access to preventive services.^[3] In including this provision in the law, Congress sought to advance women's access to health care, promote equality for women in health care, and advance women's social and economic status.^[4] Ensuring access to cost-free preventive services for women, including screening for cancer and HIV, helps to remove barriers that can prevent women from getting the care they need. Additionally, Congress understood that cost-free preventive health care services for women, including contraception, would decrease maternal mortality, reduce unintended pregnancies and pregnancy related complications, and also protect children's health and well-being by ensuring that women become pregnant when they are healthy and able to care for a child.^[5]

^[1] The two IFRs released simultaneously are entitled *Religious Exemptions and Accommodations for Coverage of Certain Preventative Services Under the Affordable Care Act* (82 FR 47792) and *Moral Exemptions and Accommodations for Coverage of Certain Preventative Services Under the Affordable Care Act* (82 FR 47838), Oct. 13, 2017.

^[2] <https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/>

^[3] 155 Cong. Rec. S12,021.

^[4] 42 U.S.C. § 300gg-13.

^[5] 155 CONG. REC. S12026 (daily ed. Dec. 1, 2009) (statement of Sen. Mikulski).

Congress made the specific decision to rely on the expertise of the federal regulatory agencies in implementing the ACA. When the Health Resources and Services Administration (HRSA) ultimately recommended coverage of birth control and related services, it effectuated Congress's intent. Congress's reliance on HRSA and the use of expert committees to determine the specific services and contraceptive methods to be covered does not detract from Congress's clear intent to provide for contraceptive coverage. To the contrary, this process ensured that medical experts determined the necessary benefits and services that would appropriately implement Congress's goals. The IFRs fail to recognize this clear congressional intent to place medical experts' recommendations over political ideology.

The IFRs offer justification for their sweeping exemptions by pointing to other statutory exemptions passed by Congress, as well as the ACA's "grandfathering" provision. However, the majority of the statutory exemptions cited are not pertinent to insurance coverage, contraception, or the ACA. The Departments misconstrue these statutes to imply that Congress not only intended this broad exemption to the ACA's contraceptive coverage requirement, but also that the Departments have authority to create such a sweeping exemption. Neither is true. Moreover, the grandfathering provision of the ACA is a temporary means for transitioning employers to full compliance, not an exemption. By creating far-reaching exemptions to the requirement to include cost-free coverage for contraceptives, the IFRs are taking a huge step back in guaranteeing women have access to important preventive services.

Ultimately, the IFRs allow employers – including large, for-profit entities – to claim a religious or moral objection to their employees having coverage for birth control and allow employers to deny individual employees coverage for necessary health care otherwise guaranteed by law. The rules also permit universities to deny access to birth control coverage for their students and insurance companies to refuse to cover birth control at all. The result of these changes is to allow employers and universities to apply their own religious or moral beliefs to deprive women of a benefit that is both central to women's equity and guaranteed to them by law. These drastic changes to women's access to health care are part of a troubling history of women being denied ownership of their own health care decisions - a history that has had a disastrous resurgence under the Trump Administration.

These IFRs also allow employers and insurance companies to once again discriminate against women by requiring them to pay more for the health care they need compared to their male counterparts.

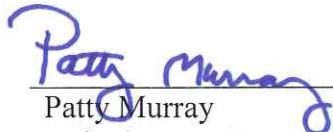
In creating these sweeping exemptions that block birth control coverage for women and discriminate against them – without authority and in violation of clear Congressional intent and regulatory requirements – the IFRs violate constitutional and statutory provisions, including the Establishment Clause and equal protection and due process guarantees of the U.S. Constitution, and the non-discrimination provision of the Affordable Care Act. By publishing these as Interim Final Rules, which went into effect immediately, the Departments failed to give the public an opportunity to weigh in on a policy which will impact millions of women and families, in violation of the Administrative Procedures Act.

The IFRs claim that, despite the significant restrictions they impose, birth control is still readily accessible and that other federal government programs cover costs for low-income women. The IFRs fail to acknowledge that the Trump Administration has been actively working to undermine


and dismantle a number of programs, including Medicaid and Title X, that assist low-income women in accessing birth control. For example, each Trumpcare bill this year has proposed a dramatic restructuring of the Medicaid program that would result in significant coverage losses for low-income women. President Trump has also signed legislation that undermines provider protections in the Title X family planning program and threatens to reduce the number of providers in the program.^[6] The Trump Administration cannot claim these programs will cover the costs of contraception coverage for women who will lose coverage because of the IFRs while simultaneously working to undermine them.


By instituting broad exemptions and no guarantee that women have another way to get coverage, these IFRs would undermine access to comprehensive birth control coverage. Rather than taking yet another destructive action to undermine health care, the Trump Administration should rescind these IFRs in their entirety.

Sincerely,



Patty Murray
United States Senator



Richard Blumenthal
United States Senator


Dianne Feinstein
United States Senator


Tammy Baldwin
United States Senator



Sheldon Whitehouse
United States Senator



Mazie K. Hirono
United States Senator


Christopher S. Murphy
United States Senator



Sherrod Brown
United States Senator


^[6] https://www.washingtonpost.com/news/powerpost/wp/2017/04/13/behind-closed-doors-trump-signs-bill-allowing-states-to-strip-federal-family-planning-dollars-from-abortion-providers/?utm_term=.94a15e8bfaaa;

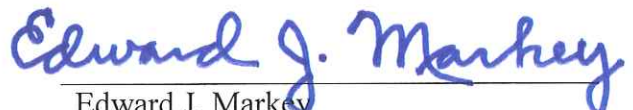

Elizabeth Warren
United States Senator



Margaret Wood Hassan
United States Senator


Jeanne Shaheen
United States Senator


Jack Reed
United States Senator


Catherine Cortez Masto
United States Senator



Edward J. Markey
United States Senator


Bernard Sanders
United States Senator

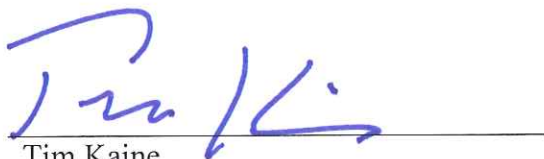

Benjamin L. Cardin
United States Senator


Tammy Duckworth
United States Senator



Robert Menendez
United States Senator


Bill Nelson
United States Senator

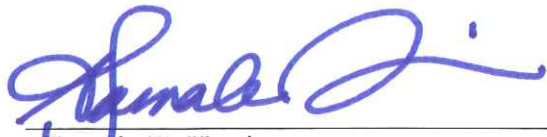

Ron Wyden
United States Senator


Tim Kaine
United States Senator


Kirsten Gillibrand
United States Senator


Al Franken
United States Senator

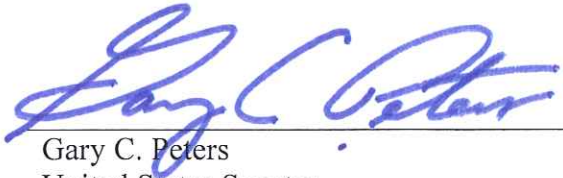

Maria Cantwell
United States Senator



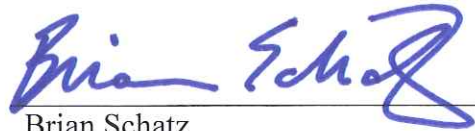
Kamala D. Harris
United States Senator



Cory A. Booker
United States Senator



Gary C. Peters
United States Senator



Brian Schatz
United States Senator




Debbie Stabenow
United States Senator



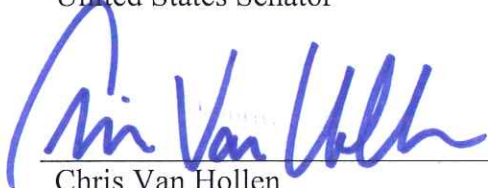
Amy Klobuchar
United States Senator



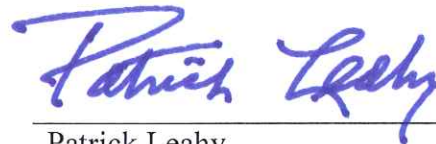
Mark R. Warner
United States Senator




Michael F. Bennet
United States Senator



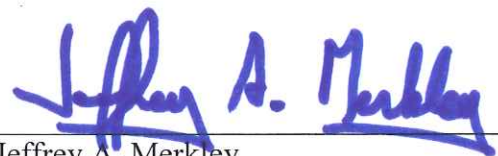
Chris Van Hollen
United States Senator



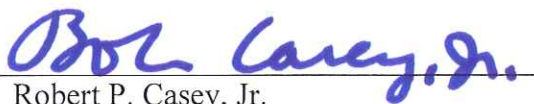
Patrick Leahy
United States Senator



Jon Tester
United States Senator



Jeffrey A. Merkley
United States Senator



Robert P. Casey, Jr.
United States Senator