

# United States Senate

WASHINGTON, DC 20510

February 16, 2022

Xavier Becerra  
Secretary of Health and Human Services  
U.S. Department of Health & Human  
Services  
200 Independence Avenue SW  
Washington, D.C. 20201

Marty Walsh  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20210

Janet Yellen  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

Dear Secretary Becerra, Secretary Walsh, and Secretary Yellen,

People across the country are watching as politicians and judges roll back reproductive health protections, compromising their ability to make their own health care decisions and control their destinies. At the federal level, the Affordable Care Act (ACA) guarantees individuals access to birth control with no out-of-pocket costs. The evidence for the public health benefits of this requirement is clear. Yet since the ACA's passage, certain insurers have not complied with this provision.

The Department of Labor (DOL) recently released FAQs acknowledging the reports that some plans continue to deny coverage for birth control and fail to maintain an exceptions policy that allows patients to access the best birth control method for their individual health needs.<sup>1</sup> This notice was a good start. We are writing to request that the DOL, Department of Health and Human Services (HHS), and Department of Treasury (Treasury) issue specific updated guidance and take the proposed enforcement measures necessary to ensure that plans fully comply with birth control coverage requirements.

Under the ACA, health insurers must ensure that people have access to the full range of birth control approved by the Food and Drug Administration without co-payments, deductibles, or coinsurance. Under the current requirements, insurers may use limited reasonable medical management techniques to determine coverage. However, they must maintain an exceptions policy so that an enrollee can obtain a medically necessary form of birth control at no cost, even if the plan does not normally cover it. We appreciate that the Departments reiterated that this

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<sup>1</sup> U.S. Department of Labor. "FAQs About Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation." January 10, 2022. <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>.

exceptions policy must be “easily accessible, transparent, and sufficiently expedient,” and it “must defer to the determination of the attending provider.”<sup>2</sup>

As noted in the recent DOL FAQs, some health insurers reportedly engage in practices that violate the ACA’s protections for birth control access.<sup>3</sup> According to these reports, these insurance companies overrule provider recommendations without explanation, incorrectly state that no exceptions policy exists, and fail to provide an exceptions policy entirely. Ultimately, these actions make it harder for people to access medically necessary birth control and force them to pay out-of-pocket for services that they are legally entitled to receive cost-free.

We were heartened to see DOL acknowledge its responsibility to examine the reports of coverage denials. We encourage DOL, HHS, and Treasury to take steps to oversee plan compliance, including engaging in enforcement action against non-compliant plans. We also urge the Departments to issue additional guidance or rules compelling plans to establish a clear exceptions policy, including a standard form for medical providers to request a coverage exception. This guidance could also direct plans to include information on their exceptions policy in enrollee materials, such as plan documents, formularies, and websites. Additionally, to ensure that plans comply with the ACA’s birth control coverage requirement, the administration can evaluate plans for the presence and execution of their exceptions policies.

DOL’s recent action was an essential first move. We look forward to seeing more from HHS, DOL, and Treasury as they respond to these reported violations and hold non-compliant insurers accountable, ensuring that exceptions policies are put in place. We ask that you respond to this letter by March 30 with a plan and timeline for issuing new guidance and developing enforcement procedures.

At this critical moment for reproductive freedom, we look forward to working with the administration to ensure that everyone can access to the reproductive rights they have been promised.

Sincerely,

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<sup>2</sup> U.S. Department of Labor. “FAQs About Affordable Care Act Implementation (Part XXVI).” May 11, 2015. [www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/aca-part-xxvi.pdf](http://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/aca-part-xxvi.pdf).

<sup>3</sup> National Women’s Law Center. “Access to Birth Control Without Out-of-Pocket Costs: Improving and Expanding the Affordable Care Act Contraceptive Coverage Requirement.” November 2021. [https://nwlc.org/wp-content/uploads/2021/11/final\\_Long\\_nwlc\\_2021\\_BC\\_AffordCareAct-003.pdf](https://nwlc.org/wp-content/uploads/2021/11/final_Long_nwlc_2021_BC_AffordCareAct-003.pdf); National Women’s Law Center. “The Biden Administration Must Ensure the Affordable Care Act Contraceptive Coverage Requirement Is Working for All.” October 2021. [https://nwlc.org/wp-content/uploads/2021/10/NWLC\\_BC\\_AffordCareAct-Oct\\_2021.pdf](https://nwlc.org/wp-content/uploads/2021/10/NWLC_BC_AffordCareAct-Oct_2021.pdf); National Women’s Law Center. “Exception Policies: Advocating for No-Cost Coverage of Noncovered Contraceptives.” March 2021. <https://nwlc.org/wp-content/uploads/2021/03/Exceptions-Guide.pdf>; National Women’s Law Center. “CoverHer Impact Report.” 2018. <https://nwlc.org/wp-content/uploads/2018/04/CoverHer-Impact-Report-April-2018-FINAL.pdf>; National Women’s Law Center. “The Affordable Care Act’s Birth Control Benefit: Progress on Implementation and Continuing Challenges.” July 2016. <https://nwlc.org/wp-content/uploads/2016/07/The-ACAs-BC-Benefit-Report.pdf>.



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United States Senator



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United States Senator



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United States Senator



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Tammy Duckworth  
United States Senator



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Chris Van Hollen  
United States Senator



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United States Senator



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Angus S. King, Jr.  
United States Senator



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Tammy Baldwin  
United States Senator



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Tina Smith  
United States Senator



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Amy Klobuchar  
United States Senator



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Bernard Sanders  
United States Senator



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Charles Schumer  
United States Senator

/s/ Martin Heinrich

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Martin Heinrich  
United States Senator



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Dianne Feinstein  
United States Senator



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Catherine Cortez Masto  
United States Senator



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Kirsten Gillibrand  
United States Senator



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Benjamin L. Cardin  
United States Senator



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Cory A. Booker  
United States Senator



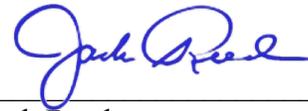
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Jacky Rosen  
United States Senator



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Jeanne Shaheen  
United States Senator



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Jack Reed  
United States Senator



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Alex Padilla  
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Chris Murphy  
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Debbie Stabenow  
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