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June 19, 2012

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9968-ANPRM
P.O. Box 8016
Baltimore, MD 21244-1850

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Submitted electronically to <http://www.regulations.gov>

Re: **Certain Preventive Services Under the Affordable Care Act**
CMS-9968-ANPRM; RIN 0938-AR42 Fed.Reg March 21, 2012.

Dear Secretary Sebelius:

The American Nurses Association, the only full service professional nursing organization representing the interests of the nation's 3.1 million nurses, welcomes the opportunity to submit the following comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) on "Certain Preventive Services Under the Affordable Care Act," published in the Federal Register on March 21, 2012. The ANA applauds the Departments' ongoing efforts to solicit input from all stakeholders and to develop a proposal to ensure that employees of religious organizations have access to full range of the Institute of Medicine's recommended preventive services, including all FDA-approved forms of contraception, to the same extent as employees of other organizations and companies.

As health care providers, nurses have a long and proud history of support for a fair and equitable health care delivery system in which all Americans have access to basic health services, including services related to reproductive health. The foundation of such a system rests on the broader social rights of privacy, free speech, freedom of choice, confidentiality between client and provider, and equity of access to essential service.

Nurses' Top Priority: Caring for Patients & Supporting Their Decisions

Every nurse's primary commitment is to the patient. In addition to providing competent, professional and high quality care, there is also an emphasis on providing patient education and support. The nursing profession holds sacred the patient's right of autonomy, to make informed decisions to direct his or her care, as well as the crucial role that nurses play in supporting the patient. Patient education and advocacy are essential elements of the nursing process.

The evolution of the ANA Code of Ethics for Nurses dates from 1893 when the “Nightingale Pledge” was adopted. Since 1950, the Code has served as the primary source of ethical standards for nurses practicing across all levels, roles and settings. It fully supports the rights of patients to determine their own care:

“Respect for human dignity requires the recognition of specific patient rights, particularly, the right of self-determination. Self-determination, also known as autonomy, is the philosophical basis for informed consent in health care. Patients have the moral and legal right to determine what will be done with their own person; to be given accurate, complete, and understandable information in a manner that facilitates an informed judgment; to be assisted with weighing the benefits, burdens, and available options in their treatment, including the choice of no treatment; to accept, refuse, or terminate treatment without deceit, undue influence, duress, coercion, or penalty; and to be given necessary support throughout the decision-making and treatment process. Such support would include the opportunity to make decisions with family and significant others and the provision of advice and support from knowledgeable nurses and other health professionals. Patients should be involved in planning their own health care to the extent they are able and choose to participate.

...The nurse supports patient self-determination by participating in discussions with surrogates, providing guidance and referral to other resources as necessary, and identifying and addressing problems in the decision-making process.”¹

In addition, we endorse the rights of patients to make their own choices about reproductive health, and to receive complete information to assist them in making those choices, as outlined in ANA’s position statement on reproductive health:

“...the health care client has the right to privacy and the right to make decisions about personal health care based on full information and without coercion. It is the obligation of the health care provider to share with the client all relevant information about health choices that are legal and to support that client regardless of the decision the client makes. Abortion is a reproductive alternative that is legal and that the health care provider can objectively discuss when counseling clients.”²

For nurses who have concerns about the provision of reproductive healthcare services, existing laws and ethical guidelines protect the rights of health care providers to follow their moral and religious convictions.

ANA strongly supports the goal of ensuring that as many women as possible receive the benefit of accessing contraceptive services without a co-pay and agrees that the provision of contraceptive coverage without cost-sharing to individuals working for religious organizations must be done in “the simplest way possible.” To that end, ANA offers the following comments on the important questions raised by the Departments in the ANPRM.

¹ American Nurses Association (2001). *Code of Ethics for Nurses with Interpretive Statements*. (Interpretive Statement 1.4). Silver Spring, MD: Nursesbooks.org.

² American Nurses Association (2010). *Position Statement: Reproductive Health*. www.nursingworld.org/MainMenuCategories/Policy-Advocacy/Positions-and-Resolutions/ANAPositionStatements/Position-Statements-Alphabetically/Reproductive-Health.html

A. Who Qualifies for the Accommodation?

ANA strongly urges the Departments to ensure that the definition of “religious organization” is narrow and limited. The definition should delineate the factors that are to be met, so that religious organizations and their employees will know whether or not they will be subject to the accommodation. The Departments should not extend the accommodation to for-profit organizations, religious health insurance issuers, or third party administrators. The religious employer exemption should not be expanded beyond the current definition adopted in final regulations on February 15, 2012. No more women should lose out on the benefit of accessing no-cost contraception.

As an organization representing health care providers, including many nurses who provide education and counseling for women making family planning decisions, as well as nurse practitioners and nurse-midwives who prescribe contraception, ANA strongly urges the Departments not to allow accommodations for only some forms of contraceptives. To do so would not only be administratively complex and impractical, it ignores the critical fact that women have different needs. It is the responsibility of a healthcare provider to make an objective evaluation of a woman’s physical and health care needs, making recommendations and providing care based on that evaluation. Religious organizations should not be able to pick and choose among methods of birth control for the accommodation or to incorrectly redefine birth control as abortion.

B. Who Administers the Accommodation?

No matter the method of accommodation, there are some important principles that must be met to ensure that employees of religious organizations have access to contraceptive coverage to the same extent as employees of other organizations.

- ANA strongly supports the statement that contraceptive coverage through the accommodation must be provided “automatically to participants and beneficiaries covered under the organization’s plan (for example, without an application or enrollment process).” Enrollees must not face any additional barrier or burden when accessing birth control coverage or care.
- ANA appreciates that the ANPRM makes it clear that the accommodation must “protect the privacy of participants and beneficiaries covered under the plan who use contraceptive services.”
- ANA strongly urges the Departments to ensure through this rulemaking that participants and beneficiaries subject to the accommodation receive timely, accurate, and clear information about their contraceptive coverage without cost-sharing.
- Whatever the method of accommodation, enrollees must not lose out on critical protections, like COBRA continuation coverage, appeals and external review, and protections against annual or lifetime maximums. If there is a need to make the contraceptive coverage excepted from certain requirements applying to group health plans or issuers, there should be close attention paid to ensure enrollees do not lose protections that currently exist to provide access to covered benefits.

C. Additional Questions

ANA supports the Department's application of preemption principles that both allow the continued enforcement of state contraceptive coverage laws that are more protective of consumer access to contraceptive coverage, and preempt those that undermine the federal contraceptive coverage requirement. ANA urges the Departments to make clear that these preemption principles will apply beyond the temporary enforcement safe harbor period, and urges the Departments to clarify that grandfathered plans must continue to comply with applicable state contraceptive coverage requirements.

In summary, in order to fulfill the promise of the preventive services provision of the health care law, women must be able to access contraceptive coverage without cost sharing in the simplest way possible, no matter where they work or go to school.

We appreciate the Departments extensive efforts to ensure that interested stakeholders are able to provide advice and input into this policy development. If we can be of further assistance, or if you have any questions or comments concerning this submission, please feel free to contact Lisa Summers, CNM, DrPH, Senior Policy Fellow, Department of Nursing Practice & Policy; Lisa.Summers@ana.org or 301-628-5058.

Sincerely,

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