



March 31, 2023

Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8013  
Baltimore, MD 21244-8013

*Submitted electronically via regulations.gov*

Re: CMS-9903-P

Dear Administrator Brooks-LaSure:

The Academy of Managed Care Pharmacy (AMCP) thanks the Internal Revenue Service (IRS), Employee Benefits Security Administration (EBSA), and Centers for Medicare & Medicaid Services (CMS) (collectively, the Departments) for the opportunity to provide comments in response to the proposed rule titled “Coverage of Certain Preventive Services Under the Affordable Care Act [CMS-9903-P]” (Proposed Rule), published in the Federal Register on February 2, 2023.

AMCP is the nation’s leading professional association dedicated to increasing patient access to affordable medicines, improving health outcomes, and ensuring the wise use of healthcare dollars. Through evidence and value-based strategies and practices, AMCP’s nearly 8,000 pharmacists, physicians, nurses, and other practitioners manage medication therapies for the 270 million Americans served by health plans, pharmacy benefit management firms, emerging care models, and government health programs.

In this comment letter, we provide our feedback and suggestions in response to the Departments’ proposal to amend regulations regarding coverage of certain preventive services under the Patient Protection and Affordable Care Act (PPACA), which requires non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage to cover certain contraceptive services without cost sharing. AMCP supports the Departments’ goals to increase access to preventive services.

### **Moral Exemption**

AMCP believes it is important to protect a patient's right to obtain legally prescribed and medically necessary treatments consistent with their benefit coverage. As a professional association, AMCP leads the way to help patients get the medications they need at a cost they can afford.<sup>1</sup> AMCP encourages the exchange of ideas among stakeholders to identify solutions

---

<sup>1</sup> <https://www.amcp.org/about/about-amcp/amcp-strategic-priorities>

that optimize patients' health outcomes and address barriers to care access. AMCP supports the Departments' proposal to remove the moral exemption to the contraceptive requirement because it will increase access to these preventive services.

AMCP also supports the Proposed Rule's creation of an independent pathway through which people can obtain contraceptive services at no cost from a willing provider. This individual contraceptive arrangement would be available without the objecting entity having to take any action to which it objects. The Departments' proposal respects the religious convictions of plans and employers by maintaining the religious exemption while also ensuring that patients have access to contraceptives in accordance with the PPACA requirements.

AMCP cautions that the Departments should consider how to mitigate potential complexity from an operational perspective, including how to notify members that this pathway is available due to a plan invoking the exemption.

### **Exclusionary Language**

AMCP urges the Departments to adopt updates to the Proposed Rule that would replace exclusionary language with intentionally inclusive language. Exclusionary language occurs throughout the preamble and the regulatory text of this Proposed Rule. The use of "women" in 29 CFR § 2590.715-2713(a)(1)(iv), 26 CFR 54.9815-2713(a)(1)(i), and 45 CFR 147.130(a)(1)(i) has the potential to exclude trans masculine and nonbinary people who were assigned female at birth and who need access to contraceptive services. AMCP acknowledges that the preamble addresses the use of "women" in a footnote, stating, "The references to 'women' in these proposed rules should be considered to include any individual potentially capable of becoming pregnant, including cisgender women, transgender men, and non-binary individuals."<sup>2</sup>

AMCP strongly encourages the Departments to adopt inclusive language in the rule itself, rather than relegating its efforts at inclusion to a mere footnote. Inclusive language is vital in removing barriers to care related to gender identity.<sup>3</sup> In the Foreword to the American Psychological Association's Inclusive Language Guidelines, Maysa Akbar, PhD, ABPP aptly noted, "As we strive to further infuse principles of equity, diversity, and inclusion (EDI) into the fabric of society, those committed to effecting change must acknowledge language as a powerful tool that can draw us closer together or drive us further apart. Simply put, words matter."<sup>4</sup> The effect of language choices on marginalized people clearly applies to government regulations and programs.

Recognizing the importance of inclusive language and acknowledging that contraceptive users' gender identities are diverse, AMCP strongly recommends updating the regulatory language to reflect the reality of gender diversity. Executive Order 13985 sets forth the Administration's goal

---

<sup>2</sup> Coverage of Certain Preventive Services Under the Affordable Care Act, Notice of Proposed Rulemaking, preamble at p. 5, footnote 3.

<sup>3</sup> Moseson H, Zazanis N, Goldberg E, Fix L, Durden M, Stoeffler A, Hastings J, Cudlitz L, Lesser-Lee B, Letcher L, Reyes A, Obedin-Maliver J. The Imperative for Transgender and Gender Nonbinary Inclusion: Beyond Women's Health. *Obstet Gynecol.* 2020 May;135(5):1059-1068. doi: 10.1097/AOG.0000000000003816. PMID: 32282602; PMCID: PMC7170432. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7170432/>

<sup>4</sup> Maysa Akbar, PhD, ABPP, Foreword, American Psychological Association. (2021). Inclusive language guidelines. <https://www.apa.org/about/apa/equitydiversity-inclusion/language-guidelines.pdf>.

to advance equity<sup>5</sup> by identifying and addressing barriers that underserved communities may face due to government policies. A recent study found significant differences in contraceptive patterns between trans masculine people and cisgender women.<sup>6</sup> AMCP believes that, to meet the mandate to embed equity in government processes, it is critical for the Departments to be vigilant about ensuring that regulatory language not only encourages health equity, but also that the language does not create systemic health disparities in the first place. The Departments should proactively address this disparity by using inclusive language in this rule.

AMCP appreciates your consideration of the concerns outlined above and looks forward to continuing work on these issues with the Departments. If you have any questions regarding AMCP's comments or would like further information, please contact AMCP's Director of Regulatory Affairs, Geni Tunstall, at [etunstall@amcp.org](mailto:etunstall@amcp.org) or (703) 705-9358.

Sincerely,



Susan A. Cantrell, MHL, RPh, CAE  
Chief Executive Officer

---

<sup>5</sup> Section 1 of EO 13985 provides that, "It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

<sup>6</sup> "Trans masculine people were prescribed fewer oral contraceptive pills (Medicaid: 17.44%, commercial: 16.62%) compared to cisgender women (Medicaid: 24.96%, commercial: 27.85%), less long-acting reversible contraception (LARC) use (Medicaid: 7.62%, commercial: 7.49% vs. Medicaid: 12.79%, commercial: 8.51%), had more hysterectomies (Medicaid: 5.77%, commercial: 8.45% vs. Medicaid: 2.15%, commercial: 2.48%), and less evidence of any contraception (Medicaid: 34.21%, commercial: 32.28% vs. Medicaid: 46.80%, commercial: 39.81%)." Crissman HP, Haley C, Stroumsa D, Tilea A, Moravek MB, Harris LH, Dalton VK. Leveraging Administrative Claims to Understand Disparities in Gender Minority Health: Contraceptive Use Patterns Among Transgender and Nonbinary People. *LGBT Health*. 2022 Apr;9(3):186-193. doi: 10.1089/lgbt.2021.0303. Epub 2022 Mar 17. PMID: 35297673. <https://pubmed.ncbi.nlm.nih.gov/35297673/>