

Congress of the United States

Washington, DC 20515

November 16, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

The Honorable Janet Yellen
Secretary
U.S. Department of Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

The Honorable Julie A. Su
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Dear Secretary Becerra, Secretary Yellen, and Acting Secretary Su,

We write to request information from the tri-Departments regarding your efforts to enforce the Affordable Care Act's (ACA) no-cost contraceptive coverage requirement and support state regulators as they work to keep contraception affordable and accessible to consumers.

The Biden Administration has demonstrated an unwavering commitment to increasing access to contraception. As the *Dobbs* decision has enabled states to restrict access to abortion, it is imperative that contraception is easily available and affordable, consistent with federal law.¹ We are pleased that the State of Vermont has taken affirmative steps to address insurer failures to cover contraception in keeping with the ACA and state mandates. We urge the administration to support state efforts by stepping up enforcement at the federal level.

A recent investigation by the State of Vermont Department of Financial Regulation (DFR) found that three health insurers in the state—Blue Cross Blue Shield Vermont (BCBSVT), MVP Health Care (MVP), and Cigna Healthcare (Cigna)—failed to provide patients with no-cost contraceptive services, in violation of state and federal law. DFR's investigation found that BCBSVT, MVP, and Cigna inappropriately charged patients a cumulative \$1.5 million in contraceptive costs between 2017 and 2021. The investigation resulted in restitution for 9,000 people for whom cost sharing was incorrectly applied for contraceptive services.²

¹ Under the Affordable Care Act, health insurance plans must provide coverage at no-cost to consumers for contraceptive services and supplies, including the full range of birth control, counseling, treatment of complications, and any other related services. Birth control can include options such as an intrauterine device (IUD) insertion and removal, prescribed emergency contraception, birth control pills, and sterilization procedures such as tubal ligation. State of Vermont Department of Financial Regulation, Contraceptive Services Claims Restitution Information (online at <https://dfr.vermont.gov/contraceptive-services-claims-restitution-information>) (November 13, 2023)

² *Id.*

An October 2022 investigation by the House Oversight Committee also found that insurers nationally are not complying with ACA requirements for contraceptive coverage. The Committee found that health plans and pharmacy benefit managers exclude or impose cost sharing on at least 34 contraceptive products.³ A majority of the insurance companies surveyed by the Committee denied an average of 40% or more of exception requests for contraceptive products between 2015 and 2021, with one company denying more than 80% of requests each year.⁴

The tri-Departments have responded to reports of coverage violations with additional guidance in January 2022⁵ and July 2022.⁶ Although we greatly appreciate the Departments' guidance issued to date, DFR's investigation reveals that additional oversight and enforcement are necessary to ensure insurers are following federal and state guidance. Improving enforcement of the ACA's contraceptive coverage mandate will also effectuate an important aim of President Biden's June 23 executive order that directed your Departments and agencies to take steps to improve access to contraception in the wake of the *Dobbs* decision.⁷

We request a staff briefing, no later than December 5, 2023, on the status of the tri-Departments' oversight and enforcement efforts and answers the following questions:

1. According to DFR, though BCBSVT, MVP, and Cigna charged patients for contraceptive services in violation of state and federal law, there was "no intent on behalf of any carrier

³ House Committee on Oversight and Reform, *Barriers to Birth Control: An Analysis of Contraceptive Coverage and Cost for Patients with Private Insurance* (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2022-10-25.COR%20PBM-Insurer%20Report.pdf>) (October 25, 2022)

⁴ *Id.*

⁵ The January guidance clarified, "if an individual's attending provider determines that a particular service or FDA-approved, cleared, or granted contraceptive product is medically appropriate for a specific individual, a plan or issuer must cover that service or product for that individual without cost sharing." Department of Labor FAQ's About Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid Relief, and Economic Security Act Implementation (online at www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf) (January 10, 2022)

⁶ Guidance also stated, "the Departments are committed to ensuring consumers have access to the contraceptive benefits, without cost sharing, that they are entitled to under the law, and will take enforcement action as warranted." Department of Labor FAQ's About Affordable Care Act Implementation Part 51 (online at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-54.pdf>) (July 28, 2022)

⁷ Executive Order on Strengthening Access to Affordable, High-Quality Contraception and Family Planning Services (online at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/06/23/executive-order-on-strengthening-access-to-affordable-high-quality-contraception-and-family-planning-services/>) (June 23, 2023).

to violate the mandate.” Instead, the payments were “the result of incorrect coding, differing interpretations of the mandate, and system limitations.”⁸

- a. Nationwide, how common are these violations of the ACA’s contraceptive coverage mandate—both intentional and unintentional—among state and federally-regulated entities?
2. Since the most recent release of the tri-Departments’ updated guidance in July 2022, what improvements, if any, have you seen in the implementation of the ACA’s contraceptive services mandate?
3. What resources have the tri-Departments put towards federal enforcement of the contraceptive coverage mandate? How many FTEs are dedicated to enforcement of the mandate?
4. Have the tri-Departments taken any enforcement action on the contraceptive coverage mandate to date?
5. Are the tri-Departments considering additional updates to its guidance to bolster compliance with the contraceptive coverage mandate? If so, please provide a description of such updates.
6. What resources do the tri-Departments provide state regulators, like DFR, to help states enforce the ACA’s contraceptive coverage mandate? What challenges do the tri-Departments face in working with state regulators, and what additional resources and support could the tri-Departments provide to help state regulators enforce the ACA?

Sincerely,



BERNARD SANDERS
United States Senator



PETER WELCH
United States Senator



BECCA BALINT
Member of Congress

⁸ State of Vermont Department of Financial Regulation, Investigation Results in Restitution for Contraceptive Services (online at <https://dfr.vermont.gov/press-release/dfr-investigation-results-restitution-contraceptive-services>) (October 12, 2023)