



State of California
Office of the Attorney General

XAVIER BECERRA
ATTORNEY GENERAL

**Attorneys General of California, Connecticut, Delaware, the District of Columbia,
Hawaii, Illinois, Maryland, Minnesota, New York, North Carolina,
Oregon, Rhode Island, Vermont, Virginia, and Washington**

September 18, 2019

Via email to Justin Sandberg (Justin.Sandberg@usdoj.gov)

Secretary Alex M. Azar II
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Acting Secretary Patrick Pizzella
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Secretary Steven T. Mnuchin
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Contraceptive Coverage Mandate
Compliance with Court-Ordered Injunction

Dear Secretary Azar, Acting Secretary Pizzella, and Secretary Mnuchin:

We, the Attorneys General of California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maryland, Minnesota, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington write today to demand that the U.S. Department of Health and Human Services (HHS), the U.S. Department of Labor (DOL), and the U.S. Department of the Treasury (DOT) immediately comply with the court-ordered



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injunction in *California v. Azar*, No. 17-cv-05783-HSG, Dkt No. 234 (N.D. Cal. 2019). This court decision made clear that women and covered dependents are able to access their statutorily-protected birth control benefit under the Affordable Care Act (ACA). It has recently become evident that your federal agencies have not revised their websites or otherwise informed the public that complying with the contraceptive coverage mandate is required under this injunction. *See* attached appendix.

As you are aware, the ACA's Women's Health Amendment ensured women's access to preventive care by guaranteeing "no cost" coverage of all approved contraceptive methods and contraceptive counseling, empowering women to select the best method to meet their healthcare needs. Since 2012, over 62 million women have benefited from this provision, saving up to \$1.4 billion, with resulting societal benefits from greater female engagement in the workforce and economic self-sufficiency. The Women's Health Amendment ensures that women have full and equal healthcare coverage through their employer-sponsored plan.

On October 6, 2017, your agencies promulgated sweeping new rules upending women's entitled contraceptive coverage in two interim final rules, effective immediately, denying the public an opportunity to comment before these drastic changes went into effect. 82 Fed. Reg. 47,792 (Oct. 13, 2017); 82 Fed. Reg. 47,838 (Oct. 13, 2017). Several states successfully obtained an injunction, blocking enforcement of those interim rules.¹

Then, on November 15, 2018, your agencies promulgated the final Religious and Moral Exemption Rules (Exemption Rules) that are nearly identical to the interim final rules. 83 Fed. Reg. at 57,536 (Nov. 15, 2018); 83 Fed. Reg. at 57,592 (Nov. 15, 2018). Once again, the States successfully obtained an injunction, blocking enforcement of these final Exemption Rules.²

Notwithstanding these court orders, HHS and DOL currently maintain several misleading websites that fail to inform the public that there are injunctions in place that enjoin implementation of the final Religious and Moral Exemption Rules. Rather, HHS's websites summarize the provisions of the Exemption Rules without specifying that those rules have been enjoined. *See, e.g.*, <https://www.hhs.gov/about/news/2018/11/07/fact-sheet-final-rules-on-religious-and-moral-exemptions-and-accommodation-for-coverage-of-certain-preventive-services-under-affordable-care-act.html>;

¹ *California v. Azar*, 281 F. Supp. 3d 806 (N.D. Cal. 2017); *Pennsylvania v. Trump*, 281 F. Supp. 3d 553 (E.D. Pa. 2017).

² *California v. Azar*, 351 F. Supp. 3d 1267 (N.D. Cal. 2019); *Pennsylvania v. Trump*, 351 F. Supp. 3d 791 (E.D. Pa. 2019).

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<https://www.hhs.gov/healthcare/about-the-ca/index.html>; <https://www.hhs.gov/sites/default/files/fact-sheet-religious-exemptions-and-accommodations-for-coverage.pdf>;
<https://www.hrsa.gov/womensguidelines/index.html> (reflecting availability of broad exemptions). On another website, HHS lists all of the preventive services mandated under the ACA, but does not include contraceptive coverage—again omitting information about coverage that the current law requires. See <https://www.hhs.gov/healthcare/about-the-aca/preventive-care/index.html>. DOL also maintains several websites that likewise suggest that broad exemptions are available. See <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-of-preventive-services>; <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/ebsa-form-700-revised.pdf>. Without correction, the statements on these websites may lead the public to incorrectly believe that employers can opt out of providing contraceptive coverage, in violation of the court’s orders.

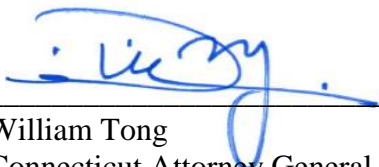
We have significant concerns that your agencies are failing to honestly apprise the public of the legal status of the ACA’s contraceptive coverage mandate and the Religious and Moral Exemption Rules. To protect consumers, we believe the Departments’ websites should clearly state what the law plainly requires: that ACA-regulated entities must abide by the contraceptive coverage mandate.

We urge you to remove the misleading and false information from these websites to fully and clearly reflect the legal obligations under the ACA.

Sincerely,



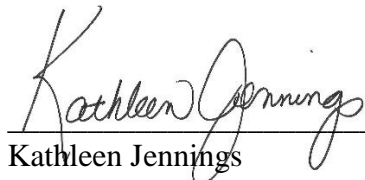
Xavier Becerra
California Attorney General



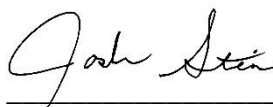
William Tong
Connecticut Attorney General



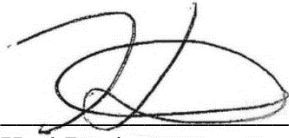
Letitia James
New York Attorney General



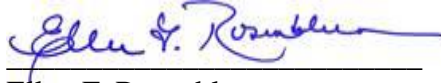
Kathleen Jennings
Delaware Attorney General



Joshua H. Stein
North Carolina Attorney General



Karl Racine
District of Columbia Attorney General



Ellen F. Rosenblum
Oregon Attorney General



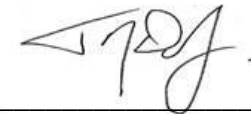
Clare E. Connors
Hawaii Attorney General



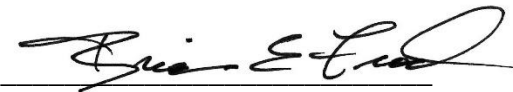
Peter F. Neronha
Rhode Island Attorney General



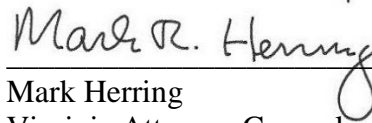
Kwame Raoul
Illinois Attorney General



Thomas J. Donovan, Jr.
Vermont Attorney General



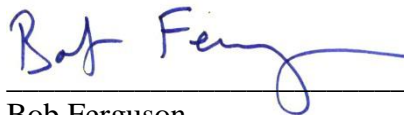
Brian E. Frosh
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Minnesota Attorney General



Bob Ferguson
Washington Attorney General