national partnership for women & families
Because actions speak louder than words.

October 26, 2017

John Graham, Acting Assistant Secretary for Planning and Evaluation
U.S. Department of Health and Human Services
200 Independence Ave. S.W., Room 415F
Washington, D.C. 20201

Re: HHS Draft Strategic Plan, FY 2018-2022

Dear Acting Assistant Secretary Graham,

The National Partnership for Women & Families is a nonprofit, nonpartisan organization that has fought for decades to strengthen our health care system and advance the rights and wellbeing of women. On behalf of women across the country, we have long supported efforts to reform our health care system to better meet the needs of women and families, including the team-based, patient-centered approach that is described in the Department of Health and Human Services' ("the Department") Draft Strategic Plan. We look forward to working collaboratively to make those goals a reality.

Today, however, we write to express our deep concerns with the Department's Strategic Plan. The mission of the Department of Health and Human Services is "to enhance and protect the health and well-being of all Americans." The direction and priorities outlined in the proposed Strategic Plan will not serve that mission. This Strategic Plan will undermine and weaken the very programs that the Department oversees – programs that tens of millions of people rely on to protect the health and wellbeing of their families.

The misuse of the Strategic Plan as a platform for extreme political viewpoints that will harm access to care is an affront to the mission of the Department. Specifically, we are extremely concerned about continued attempts to sabotage the Affordable Care Act (ACA) despite stated goals to strengthen our health care system; use of unscientific and nonmedical terms to undermine women's health and autonomy; and a lack of attention to persistent health disparities based on race, ethnicity, gender and gender identity. We strongly urge the Department to change course, and instead prioritize access to quality, affordable health insurance; access to comprehensive reproductive health care; and achieving health equity.

1. The Department should bolster women's access to quality, affordable health insurance.

As the majority of Medicare and Medicaid beneficiaries, as well as the majority of Marketplace enrollees, women rely on the continued success and stability of these federal health programs for their health and economic security.[1,2,3]

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We support the goal of reforming, strengthening and modernizing the nation's health care system, but believe the Department's actions to date are instead weakening and damaging it. We are extremely concerned that the Strategic Plan lacks any reference to the Affordable Care Act (ACA). The ACA brought significant progress in increasing women's access to care by providing subsidies for insurance premiums and cost sharing, eliminating out of pocket costs for preventive services, requiring coverage of the essential health benefits (including maternity care) and expanding Medicaid coverage. Indeed, since the ACA was passed, the share of women, particularly low-income women, who report that they delayed or went without care due to costs, has fallen.[4]

Continued, successful implementation of the ACA is the bedrock of a functioning, stable insurance market, upon which millions of women and families rely. Nevertheless, contrary to the stated goals of the Strategic Plan, the Department is working to dismantle the ACA piece by piece and ultimately, to put health coverage out of reach for millions of women and families. The decision to end cost-sharing reduction payments is just the latest in an escalating series of actions that are destabilizing the health insurance marketplace and sabotaging the coverage that millions of people rely on. The President's Executive Order issued on October 12 will have the effect of loosening or eliminating critical consumer protections for certain health insurance plans, driving up the costs of premiums and making it harder for people, especially those with pre-existing conditions, to afford coverage. This comes on the heels of numerous actions designed to undermine the health insurance marketplace, including shortening the 2018 open enrollment period to only six weeks; gutting the enrollment marketing budget by 90 percent; stripping funding for health insurance navigators; barring regional directors from joining open enrollment promotional efforts; and shutting down healthcare.gov for 12 hours every Sunday throughout the open enrollment period.

Instead of dismantling the law, increasing women's access to health care and improving women's health should be at the center of the Strategic Plan. Women's health care needs span across their lives, but the Plan references women's health solely as a means of improving the health of future pregnancies. We urge the Department to properly prioritize women's health care in its objectives and goals. For example, the Department should continue the important work of the Health Resources Services Administration (HRSA) through the Women's Preventive Services Initiative. The ACA's coverage for women's preventive services has led to 62 million women having coverage for this essential care without additional cost barriers, including coverage for the full range of FDA-approved contraceptive methods.[5] We urge the Department not to roll back these critical protections. The Department should reverse course and undo the harmful recently promulgated Interim Final Rules that allow employers, universities, and insurance companies to deny coverage for contraception.

We urge the Department to preserve and fully implement the Affordable Care Act as the most effective strategy to promote affordability, accessibility, quality and innovation. Only through robust enrollment efforts, maintaining consumer protections and improving women's access to care will the Department achieve its goals of strengthening and modernizing the nation's health care system.

2. The Department should remove explicit anti-abortion and personhood language that undermines women's health and autonomy.

The Draft Strategic Plan defines the lifespan as from "conception" to "natural death," and vows to respect "the inherent dignity of persons from conception to natural death." The explicit connotation that personhood begins at conception runs counter to well-established constitutional case law. *Roe v. Wade* established abortion as a fundamental right for women, declaring that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." This central holding of *Roe,* protecting a woman's right to access abortion, has been consistently upheld and reaffirmed by the U.S. Supreme Court, including just last year in *Whole Woman's Health v. Hellerstedt.* The language in the Draft Strategic Plan is an attempt to directly undermine this fundamental right by pushing an unconstitutional definition of persons as beginning at conception, which has no basis in science.

The Department's reliance on such unscientific and non-medical terms raises serious concerns about government overreach into the patient-provider relationship and threatens women's access to crucial health care services, including abortion, birth control, assisted reproductive technology (ART), stem cell research, *in vitro* fertilization (IVF), and reproductive health information and counseling. This unconstitutional non-medical definition threatens autonomous decision-making for all pregnant women, including those intending to carry their pregnancies to term. Further, elevating the status of a fetus over the health needs of pregnant women would result in poorer maternal health and poorer birth outcomes.[6]

The language in the Draft Strategic Plan is an unacceptable and unconstitutional infringement on a woman's autonomy over her own body. The Strategic Plan invites misuse and abuse by creating a federal health care framework for the Department to refuse to participate in the orderly delivery of evidence-based health care services.We urge the Department to immediately remove all language that could threaten women's access to a broad array of health care services.

3. The Department should prioritize achieving health equity and eliminating discrimination in health care.

Reforms to our health care system should endeavor to meet the needs of women and their families, and should account for the many factors that impact a woman's health, including longstanding health disparities that leave individuals, particularly people of color and those with low incomes, at disproportionate risk of being uninsured, lacking access to care and experiencing worse health outcomes.[7] To give just one example of stark health disparities that exist in the United States, black women are three to four times more likely to die from pregnancy complications than white women are, and they are twice as likely to suffer maternal morbidity.[8,9] We are deeply dismayed by the de-emphasis on achieving health equity and eliminating health disparities in the Strategic Plan. While we agree with the Department's goal of reducing disparities in quality and safety, this must be accompanied by efforts to identify and eliminate disparities based on race, ethnicity, language, sex, gender identity, sexual orientation, age and disability.

The Department must continue to undertake activities to identify and address health disparities with the ultimate goal of eliminating them. In activities spanning the Office for Civil Rights, Office of Minority Health, Office of Women's Health as well as the Centers for Medicare & Medicaid Services, the Department activities must prevent, not heighten, disparities.

Previous strategic plans for the Department have included an objective to ensure access to quality, culturally competent care, specifically for vulnerable populations.[10] We urge the Department to add additional, specific objectives and strategies that aim to provide culturally competent care, reduce disparities and prevent discrimination in health care, and promote better health for vulnerable populations. Vulnerable population should be defined to include racial and ethnic minorities, children, older adults, women, people with disabilities, uninsured people, rural populations, persons with Limited English proficiency or limited health literacy skills, refugees and immigrants, and other historically underserved populations.

Further, we are concerned that the Strategic Plan does not mention reducing health care discrimination against women, the LQBT community and people of color among the stated strategies to reduce disparities and provide patient-centered care. The Department is obligated to enforce the ACA's §1557 non-discrimination provision. Federal rules currently prohibit discrimination based on health status, race, gender, gender identity, sex stereotyping and disability status. The rules also address insurance discrimination against transgender people, who previously frequently encountered discriminatory insurance plan exclusions that denied them coverage for medically necessary care related to gender transition, even though the same services and procedures were routinely covered for non-transgender individuals.[11] These protections apply at the point of enrollment, in benefit design, and in health care more broadly under §1557 of the ACA. Such protections have already been used by state regulators to, for instance, better ensure that consumers with high-risk conditions such as HIV have access to affordable prescription drugs and eliminate the use of exclusions that discriminate against transgender people.[12,13,14] The Department should ensure that these protections are not undermined so that consumers have access to the services, providers and plans that meet their health care needs.

The Strategic Plan also states that the Department will "promote equal and nondiscriminatory participation by faith-based organizations in HHS-funded or conducted activities," and the Department will "affirmatively accommodate" burdens imposed on the exercise of religious beliefs and "moral convictions" by persons and entities partnering with the Department (Objective 1.3). Indeed, the Draft Strategic Plan refers to faith-based providers or a variation thereof more than 40 times.

This language is inappropriate for a strategic plan, as it does not establish measurable goals, and further, the use of this language to qualify broader goals relating to health care access improperly implies that limitations on health care access may be appropriate based on religious or moral grounds. One individual's personal religious belief should never determine or limit the health care services that another individual can receive. When hospitals, clinics, and individual health care providers have the ability to refuse patient care based on religious, moral or personal beliefs, patients may suffer devastating health consequences.[15,16,17] The harms caused by refusals to provide care have a disproportionate impact on those who already face multiple barriers to care, including women, communities

of color, LGBT individuals, people facing language barriers, and low-income families and individuals.

The Department should be committed to eliminating discrimination and improving individual patient care. The Department should work to ensure medical standards of care and individual patient circumstances determine patient care, not politicians' or providers' and insurance companies' religious or personal beliefs. The Draft Strategic Plan's repeated references to accommodating faith-based entities signals that the Department intends to prioritize personal opinion and belief over access and care. Additionally, this Strategic Plan fails to acknowledge that many health care providers are dedicated to providing services that patients need, including abortion, based on moral conviction. The Department is responsible for enforcing federal law that protects individual health care providers from employment discrimination due to their providing abortion and other care. If the Department cares about protecting individual health care providers' conscience beliefs, as it claims, then it should acknowledge its responsibilities under federal law and articulate a commitment to protecting health care providers who are committed to providing abortion care and other services that patients need. We urge the Department to remove the broad language promoting open-ended deference to religious health care entities and providers, and to commit to truly putting patient health first.

Once again, we express deep concerns about the direction outlined in the HHS Draft Strategic Plan, FY 2018-2022. Millions of women and families rely on the Department to oversee and manage the programs that support their health, economic security, and wellbeing. As drafted, we believe the Department is undermining its own mission and goals. If you have any questions about our concerns and recommendations, please contact Sarah Lipton-Lubet, vice president for reproductive health programs at slipton-lubet@nationalpartnership.org or Stephanie Glover, senior health policy analyst at sglover@natioanlpartnership.org, or by phone at (202) 986-2600.

Sincerely,

Debra L. Ness, President

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[11] These services include cancer treatment or prevention, or reconstructive surgery following an injury. More information about common misconceptions about health coverage for transgender individuals can be found in *Why Gender Identity Nondiscrimination in Insurance Makes Sense*, a report by the Center for American Progress. Retrieved from https://www.americanprogress.org/issues/lgbt/reports/2013/05/02/62214/why-gender-identity-nondiscrimination-in-insurance-makes-sense/

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[15] For documented examples of religious health care providers denying care to patients on the basis of religious beliefs, see, e.g., Complaint at 7, ACLU of Mich. v. Trinity Health Corp., 178 F. Supp. 3d 614 (E.D. Mich. 2016).

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