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12 **IN THE UNITED STATES DISTRICT COURT**  
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 14 **OAKLAND DIVISION**  
 15

16 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

19 XAVIER BECERRA, Secretary of  
 20 Health and Human Services, *et al.*,

21 Defendants,

22 and,

23 THE LITTLE SISTERS OF THE POOR,  
 24 JEANNE JUGAN RESIDENCE, *et al.*,

25 Defendant-Intervenors

) Case No.: 4:17-cv-5783-HSG

) **NOTICE OF INTENTION TO**  
 ) **INITIATE RULEMAKING**

26 On August 3, 2021, Federal Defendants filed a joint status report [ECF No. 462] in this case,  
 27 which concerns the validity of two 2018 regulations creating a moral exemption and expanding a  
 28

1 religious exemption to the rules establishing the contraceptive coverage requirement. In that status  
2 report, Federal Defendants (i) reported that they were continuing to evaluate the issues presented by  
3 this litigation and their regulatory options, and (ii) requested that the Court continue to hold the  
4 pending dispositive motions in abeyance to afford the agencies additional time to undertake these  
5 tasks.

6 After the filing of that report, Federal Defendants made an announcement related to their  
7 consideration of regulatory options. Specifically, they announced that “[t]he Departments [of Health  
8 and Human Services, Treasury, and Labor] intend to initiate rulemaking within 6 months to amend  
9 the 2018 final regulations and obtaining public input will be included as part of the Departments’  
10 rulemaking process.” CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation  
11 FAQs (Set 48) (Aug. 16, 2021) (available at [https://www.cms.gov/CCIIO/Resources/Fact-Sheets-  
12 and-FAQs#Affordable\\_Care\\_Act](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)) (attached as Exh. 1).

13  
14 Dated: August 17, 2021

Respectfully submitted,

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# EXHIBIT 1

# FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 48

August 16, 2021

Set out below is an additional Frequently Asked Question (FAQ) regarding implementation of the Affordable Care Act. This FAQ has been prepared jointly by the U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs> and <http://www.cms.gov/ccio/resources/fact-sheets-and-faqs/index.html>), this FAQ is intended to help stakeholders stay informed about the law.

## **Coverage of Preventive Services**

Section 2713 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act and incorporated into the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code), requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services without cost sharing. These preventive services include, with respect to women, preventive care and screenings as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA), including contraceptive services.

On November 15, 2018, the Departments published final regulations concerning religious and moral exemptions and accommodations regarding coverage of certain preventive services (2018 final regulations).<sup>1</sup> The 2018 final regulations expand exemptions for entities with religious or moral objections to the contraceptive coverage requirement to which their health plans would otherwise be subject.

### **Q1. Are the Departments considering changes to the 2018 final regulations?**

Yes. The Departments are considering how best to address these provisions in light of recent litigation. The Departments intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process.

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<sup>1</sup> 83 FR 57536, 83 FR 57592 (Nov. 15, 2018).

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.