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May 13, 2026

The Honorable Keith Sonderling
Acting Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Robert F. Kennedy Jr.
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Scott Bessent
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Comment on Proposed Rule, Excepted Fertility Benefits, 91 FR 27140 (May 13, 2026) [File Code 1210-AC40]

Dear Acting Secretary Sonderling, Secretary Kennedy, and Secretary Bessent:

Independent Women (IW) submits these comments in support of the proposed rule establishing excepted fertility benefits (the "Proposed Rule"). This rulemaking represents a meaningful and well-constructed policy achievement for American women and families, and we commend the Departments of Labor, Health and Human Services, and Treasury for their collaborative work in bringing it forward.

Independent Women is a non-partisan policy organization dedicated to advancing policies that expand freedom, opportunity, and well-being for women and their families. Through our Center for Better Health, we engage on healthcare policy with a focus on access, transparency, and the structural factors that determine health outcomes for American women. Fertility care access falls squarely within that mission.

The Proposed Rule advances a genuine and long-overdue priority for women's health. Infertility is not a peripheral health issue. According to the CDC, one in five

Americans of reproductive age experiences infertility. The physical burden of diagnosis and treatment falls predominantly on women, regardless of where the underlying fertility problem originates. Women undergo monitoring, hormonal stimulation, egg retrieval, and embryo transfer procedures that are medically significant, emotionally demanding, and financially prohibitive for the majority of those who need them.

Employer-sponsored coverage has functionally been the gatekeeper for fertility care access in this country. Yet the regulatory framework has historically created friction for employers who wish to offer fertility benefits outside their major medical plans, limiting uptake particularly among small and mid-size employers. The Proposed Rule removes that friction through a mechanism that is legally sound, administratively elegant, and consistent with decades of precedent for limited excepted benefits such as dental and vision coverage. Rather than imposing mandates, it expands the menu of options available to employers and employees alike—working through the market, not around it.

The regulatory design is well-constructed. The "substantially all" standard for benefit scope, modeled on existing dental and vision regulations, provides employers with appropriate flexibility while ensuring the benefit remains targeted to fertility care. The $120,000 combined lifetime maximum is reasonable for the typical patient—at $12,000 to $25,000 per IVF cycle, the cap provides meaningful coverage for the majority of individuals who will need two to three cycles. The decision to index the cap to the medical care component of the CPI-U beginning in 2028 appropriately accounts for rising treatment costs over time. The tri-agency coordination across ERISA, the Internal Revenue Code, and the Public Health Service Act ensures the rule reaches insured and self-insured plans consistently.

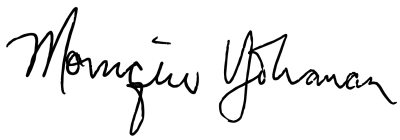
We support the Proposed Rule as written and, in response to the Departments' specific solicitation of comments on extending a similar approach to the individual market, we encourage the Departments to pursue that extension. The individual market serves self-employed workers, gig economy workers, and lower-income individuals who are disproportionately underinsured for fertility care and who have no access to an employer-sponsored benefit of any kind. If the administration's goal is to facilitate reliable and affordable access to IVF for American families—as stated in Executive Order 14216—limiting the benefit to the employer-sponsored market leaves a significant population of women without a pathway. We urge HHS to move forward on individual market guidance as expeditiously as possible, using the same excepted benefit framework where statutorily available.

The Excepted Fertility Benefits proposed rule is a substantive, well-designed policy advance for American women and families. It removes real regulatory barriers, expands access to care through a proven mechanism, and reflects the

administration's commitment to making fertility treatment more affordable and accessible. Independent Women strongly supports its finalization.

We appreciate the opportunity to comment and look forward to continued engagement on policies that advance women's health and family formation.

Respectfully submitted,



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