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HHS action draws religious liberty protests

Nancy Frazier O'Brien Catholic News Service | Aug. 4, 2011

WASHINGTON (CNS) -- When it comes to issues of religious freedom, Bill Donohue thinks the Obama administration has put religious employers between a rock and a hard place.

Commenting on the Department of Health and Human Services' Aug. 1 announcement that contraceptives and sterilization will be among the mandated preventive services for women under the new health reform law, the president of the Catholic League for Religious and Civil Rights recalled that as a presidential candidate, Barack Obama said faith-based programs that receive government aid should not be allowed to hire only members of their own faith.

"If you get a federal grant, you can't use that grant money to proselytize to the people you help and you can't discriminate against them -- or against the people you hire -- on the basis of their religion," Obama said in a July 1, 2008, speech in Zanesville, Ohio.

Now, HHS is proposing that only religious employers meeting four criteria would be exempt from providing contraceptives and female sterilization through their health plans. Those requirements are that the organization "(1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a nonprofit organization" under specific sections of the Internal Revenue Code.

"In other words, the Obama administration is playing Catch-22 with religious employers," Donohue said. "If they are too religious, Catholic social service agencies risk losing federal funds, but if Catholic hospitals are not sufficiently religious, they cannot be exempt from carrying health insurance policies that transgress their religious tenets."

The announcement of the narrow "religious exemption" proposed by HHS -- and subject to a 60-day comment period -- has drawn strong criticism not only from those known to oppose Obama and his health reform law.

Stephen S. Schneck, director of the Institute for Policy Research & Catholic Studies at The Catholic University of America in Washington, said in a commentary published by National Catholic Reporter newspaper before the Aug. 1 announcement that he had supported Obama's nomination of then-Kansas Gov. Kathleen Sebelius to head HHS, even though she took a "pro-choice stance on abortion."

"Those of us who supported Sebelius' nomination argued forcefully that she should not be penalized because her conscience reached different conclusions on contentious issues from those reached by the leaders of the Catholic Church," Schneck wrote.

"But it would be a tragic irony if, in adopting the new rules, Sebelius declined to afford to Catholic church organizations the same conscience rights we invoked when defending her nomination," he added. "Those of us who joined 'Catholics for Sebelius' did not do so to see our conscience rights eviscerated."

Sr. Carol Keehan also found fault with the conscience protections in the HHS guidelines.

"The language is not broad enough to protect our Catholic health providers," said the president and CEO of the Catholic Health Association, who was a key supporter of the Patient Protection and Affordable Care Act.

Keehan, a member of the Daughters of Charity, said her organization would submit written comments to HHS "and will continue our dialogue with government officials on the essential need for adequate conscience protections."

Writing in the Aug. 1 issue of America magazine, Catholic University President John Garvey recalled U.S. President George Washington's letter to a group of Quakers in 1789, in which he wrote, "In my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness: and it is my wish and desire that the laws may always be as extensively accommodated to them, as a due regard for the protection and essential interests of the nation may justify and permit."

"I think it is a point of pride for Americans that, even with the differences we have had recently over many issues of health care, we adhere so carefully to Washington's promise of conscientious accommodation," Garvey said.

But, he added, "I worry that this distinguished record of liberal toleration might soon come to an end."

Garvey urged HHS to "consider our historical commitment to religious liberty in deciding what kinds of services to mandate" under the new health reform law.

"The administration promised that Americans who like their current health care coverage could keep it after we enacted the new reform," Garvey noted. "Employers, employees and issuers who have moral and religious objections to sterilization, contraception and abortion are now free to have health care coverage that excludes these practices. It would break both old and new promises to deprive them of that liberty."

Mercy Sr. Mary Ann Walsh, director of media relations for the U.S. Conference of Catholic Bishops, said on the USCCB media blog that the HHS regulation "conveniently ignores the underlying principle of Catholic charitable actions: We help people because we are Catholic, not because our clients are."

"There's no need to show your baptismal certificate in the hospital emergency room, the parish food pantry or the diocesan drug rehab program," she wrote. "Or any place else the church offers help, either."

Walsh said it makes no sense for Catholic Charities agencies to "use money that would be better spent on feeding the poor to underwrite services that violate church teachings."

"Whatever you think of artificial birth control, HHS' command that everyone, including churches, must pay for it exalts ideology over conscience and common sense," she said.

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