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More comments filed objecting to HHS mandate

Mark Pattison Catholic News Service | Oct. 4, 2011

WASHINGTON -- Catholic organizations filing comments on the federal Department of Health and Human Services' mandate that health insurance plans cover contraception and sterilization and a proposed religious exemption registered their strong disapproval.

The latest round of comments echoed objections raised in those filed earlier by, among others, attorneys for the U.S. bishops and the Catholic Health Association.

The comment deadline was Sept. 30, the last day of a 60-day comment period for the mandate and proposed exemption announced Aug. 1 by HHS Secretary Kathleen Sebelius.

In describing as "narrow" a religious exception from the proposed mandate, Catholic Charities USA president Father Larry Snyder, in a 13-page Sept. 28 memo to an HHS administrator, said the mandate will "force organizations that oppose contraception for religious reasons to choose between (1) offering these services in violation of their religious beliefs, and (2) facing the prospect of substantial fees if they choose not to offer health insurance coverage. This lose-lose choice would impose a 'substantial burden' on these organizations' exercise of religion."

Under the HHS proposal, to qualify for a religious exemption, an organization would have to meet four criteria: "(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.

Catholic Charities has been the principal social services agency of the U.S. church for more than a century. "Throughout our history, we have always been able to serve those in need while maintaining our religious identity," Father Snyder said. "These federal regulations, if implemented, would compromise in unprecedented ways the ability of our agencies in local communities across America to provide these services."

In a Sept. 28 letter to Sebelius, Holy Cross Father John Jenkins, president of the University of Notre Dame, reminded her that when President Barack Obama spoke at Notre Dame's commencement ceremony in 2009, he had spoken of "a sensible conscience clause" on such matters.

"May I suggest that this is not the kind of 'sensible' approach the president had in mind when he spoke here," Father Jenkins said. "It runs contrary to a 40-year history of federal conscience statues that have been in effect to protect individuals and organizations like ours from being required to participate in, pay for, or provide coverage for certain services that are contrary to our religious beliefs or moral convictions."

He suggested an alternative definition for a religious employer already found in the IRS code that such an organization "shares common religious bonds and convictions with a church." "This definition more adequately defines religious employers to include all organizations that work in ministries of the church," Father Jenkins said.

Catholic University of America president John Garvey, in a Sept. 30 op-ed essay in The Washington Post, lodged his objections to the contraception mandate.

"The regulations that HHS unveiled in August will require Catholic University to offer its students sterilization procedures and prescription contraceptives, including pills that act after fertilization to induce abortions," Garvey said. "If we comply, as the law requires, we will be helping our students do things that we teach them, in our classes and in our sacraments, are sinful -- sometimes gravely so."

He added, "In objecting to these regulations, our university does not seek to impose its moral views on others, What we ask is respect for the religious beliefs we try to impart to our students."

On Sept. 29, 18 other Catholic colleges and universities, along with Auxiliary Bishop Thomas J. Curry of Los Angeles, chairman of the U.S. bishops' Committee on Catholic Education, had appealed to the White House to exempt all religious institutions and individuals from the proposed mandate, saying the exemption were "potentially so narrow as to be not only nearly inconsequential but insulting to religious entities, in particular to Catholic colleges and universities."

The Catholic Health Association, in comments dated Sept. 23, also criticized the HHS proposal.

"Requiring our members to cover contraceptive services, including sterilization and drugs with an abortifacient effect, would put them in an untenable situation," said Sister Carole Keehan, a Daughter of Charity who is CHA president and CEO.

The proposed exemptions, she added, raise "serious constitutional questions" by trying to define if an organization is "sufficiently religious" to warrant the exemption. "The government is unconstitutionally parsing a bona fide religious organization into 'secular' and 'religious' components solely to impose burdens on the secular portion," Sister Carol said.

The federal government's mandate that all health insurance plans cover contraceptives and sterilization free of charge "represents an unprecedented attack on religious liberty" and creates "serious moral problems" that require its rescission, attorneys for the U.S. bishops said in a 35-page comment submitted to HHS Aug. 31.

The letter called the HHS mandate "unprecedented in federal law and more radical than any state contraceptive mandate enacted to date."

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