

Obama administration issues new contraception mandate rules

Joshua J. McElwee | Brian Roewe | Mar. 16, 2012



The headquarters of the U.S. Department of Health and Human Services is seen in Washington. (CNS/Nancy Wiechec)

Taking a conciliatory tone and asking for a wide range of public comment, the Obama administration announced this afternoon new accommodations on a controversial mandate requiring contraceptive coverage in health care plans.

Coming after a month of continued opposition from the U.S. bishops to the mandate, which was first revised in early February to exempt certain religious organizations, today's announced changes from the Department of Health and Human Services make a number of concessions, including allowing religious organizations that self-insure to be made exempt.

Also raised is the possibility that the definition given for religious employers in the original mandate could be changed.

News of the changes came as a senior White House official told *NCR* in an afternoon phone interview unrelated to the new proposed rules for the contraceptive mandate that while the Obama administration and Catholic leaders may have "some points of disagreement" over a number of concerns, the president has "dramatically expanded" the federal government's connection with Catholic organizations.

On Wednesday, the leadership of the U.S. bishops' conference dialed back its vehement opposition to the Obama administration with a statement released at the end of a two-day meeting of the bishops' administrative committee.

While the statement declared the bishops' conference "strongly unified and intensely focused" and vowed to continue their defense of religious liberty in the courts, Congress and the White House, it lacked much of the inflammatory rhetoric that has characterized the debate between the bishops and the administration in recent weeks.

Although the bishops still described the administration's Feb. 10 accommodation on the mandate as "unspecified and dubious," they also said they would "accept any invitation to dialogue."

The change in tone led Jesuit Fr. Thomas Reese of the Woodstock Theological Center at Georgetown University to say that "while the language [of the bishops' statement] is strong and uncompromising, it is not inflammatory."

News of the changes also came as a separate ruling on student health insurance coverage was announced by the Department of Health and Human Services this afternoon. Under that ruling, health care plans for students would be treated like those of employees of colleges and universities -- meaning the colleges will have to provide contraceptive services to students without co-pay.

Religiously affiliated colleges and universities, however, would be shielded from this ruling, according to a statement from the HHS.

"In the same way that religious colleges and universities will not have to pay, arrange or refer for contraceptive coverage for their employees, they will not have to do so for their students who will get such coverage directly and separately from their insurer," the statement said.

In the 32-page proposal on the broader health care mandate published in the *Federal Register* today, the Health and Human Services Department says it is not yet making final rules on the contraceptive mandate, but is instead issuing questions and suggestions for a 90-day comment period to begin today.

Repeatedly, throughout the document, the federal departments involved in the ruling -- which include Health and Human Services, Labor and Treasury -- ask for advice on how best to address several issues raised by the mandate.

The federal departments, the document says, "seek input on these options, particularly how to enable religious organizations to avoid such objectionable cooperation when it comes to the funding of contraceptive coverage, as well as new ideas to inform the next stage of the rulemaking process."

Among the suggestions made in the document, known as a "proposed rulemaking," is that self-insuring employers with a religious affiliation be given several options to ensure that they will not have to cover contraceptive services. Included in the possibilities is the use of a system of third-party administrators to administer the coverage.

While the original version of the mandate defined religious employers as those which primarily serve or hire those of their faith, the rulemaking acknowledges that federal law in other areas define religious employers more broadly.

The federal departments involved, the document states, "seek comment on which religious organizations should be eligible for the accommodation and whether, as some religious stakeholders have suggested, for-profit religious employers with such objections should be considered as well."

The document also clarifies how religiously affiliated organizations would apply to be covered by the exemptions, saying those organizations would "self-certify" that they meet one or more of the exemptions and then make themselves available for inspection.

Following the 90 day comment period, the proposal says another "proposed rulemaking" on the issue will be released. Following that rulemaking, there will be another comment period, which will then be followed by the final regulations.

Mercy Sr. Mary Ann Walsh, the spokesperson for the U.S. bishops' conference told *NCR* she was "surprised

that such important information would be announced late Friday of St. Patrick's Day weekend and as we prepare for the Fourth Sunday of Lent.?

Sr. Carol Keehan, the head of the Catholic Health Association, would only say in an email comment provided by the organization that "we have to spend time reviewing it."

"The bishops will begin analyzing it immediately, but it's too soon to consider what it actually says," said Walsh, who also said they would consider "how the proposal actually gels" with the statement released by the conference's administrative committee Wednesday.

That statement, titled "United for Religious Freedom," said the mandate represented a "new definition of who we are as people of faith and what constitutes our ministry" that creates "a second class of citizenship within our religious community" that could "spread throughout federal law, weakening its healthy tradition of generous respect for religious freedom and diversity."

In the ruling on student health insurance coverage, the federal departments state that a college or university with religious objections to contraceptive coverage would also fall into an exemption window provided to other religiously affiliated organizations, running through Aug. 1, 2013.

If the college or university, along with its student health insurance plan, satisfies the terms for a religiously affiliated employer as outlined in the Feb. 10 accommodation, it will also be allowed to have a temporary one-year safe harbor from required contraceptive coverage.

According to today's ruling, schools within the safe harbor would be required to send notices to students alerting them of the exemption period.

During that time, the ruling says the federal departments "will work with stakeholders to develop alternative ways of providing contraceptive coverage without cost-sharing to students of non-profit religious institutions of higher education with religious objections to such coverage."

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Editor's Note: For a copy of the ruling on the broader health care mandate in the *Federal Register*, [click here](#) [1]. For a copy of the ruling on student health care plans, [click here](#) [2].

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