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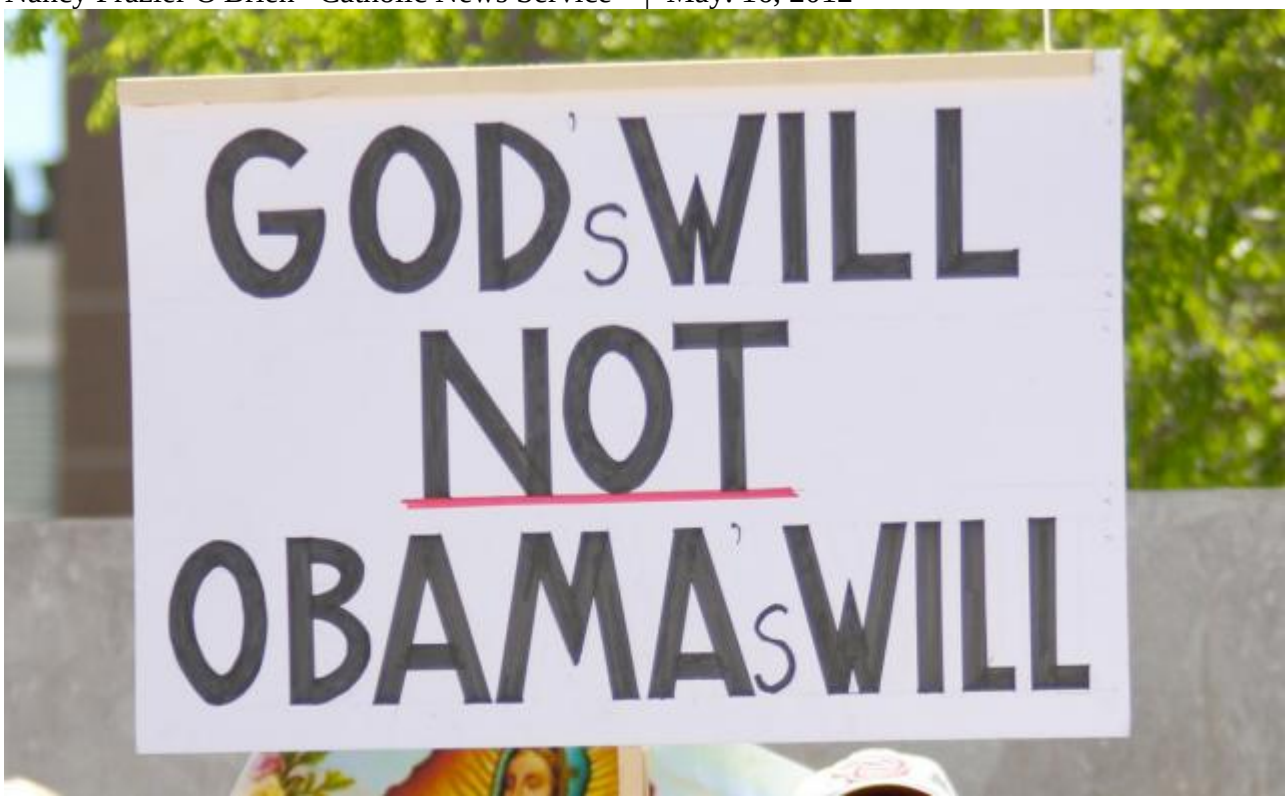
Obama 'accommodation' offers no fundamental change, USCCB attorneys say

Nancy Frazier O'Brien Catholic News Service | May. 16, 2012



A sign at a rally for the protection of religious liberty in March in Phoenix (CNS/Catholic Sun/Ambria Hammel)

WASHINGTON -- Although the Obama administration's proposed accommodation for religious employers to the mandate that contraceptives and sterilization be included in most health plans "may create an appearance of moderation and compromise," it does not change the administration's fundamental position, attorneys for the U.S. bishops said in comments filed Tuesday.

"We are convinced that no public good is served by this unprecedented nationwide mandate, and that forcing individual and institutional stakeholders to sponsor and subsidize an otherwise widely available product over their religious and moral objections serves no legitimate, let alone compelling, government interest," said the comments filed with the U.S. Department of Health and Human Services.

Signed by Anthony R. Picarello and Michael F. Moses, general counsel and associate general counsel, respectively, for the U.S. Conference of Catholic Bishops, the 21-page comments were in response to the administration's "advance notice of proposed rulemaking" published March 16 in the Federal Register, which proposed new ways for religious organizations that have moral objections to providing free contraceptives to their employees to comply with the requirement.

Among the administration's suggestions are having the costs covered by a "third-party administrator" of a health plan or "independent agency" that receive funds from other sources, such as rebates from drug makers.

The USCCB comments said the proposed changes would still require "conscientiously objecting nonexempt religious organizations ... to provide plans that serve as a conduit for contraceptives and sterilization procedures to their own employees, and their premiums will help pay for those items."

"As a practical or moral matter, none of (the approaches proposed by the administration) will solve the problem that the mandate creates for nonexempt religious organizations with a conscientious objection to contraceptive coverage," the attorneys added.

The USCCB comments repeated several times that the best solution to their objections to the mandate would be its complete rescission.

"We believe that this mandate is unjust and unlawful -- it is bad health policy, and because it entails an element of government coercion against conscience, it creates a religious freedom problem," the USCCB attorneys said.

"These moral and legal problems are compounded by an extremely narrow exemption that intrusively and unlawfully carves up the religious community into those that are deemed 'religious enough' for an exemption, and those that are not," they added.

The USCCB submission noted that HHS had not asked for comments on whether contraceptives and sterilization should be among the mandated preventive services for women under the health reform law or on the four-pronged definition of religious organizations that could be exempt from the requirement.

To be exempt from the requirement, a religious organization "has the inculcation of religious values as its purpose; primarily employs persons who share its religious tenets; primarily serves persons who share its religious tenets; and is a nonprofit organization" under specific sections of the Internal Revenue Code.

Both the mandate and the exemption are now final rules, "entirely unchanged from August 2011," the USCCB said.

It warned that "many religious and other stakeholders with a conscientious objection to some or all of the mandate coverage are ineligible" for the exemption or the one-year "temporary enforcement safe harbor" established by the Obama administration. That safe harbor period is to begin Aug. 1, 2012.

"Absent a change of course by the administration or a court order granting relief, individuals, insurers, for-profit employers and many other stakeholders with a moral or religious objection to contraceptive coverage will be required in the next few months either to drop out of the health insurance marketplace, potentially triggering crippling penalties, or to provide coverage that violates their deeply held convictions," the USCCB attorneys said.

Before it makes a final decision on the proposed ruling, the Obama administration is seeking public comment until June 19.

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