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Catholic Charities, Catholic Health Association challenge HHS mandate

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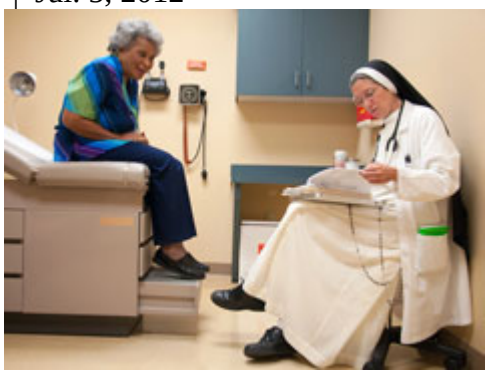

Dominican Sr. Mary Diana Dreger, a physician, sees a patient at St. Thomas Family Health Center South in Nashville, Tenn., in this 2011 file photo. (CNS/Tennessee Register/Theresa Laurence)

WASHINGTON -- In separate submissions to U.S. Health and Human Services June 15, Catholic Charities USA and the Catholic Health Association sharply opposed the federal health care contraceptive insurance mandate.

Both called it a direct violation of their own religious freedom and that of the thousands of Catholic agencies across the country that they represent.

Both said the religious employer exemption adopted by HHS is too narrowly drawn and does not recognize Catholic hospitals, charities and social services as engaged in religious ministries, although these agencies are clearly religious and carry on their ministries as a direct matter of faith.

The HHS regulation in question will require all employers that provide employee health insurance to include, at no cost to employees, voluntary sterilization and contraceptive services -- including ulipristal acetate, more commonly referred to as "ella," which can prevent implantation of a fertilized ovum as well as fertilization and is therefore regarded by the Catholic church as not just a contraceptive but an abortifacient.

All three procedures -- artificial contraception, voluntary sterilization and abortion -- are condemned in Catholic teaching as seriously evil.

HHS included an exemption for religious employers that belong to religions that consider those procedures or treatments immoral, but it restricted the definition of religious employer to an organization that exists primarily to inculcate its faith, employs primarily or only members of its faith, serves primarily or only members of its own faith, and is organized under the federal tax code as a nonprofit religious organization.

The Catholic Charities and Catholic Health Association as a matter of their faith commitment serve members of all faiths and as a matter of ethics do not proselytize or "inculcate their faith" among those they serve.

The Catholic Health Association said it represents "more than 2,000 Catholic health care sponsors, systems, hospitals, long-term care facilities and related organizations" in all 50 states and the District of Columbia, whose hospitals serve one in every six patients each year across the country.

Catholic Charities said its member organizations in Catholic dioceses across the nation employ an estimated 70,000 people who serve "approximately 10.2 million people of all faiths, in many cases doing work that the federal, state and local governments lack the human and financial resources to do."

The two organizations' submissions to HHS -- triggered by the opening of a new, final commentary period on the HHS regulation, which is slated to take effect this August -- happened to coincide with the final day of a national meeting of the U.S. bishops in Atlanta.

One of the main focuses of the bishops' June 13-15 meeting (at which only the first day and a small portion of the second were open to media and observers) was threats to religious freedom at home and abroad, with a strong emphasis on the HHS mandate.

The bishops discussed at length their then-upcoming Fortnight for Freedom observance, June 21-July 4, through which they hoped to rally Catholics nationwide to speak out against the HHS regulation.

The Catholic Health Association letter could carry more weight with the Obama administration than the Fortnight for Freedom simply because, unlike the U.S. bishops, who waged public war on the Affordable Care Act because they believed it did not carry sufficient iron-clad guarantees against government-funded abortions, the association supported the act while putting the question of its potential funding of abortion on hold.

That support was critical to the passage of the act in 2010, while the bishops' total opposition has in practical terms removed them from the political playing field then and since: The Obama administration simply views them as hostile.

In its June 15 letter to Marilyn Tavenner, HHS acting administrator for Medicare and Medicaid services, Catholic Health Association said that the "narrow religious exemption" proposed by HHS simply does not meet any real church standard of what constitutes a religious employer.

'The exemption in the final rule is narrower than any conscience clause ever enacted in federal law and reflects an unacceptable change in federal policy regarding religious beliefs," it said.

The association proposed two solutions to the current standoff:

- It suggested changes in the language of the HHS mandate to state that "the term 'church' includes a religious order or religious organization if such order or organization (1) is an integral part of a church, and (2) is engaged in carrying out the functions of a church, whether a civil law corporation or otherwise," and that an "organization is associated with a church if it shares common religious bonds and convictions with the church."

"Making this change could address the serious constitutional questions created by the ... current approach, in which the government essentially parses the bona fide religious organization into secular and religious components solely to impose burdens on the secular portion," the association said.

"To make this distinction is to create a false dichotomy between the Catholic Church and the ministries through which the church lives out the teachings of Jesus Christ," the letter said.

- The association also advised simplifying the current, "unduly cumbersome" bureaucratic approach of calling for insurance providers to cover contraception and related services without charge to employees of nonexempt religiously related organizations, and moving instead to direct government provision of such coverage. "The more we learn," said the association's letter, "the more it appears that the ANPRM [the March 21, 2012, Advance Notice of Proposed Rulemaking] approaches for both insured and self-insured plans would be unduly cumbersome and would be unlikely to adequately meet the religious liberty concerns of all of our members and other church ministries. Given this, if the Departments [HHS and the Health Resources and Services Administration] unfortunately continue to pursue the course that all employees must have access to contraceptive services without cost, then the government will need to develop a way to pay for and provide such services directly to those employees who desire such coverage without *any* direct or indirect involvement of religious employers (under the expanded definition above.)"

The letter was signed by Daughter of Charity Sr. Carol Keehan, the association's president and CEO, and by the association's outgoing and incoming board chairs, Robert V. Stanek and Joseph R. Swedish respectively.

The Catholic Charities USA letter, signed by president and CEO Fr. Larry Snyder, said, "Catholic Charities agencies are first and foremost Catholic institutions -- a manifestation of the Gospel call for charity and justice for all people. Remaining faithful to Catholic teaching is not a matter of choice; rather it is essential to our identity."

Those agencies operate under the authority of the local Catholic bishop, "who has responsibility for interpreting Catholic teaching and applying it," and they can only operate in accord with that teaching authority, he said.

The narrow HHS definition of a "religious employer" he said, "is especially problematic because, in analyzing this issue, the government will likely ignore the fact that many people and organizations of faith consider acts of charity and social justice to constitute an expression of their religious values."

The regulation violates "the well-established First Amendment principle that the government 'should refrain from trolling through a person's or institution's religious beliefs,' " he said, citing the 2000 Supreme Court decision *Mitchell* v. *Helms*.

He said it also violates the Religious Freedom Restoration Act, which "prohibits the federal government from substantially burdening a person's exercise of religion unless the burden is in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest."

HHS "did not set forth a compelling rationale for its policy decision or employ the least restrictive means of furthering that interest," he wrote.

Notably absent from both the Catholic Charities and Catholic Health Association submissions on the HHS regulation was any reference to what has been dubbed the "Taco Bell rule," the claim advanced by the U.S. Conference of Catholic Bishops and the 43 Catholic dioceses and other agencies in lawsuits against the HHS regulation, that not only religious employers but also secular employers who have personal religious objections to the HHS contraceptive coverage mandate should be exempted by federal law from the mandate.

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