

Published on *National Catholic Reporter* (<https://www.ncronline.org>)

February 1, 2013 at 11:37am

Obama administration offers new, broad compromise on contraceptives

by Joshua J. McElwee

Dozens of lawsuits and more than a few fortnights later, the Obama administration on Friday announced a new set of wide-ranging exemptions from a federal mandate requiring contraceptive coverage in health care plans.

The mandate, a provision of the U.S. Department of Health and Human Services as part of the implementation of the health care reform law, has been the subject of sustained criticism from the U.S. bishops' conference, which has claimed it does not do enough to exempt religious organizations opposed to contraception.

Under the new proposed regulations, any employers who are exempt from filing taxes because of their religious status, partially defined as "churches, their integrated auxiliaries, and conventions or associations of churches," would be exempt from the mandate.

Additionally, any nonprofit organizations that oppose providing coverage and consider themselves to be religious entities will also be exempt.

"Under the proposed accommodations, the eligible organizations would not have to contract, arrange, pay or refer for any contraceptive coverage to which they object on religious grounds," states a fact sheet provided by the Department of Health and Human Services on the change.

According to the fact sheet, employees of exempted organizations who wish to have contraceptive coverage would be able to receive coverage "through separate individual health insurance policies, without cost sharing or additional premiums."

Cardinal Timothy Dolan, archbishop of New York and president of the U.S. bishops' conference, issued a statement saying the bishops "welcome the opportunity to study the proposed regulations closely."

Daughter of Charity Sr. Carol Keehan, president and chief executive officer of the Catholic Health Association of the United States, said in a statement they "look forward to studying it in relation to our members? expressed concerns and sharing our assessment of the changes."

Jesuit Fr. Thomas Reese, a Catholic commentator and senior fellow at Georgetown University's Woodstock Theological Center, said the new proposed regulations show that the administration has "gone out of their way to resolve the concerns of religious institutions that object to covering contraceptives in their insurance programs."

A media call with Health and Human Services staff early Friday afternoon focused mainly on funding for the new proposed regulations.

Chiquita Brooks-LaSure, the Deputy Director of Policy and Regulation for the Center for Consumer Information and Insurance Oversight, said any cost to insurance issuers on behalf of organizations exempt from the mandate would be made up by long-term health benefits caused by the coverage.

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"We believe that providing this coverage overall leads to reduced cost because preventive services provide coverage that is more helpful for benefits," said Brooks-LaSure.

Brooks-LaSure also said that no federal funds would be used to provide coverage to employees of self-insured organizations.

"In no instance would there be federal funds flowing and in no instance would employer dollars be used" in that case, she said.

Dolan, along with a number of other American bishops, has taken a strident tone toward the administration over the mandate in the last year. After the initial release of the mandate in January 2012, several bishops painted the matter as an assault on religious freedom.

Bishop David Zubik of Pittsburgh wrote at the time that the administration had essentially said " 'To hell with you' to the Catholic faithful of the United States." Bishop Daniel Jenky of Peoria, Ill., called it an "unprecedented governmental assault upon the moral convictions of our faith."

The Obama administration previously announced a narrower compromise in February 2012, which would have allowed some religiously affiliated organizations to decline providing coverage.

The bishops and others who opposed that compromise said its definition of religious employers as those who primarily inculcate religious values and primarily serve or employ members of the religious was too narrow.

Taking up the matter as a whole, the U.S. bishops launched a Fortnight for Freedom in June and July, asking Catholic dioceses to address the matter with "prayer, study, catechesis, and peaceful public action."

According to the new proposed regulations, the definition of religious employers would follow IRS tax

return filing exemptions as "churches, their integrated auxiliaries, and conventions or associations of churches" and "the exclusively religious activities of any religious order."

Reese said the proposed regulations "fixed the four-part definition of religious employer by eliminating the confusing first three parts and relied on the traditional definition of churches in the Internal Revenue Code."

According to the fact sheet, to be exempt from the mandate, nonprofit organizations would need to:

- oppose providing coverage "for some or all of any contraceptive services required under the health care reform";
- be "organized and operating as a nonprofit entity";
- identify as a religious organization; and
- self-certify that "it meets these criteria and specifies the contraceptive services for which it objects to providing coverage."

Following the Friday announcement, the new regulations are open to public comment for the next 60 days.

Check back with NCRonline.org as the day progresses for more news and analysis on the new mandate.

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