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HHS revision draws mixed response from bishops

Joshua J. McElwee | Feb. 28, 2013

Competing statements from several U.S. prelates in February seemed to point to some division among the nation's bishops regarding their response to a federal mandate requiring contraceptive coverage in health care plans.

The mandate, a provision of the U.S. Department of Health and Human Services first issued in January 2012 as part of the implementation of the health care reform law, has been the subject of sustained episcopal discussion -- and sometimes outright condemnation -- since.

The bishops and other groups have claimed the mandate does not do enough to exempt religious organizations opposed to contraception.

The Obama administration revised the mandate for a second time Feb. 1, outlining broader accommodations for churches and other nonprofit, religious groups.

A Feb. 4 statement issued by Philadelphia Archbishop Charles Chaput, who called the revisions "coercive and gravely flawed," seemed to preempt an official statement made by the U.S. Conference of Catholic Bishops Feb. 7.

Speaking on behalf of the bishops, New York Cardinal Timothy Dolan, president of the conference, said that while the prelates believe the latest compromises still fall short they "remain eager" to work with the administration on the issue.

Dolan's claim that the issues remained unresolved, along with Chaput's earlier statement, caused some to conclude the bishops were rejecting the administration's latest accommodation.

Dolan issued a second statement Feb. 8 on his archdiocesan blog saying the bishops had not rejected the new proposals, but will rather "take seriously the Administration's invitation to submit our concerns through formal comments."

Baltimore Archbishop William Lori, chairman of the U.S. bishops' Ad Hoc Committee for Religious Liberty, took a different tack Feb. 15 when he formally asked Congress to attach new conscience provisions for the mandate to upcoming appropriation bills for the Health and Human Services and Labor departments.

Such attachments would effectively amount to an end-run around the administration's proposals, forcing the departments to follow certain provisions to receive their federal funding allotments.

With a 60-day public comment period on the Feb. 1 proposals, the bishops and others have until April 8 to submit proposals.

The mandate, and whatever exemptions are negotiated, is expected to have the force of law by August.

Two other U.S. bishops took a more congenial tone on the matter in February.

"Clearly, the Administration has been desirous of listening to and accommodating the concerns of Catholics and other people and institutions of conscience, like myself," Bishop Robert Lynch of St. Petersburg, Fla., wrote Feb. 9.

"One would be hard put to find any other segment of the American public whose concerns about the Affordable Health Care Act have attempted to be dealt with than those of the Catholic bishops," Lynch continued.

Bishop Blase Cupich of Spokane, Wash., responded similarly, saying he was "confident that we can find a way forward."

"This latest response of the government appears to provide some new openings, which we need to explore and for which we should express appreciation," Cupich wrote in a letter to his diocese Feb. 11.

Daughter of Charity Sr. Carol Keehan, president of the Catholic Health Association, said in a statement Feb. 13 that while her organization is still studying the new regulations, some of their provisions are "a great relief to our members and many others."

"CHA looks forward to working with our members, the leadership of the Bishops' Conference and the Administration to complete this process," Keehan wrote.

Lynch, who is a Catholic Health Association board member, also said the bishops "should consider ourselves lucky" that the administration is "still talking to us."

Under the new proposed regulations, any employers who are exempt from filing taxes because of their religious status 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.

The Obama administration had previously announced a narrower compromise on the issue in February 2012.

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 their religion was too narrow.

In his Feb. 7 comments regarding the newer proposals, Dolan said the bishops are specifically concerned with a distinction the new regulations make between religious employers and nonprofit religious organizations.

While the regulations consider religious employers "exempted" from the mandate, they state that religious nonprofits are "accommodated."

Lynch said he thought that distinction was not significant. After consulting a dictionary for definitions of the two terms, Lynch wrote, "I am led to believe that it is a distinction without a difference."

"I still am grateful that that more universal health care coverage will be the first fruit of the Affordable Care Act and I am beginning to feel that I can say to my diocesan self-insured employees, all 1,400 of them, that their moral right to health care coverage will survive this moment," Lynch concluded.

Some 44 organizations -- including a number of Catholic dioceses and colleges, and private companies such as retail store giant Hobby Lobby -- have filed suits against the federal mandate.

A U.S. District Court judge Feb. 8 dismissed a lawsuit filed against the mandate by the dioceses of Springfield and Joliet, Ill., their respective Catholic Charities agencies, and Catholic Charities of the Chicago archdiocese, saying the matter was "unripe for adjudication."

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