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Obama administration issues final rules on HHS contraceptive mandate

Brian Roewe | Jun. 28, 2013

The Obama administration on Friday released its final rules [1] regarding exemptions for religious organizations from contraception coverage mandated by the Patient Protection and Affordable Care Act.

The rules state that group health plans of "religious employers" do not have to provide contraception coverage in their employee health plans. "Religious employers" are defined as those organizations that file as such under the terms of the Internal Revenue Code.

Also, the safe harbor period for compliance was moved to Jan. 1, pushing back from an Aug. 1 deadline.

The new definition throws out a previous version, which drew ire from U.S. bishops and other religious groups, requiring "religious employers" to meet three criteria:

- "have the inculcation of religious values as its purpose;
- primarily employ persons who share its religious tenets; and
- primarily serve persons who share its religious tenets."

The administration also addressed a separate accommodation for nonprofit religious organizations -- including charities, hospitals and universities -- that will not have to "contract, arrange, pay, or refer for contraceptive coverage" to which they object on religious grounds.

To qualify for the accommodation, an organization must self-certify as a nonprofit religious group with religious objections to contraceptive coverage, then provide a copy of its self-certification to its health insurance issuer. The issuer would then notify enrollees that coverage is provided separately and at no cost to the women.

"The health care law guarantees millions of women access to recommended preventive services at no cost," Kathleen Sebelius, Secretary of the Department of Health and Human Services, said in a press release.

"Today's announcement reinforces our commitment to respect the concerns of houses of worship and other non-profit religious organizations that object to contraceptive coverage, while helping to ensure that women get the care they need, regardless of where they work," she said.

The rules revise a February draft [2], which received more than 400,000 comments during the public commenting period that ended in April.

In their comment, filed in March, U.S. bishops objected [3] to a narrow "exemption" definition while expressing dissatisfaction with the manner funding was facilitated for "accommodating" organizations. The bishops called for for-profit employers to be eligible for exemption if they objected to providing contraception to employees.

In a press release [4] Friday, Cardinal Timothy Dolan of New York, president of the U.S. bishops' conference,

said he "appreciated the extension" of the grace period.

"We appreciate the extension of the effective date by five months, which is readily apparent in the rule. The remainder of the rule is long and complex. It will require more careful analysis. We will provide a fuller statement when that analysis is complete," he said.

For organizations with an insured health plan, coverage will be offered separately through health insurance companies or third-party administrators who must ensure that payments for contraceptive services come from outside the objecting organization's premiums. For self-insuring institutions, a third-party administrator would provide or arrange the services, paid for through reductions in federally-facilitated-exchange user fees associated with its partnering health insurance issuer.

The final rules do not extend exemptions or accommodations to private, for-profit employers, a point of contention with previous drafts. On Thursday, a federal appeals court ruled [5] that Hobby Lobby, a retail craft store founded "in a manner consistent with Biblical principles," according to its website, would not have to pay fines (upwards of $1 million) while the company proceeds with its case against the government.

During a conference call with reporters, HHS officials said the department had no comment on ongoing litigation.

"The definitions that we've used in the rule are consistent with other related areas of federal law," Chiquita Brooks-LaSure, a deputy director of Centers for Consumer Information and Insurance Oversight.

The rulings come amidst the U.S. bishops' second Fortnight for Freedom, which started in 2012 as a response to the threats to religious liberty the HHS mandate and other government policies posed to religious groups and individuals.

The HHS rules are the second major political development to come during the Fortnight (which continues until July 4), the other being two Supreme Court decisions [6] on same-sex marriage. The bishops have made upholding traditional marriage a focus of this year's religious liberty campaign.

Baltimore Archbishop William Lori is one of several religious leaders who is scheduled to present an open letter calling for religious freedom in regard to the HHS mandate on Tuesday.

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