USCCB Submits Comments on Proposed HHS Rulemaking, Urges Re-Opening of Final Rule Defining Mandate, Exemption

Future 'accommodation' excludes many, cannot meet incompatible goals

Outstanding issues should be resolved 'in favor of more, not less, religious freedom'

WASHINGTON, May 15, 2012 /PRNewswire-USNewswire/ -- Religious employers and other stakeholders would still have their employee health insurance plans and premiums used for services they find morally objectionable, even under future government accommodations, according to comments submitted by the General Counsel of the U.S. Conference of Catholic Bishops (USCCB) to the U.S. Department of Health and Human Services (HHS). The May 15 comments outlined the continued objections of USCCB to the HHS "preventive services" mandate and urged the administration to resolve these issues "in favor of more, not less, religious freedom."

"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," wrote Anthony Picarello, USCCB associate general secretary and general counsel, and Michael Moses, associate general counsel. "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."

The comments were submitted in response to an HHS Advance Notice of Proposed Rulemaking (ANPRM) on preventive services, which expressed the administration's intention to propose additional regulations in order to establish alternative ways of ensuring contraceptive coverage for employees enrolled in health plans of religious organizations not exempted from the HHS mandate while still "accommodating" such organizations.

The USCCB comments noted that such an accommodation would only apply to some religious organizations and that it "would still leave their premiums or plans (or both) as the source or conduit for the objectionable 'services.' But the use of premiums and plans for that purpose is precisely what is morally objectionable, and having an insurer or third party administer the payments does not overcome the moral objection." The comments concluded that, "under the terms set out in the ANPRM, the 'accommodation' cannot provide effective relief even for those few stakeholders that qualify for it."

The comments outlined six points:

First, the ANPRM does not change the fact that contraceptive services are included in the list of mandated preventive services. This has remained unchanged from an earlier regulation announced in August 2011.

Second, the ANPRM does not change the administration's criteria for defining "religious employers" exempted from the mandate, an exemption that USCCB calls "unprecedented in federal law, improperly narrow, and unlawful." These criteria include that employers primarily hire and serve only members of their own religion.

Third, many stakeholders in the health insurance process—religious and secular insurers, religious and secular for-profit employers, individual policy-holders, and others—with a conscientious objection to the mandate are completely ineligible for the exemption. The ANPRM does not acknowledge or address this problem, and as a result, those stakeholders "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."

Fourth, while the administration has invited public comment on some further "accommodation" for certain non-exempt religious organizations, secular stakeholders will receive no such accommodation. "We

believe that the contraceptive mandate violates the religious and conscience rights of these stakeholders as well and is unlawful."

Fifth, regardless of the definition of "religious organization," the central problem remains, that "conscientiously-objecting non-exempt religious organizations will still be required 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." The administration has invited comment on different approaches for how to deal with a self-insured employer, but "none of them will solve the problems that the mandate creates for non-exempt religious organizations with a conscientious objection to contraceptive coverage."

Sixth, the ANPRM raises new questions such as whether employers must be independently exempt for their employees to participate in an exempt plan, whether religious objection to some, but not all, contraceptives should be accommodated and whether a past practice of mistakenly or unknowingly covering contraceptives should disqualify one from accommodation.

"In each case, we urge resolution of these questions in favor of more, not less, religious freedom," Picarello and Moses wrote.

The full text of the comments is available online: www.usccb.org/about/general-counsel/rulemaking/upload/comments-on-advance-notice-of-proposed-rulemaking-on-preventive-services-12-05-15.pdf

CONTACT: Don Clemmer, O: +1-202-541-3206, M: +1-260-580-1137