WISCONSIN CATHOLIC CONFERENCE

April 8, 2013

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201
Re: Notice of Proposed Rulemaking on Preventive Services
File Code No. CMS-9968-P

Dear Sir or Madam:

On behalf of the Wisconsin Catholic Conference, the public policy voice of Wisconsin's Catholic Bishops, we respectfully submit the following comments on the Notice of Proposed Rulemaking ("NPRM") on preventive services. 78 Fed. Reg. 8456 (Feb. 6, 2013)

While we acknowledge the Administration's efforts to modify the rule to address concerns expressed in our previous letters on this topic (see Wisconsin Bishops letter to the Honorable Kathleen Sebelius, Secretary, U.S. Department of Health and Human Services, Sept. 2, 2011; and the Wisconsin Bishops Comments on the Advance Notice of Proposed Rulemaking (ANPRM), June 15, 2012), the proposed rule described in the NPRM remains flawed in certain important respects.

First, as a matter of public policy, mandating that private health plans provide coverage for surgical sterilizations and prescription FDA-approved contraceptives as a "preventive service" implies that human fertility is unwelcome, both to women and society. Instead, our public policies should recognize its value as it allows humanity to prosper.

Second, while the definition of an exempt "religious employer" has been revised to eliminate some of the intrusive government inquiries into religious teaching and beliefs that were inherent in the earlier definition, the current proposal continues to define "religious employer" in a manner that excludes many employers who are undeniably religious.

The nonprofit religious organizations that fall on the "non-exempt" side of this definition include those organizations that contribute in a very visible and public way to the common good through the provision of health, educational, and social services. We and others have previously noted that this approach divides the religious community into those "religious enough" to qualify for the exemption from the mandate, and those that are not. Yet faith, by its very nature, requires both formation and expression in every aspect of daily life. Living the faith and preaching are not detached, and we continue to object to this dichotomy.

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We reaffirm, as stated by the Wisconsin bishops in their September 2011 letter to Secretary Sebelius, that "for Catholics, religion is a matter of personal conviction with social consequences. Ministry in the Catholic tradition is not limited to houses of worship. It finds full expression in service to others. The faith we profess and celebrate in the parish is taken into the world through our public ministries."

Third, the Administration has offered an "accommodation" for nonprofit religious organizations, which fall outside the narrow definition of "religious employer." We agree with the submittal of the United States Conference of Catholic Bishops (USCCB) that the "accommodation" is based on a number of questionable factual assumptions. As the USCCB points out, even if all of the assumptions were sound, the "accommodation" still requires the objecting religious organization to fund and/or facilitate the morally objectionable coverage. As such, religious organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments.

Under the proposed regulation, the plan sponsor (the employer) and enrollees (employees and their dependents) would either purchase a group plan that excludes contraceptive coverage, or else they would self-insure. For a purchased group plan, the policy issurer would automatically issue a separate individual policy to each enrollee for contraceptive coverage. The issuer would do so "without cost sharing, premium, fee, or other charge to plan participants and beneficiaries." 78 Fed. Reg. at 8462. The insurer would offer such coverage because it would be "cost neutral," according to the Administration. However, the individual policies for contraceptive coverage, by virtue of the participants' enrollment in the group plan, would still ultimately be facilitated by the objecting group. Therefore, even if a group's premiums were somehow segregated and not used to pay for these "cost neutral services," there remains a direct tie to the accommodated organization.

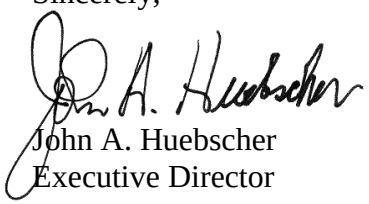
As regards self-insured plans, the Administration proposes that the third-party administrator ("TPA") to the plan find an insurer that would automatically issue individual contraceptive-only plans to all persons enrolled in the group plan (that is, all employees and their dependents). The USCCB observes, we think correctly, that a number of conjectures are built into this aspect of the proposal that may not be applicable to our local situations.

For example, the proposal assumes that (a) the plan sponsor with a religious or moral objection to contraceptive coverage does not self-administer the plan; (b) the sponsor will be both willing and able to find a TPA that does not share its objection and is willing to arrange such coverage; and (c) TPAs in turn will be willing and able to find an insurer to provide such coverage that will be content with the only consideration for such services being an adjustment in the insurer's federally-facilitated exchange (FFE) user fee. This, in turn, assumes that (d) there is a market of willing insurers that participate, or have an affiliate that participates, in the FFE for which (e) the costs of contraceptives and sterilization procedure will not outpace the adjustment in the insurer's (or its affiliate's) FFE user fee. If any of these assumptions fail to materialize, self-insured religious organizations may be placed in the untenable position of paying for services that violate their religious beliefs.

Moreover, those with moral and religious objections to the mandated coverage are provided with no recourse through which to retain a commitment to their principles. Unlike state mandates, the federal mandate applies to self-insured entities. Even those who may not wish to have such coverage will be forced to accept it with no viable alternative, including the employees of those organizations that qualify for the "accommodation," as well as for-profit businesses, individual purchasers, and other employers who may operate under moral precepts, but are not affiliated with any one religion (interfaith groups, etc.).

Thus, I must repeat the request made by the bishops of Wisconsin in September of 2011, namely that the regulation be rescinded or at least be modified so that its treatment of religious liberty reflects a more inclusive understanding of religion and religious institutional arrangements. We remain committed to working with the Administration to reach a just and lawful resolution of these issues.

Sincerely,



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