

Written Statement by
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CEO
Christian Medical Association

Committee on Energy and Commerce, Subcommittee on Health
United States House of Representatives

November 2, 2011

Re: U.S. Dept. of Health and Human Services (HHS) preventive services rule

Summary of arguments

1. The potential "**religious exemption**" in the contraception mandate--exempting only a nano-sector of "religious employers" from the guidelines--is *meaningless* to conscientiously objecting health care professionals, insurers and patients.
2. The contraception mandate can potentially **trigger a decrease in access to health care** by patients in medically underserved regions and populations.
3. The contraception mandate further **contributes to an increasingly hostile environment** in which medical students, residents and graduate physicians face discrimination, job loss and ostracism for holding pro-life views on abortion, controversial contraceptives and other ethical issues.
4. The contraception mandate **creates a climate of coercion** that can prompt pro-life health care professionals to limit the scope of their medical practice and can discourage pro-life medical students and residents from choosing careers in Family Medicine, Obstetrics and Gynecology and other specialties likely to involve conflicts of conscience.
5. The contraception mandate can potentially **cause a decrease in the provision of health insurance for employees** of pro-life health care employers who want to avoid conflicts of conscience regarding the subsidy and implied endorsement of controversial contraceptives.

Testimony

Mr. Chairman, I am testifying on behalf of the over 16,000 members of the Christian Medical Association, a professional membership organization that helps healthcare professionals to integrate their faith and profession and to care for patients according to longstanding ethical and moral principles. I am a Diplomate of the American Board of Family Medicine and hold a master's degree in bioethics.

Our members include physicians who hold a range of conscience convictions on controversial ethical and moral issues including contraception, health care reform, participation in the death penalty, and other conscience issues that span the left-right political spectrum.

- Virtually all medical professionals and student members we recently surveyed¹ say it is "important to personally have the freedom to practice health care in accordance with the dictates of [his or her] conscience."
- Even more specific to our topic today, over nine of ten say they "would not prescribe FDA-approved contraceptives that might cause the death of a developing human embryo."

The principle of physicians practicing professional judgment regarding both medical options and ethical standards is neither novel nor new; in fact, it has guided the practice of medicine for millennia.

Many physicians today conscientiously profess allegiance to life-affirming ethical standards such as the Hippocratic oath, which was first adopted over two millennia ago to protect the interests of patients and establish objective professional standards. It is especially important today for pro-life patients to retain the freedom to choose physicians whose professional judgments reflect the patient's own life-affirming values.

The HHS interim final regulations would force insurance plans nationwide to cover “*all Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.*”

The contraception mandate does not exempt controversial drugs such as Ella and the "morning-after pill," which according to the FDA have post-fertilization effects that "may inhibit implantation" of a living human embryo. That is an issue of weighty moral concern for many pro-life and faith-based health care professionals, individuals and groups.

The potential "religious exemption" in the contraception mandate--exempting only a nano-sector of "religious employers" from the guidelines--is *meaningless* to conscientiously objecting health care professionals, insurers and patients.

The HHS rule implementing provisions of the Patient Protection and Affordable Care Act fits a pattern of this administration's extremely narrow and limiting view of conscience rights. The HHS rule has the potential to negatively impact patients and health care professionals in the following ways:

1. The contraception mandate can potentially **trigger a decrease in access to health care** by patients in medically underserved regions and populations.
 - The *New York Times*ⁱⁱ reports that "Health policy experts have long expressed concern about a shortage of primary care doctors, including family physicians and internists. The shortage, they say, could become more serious if, as President Obama hopes, more than 30 million people gain insurance coverage under the health care law passed last year."

- Ironically, the administration's own policies on the exercise of conscience in health care, including the gutting of the only federal conscience-protecting regulation, actually threaten to *worsen* the physician shortage.
 - A national surveyⁱⁱⁱ of over 2,100 faith-based physicians revealed that over nine of ten are prepared to leave medicine if pressured to compromise their ethical and moral commitments.
 - The recent survey of our members revealed that 85 percent of medical professionals and students said that "policies that restrict the exercise of conscience in health care" make it less likely that they will "practice health care in the future."
2. The contraception mandate further **contributes to an increasingly hostile environment** in which medical students, residents and graduate physicians face discrimination, job loss and ostracism for holding pro-life views on abortion, controversial contraceptives and other ethical issues. This administration's gutting of the only conscience-protecting federal regulation only serves to reinforce such intolerance.
- Seventy-nine percent of our members surveyed said the new contraception mandate will have a negative impact on their "freedom to practice medicine in accordance with the dictates of [their] conscience."
3. The contraception mandate **creates a climate of coercion** that can prompt pro-life health care professionals to limit the scope of their medical practice and can discourage pro-life medical students and residents from choosing careers in Family Medicine, Obstetrics and Gynecology and other specialties likely to involve conflicts of conscience.

- Over half of the medical professionals and students we surveyed said the "new contraception mandate might cause [them] to restrict [their] practice of medicine."
 - One out of five faith-based medical students surveyed say they will not go into an Ob-Gyn specialty because of abortion-related pressures.
4. The contraception mandate can potentially **cause a decrease in the provision of health insurance for employees** of pro-life health care employers who want to avoid conflicts of conscience regarding the subsidy and implied endorsement of controversial contraceptives.
- Sixty-five percent of the medical professionals and students we surveyed said the contraception mandate will make them "less likely to provide insurance for their employees."

The contraceptive mandate rule sweepingly tramples conscience rights, which have not only provided a foundation for American civil liberties but also a foundation for the ethical and professional practice of medicine.

The administration should rescind this mandate entirely, for the ethical and practical reasons I have noted that especially impact faith-based and pro-life health care professionals and patients. The rule should also be rescinded for the constitutional and statutory reasons outlined in our official comment letter of September 29 to HHS, which I am submitting separately and ask to be included in the record.

We encourage Members of Congress to uphold conscience rights by passing the Respect for Rights of Conscience Act, which will ensure that

"health care stakeholders retain the right to provide, purchase, or enroll in health coverage that is consistent with their religious beliefs and moral convictions, without fear of being penalized or

discriminated against ... and to ensure that no requirement in [the new health care law] creates new pressures to exclude those exercising such conscientious objection from health plans or other programs...."

Upholding a respect for conscience and our First Amendment freedoms protects all Americans: conservatives and liberals, capitalists and socialists, atheists and people of faith.

Thank you for your consideration of these views.

Addendum

September 29, 2011 - *Submitted Electronically*

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-9992-IFC2
PO Box 8010
Baltimore, Maryland 21244-8010

Re: Interim Final Rule on Preventive Services. File Code CMS-9992-IFC2.

Dear Sir or Madam:

I am writing on behalf of the 16,000 members of the Christian Medical Association, a professional membership organization that helps healthcare professionals to integrate their faith and profession and to care for patients according to longstanding ethical and moral principles.

We offer comments on the amendments to the interim final regulations (76 Fed. Reg. 46621 (Aug. 3, 2011)) regarding mandatory coverage nationwide of certain preventive health services under provisions of the Patient Protection and Affordable Care Act.

Key components of the mandate that especially impact faith-based health care include the following:

- The new rule would force insurance plans to cover “*all Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.*”
- The Amended Regulations only consider for *potential* exemption a “religious employer” to be one that “(1) Has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization under section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue Code].” Conscientiously objecting individuals and religiously affiliated health insurers are not exempted.
- The new rule does not exempt drugs that according to the FDA have post-fertilization effects that “may inhibit implantation” of a living human embryo--an issue of weighty moral concern for many faith-based health care professionals, individuals and groups.

The administration should rescind this mandate entirely, for the following reasons:

1. Pregnancy is not a disease to be prevented; therefore, mandating contraceptives has no place in preventive disease policies.
2. The federal mandate imposes a radical ideological stance--unprecedented in and inconsistent with federal law--regarding conscience, contraception and abortion, on the vast majority of states that have taken a far less coercive and far more balanced approach.

3. The mandate violates the Constitution, federal law and the administration's stated policies:
 - a. The mandate violates the religion and free speech clauses of the First Amendment of the Constitution, by coercing faith-based health care ministries to not only violate the very faith-based tenets that have motivated patient care for millennia, but also to *pay for* that violation.
 - b. The mandate violates the Weldon amendment, passed every year by Congress since 2004.
 - c. The mandate violates the abortion and non-preemption provisions of the Patient Protection and Affordable Care Act (PPACA).
 - d. The mandate violates the Administration's own public assurances that PPACA would not be construed to require coverage of abortion; it also violates the related presidential Executive Order to secure passage of the Act.
4. The *potential* "religious exemption" is meaningless:
 - a. The preamble to the Amended Regulations offers no actual exemption but merely allows "additional discretion" to exempt a nano-sector of "religious employers" from the guidelines regarding contraception.
 - b. The potential exemption provides no protection to conscientiously objecting individuals or insurers.
 - c. The narrow potential exemption is far more restrictive than any other genuine religious exemption in federal health care law.
 - d. HHS is not constitutionally empowered--especially absent a compelling state interest--to simply make up its own definition of religious ministry.
5. Such conscience-violating mandates will ultimately reduce patients' access to faith-based medical care, especially depriving the poor and medically underserved populations of such care. A national survey (available at www.Freedom2Care.org) of over 2,100 faith-based physicians revealed that over nine of ten are prepared to leave medicine if pressured to compromise their ethical and moral commitments.

Thank you for your consideration of these views.

Sincerely,

David Stevens, MD, MA (Ethics)
CEO

ⁱ Christian Medical Association online survey of membership conducted Oct. 24-29, 2011, N=1,177.

ⁱⁱ *New York Times*, "Administration Halts Survey of Making Doctor Visits, June 28, 2011.

ⁱⁱⁱ Available online at <http://www.freedom2care.org/learn/page/polls-april-2009>.