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Contraception mandate outrages religious groups

The Obama administration's decision requiring church-affiliated employers to cover birth control was bound to cause an uproar among Roman Catholics and members of other faiths, no matter their beliefs on contraception.

The regulation, finalized a week ago, raises a complex and sensitive legal question: Which institutions qualify as religious and can be exempt from the mandate?

For a church, mosque or synagogue, the answer is mostly straightforward. But for the massive network of religious-run social service agencies there is no simple solution. Federal law lays out several criteria for the government to determine which are religious. But in the case of the contraception mandate, critics say Health and Human Services Secretary Kathleen Sebelius chose the narrowest ones. Religious groups that oppose the regulation say it forces people of faith to choose between upholding church doctrine and serving the broader society.

"It's not about preventing women from buying anything themselves, but telling the church what it has to buy, and the potential for that to go further," said Sister Carol Keehan, president of the Catholic Health Association, representing some 600 hospitals.

Keehan's support for the passage of the Obama health care overhaul was critical in the face of intense opposition by the U.S. bishops. She now says the narrowness of the religious exemption in the birth control mandate "has jolted us." She pledged to use a one-year grace period the administration has provided to "pursue a correction."

The U.S. Health and Human Services Department adopted the rule to improve health care for women. Last year, an advisory panel from the Institute of Medicine, which advises the federal government, recommended including birth control on the list of covered services, partly because it promotes maternal and child health by allowing women to space their pregnancies. The regulation includes a religious exemption if an organization qualifies. Under that provision, an employer generally will be considered religious if its main purpose is spreading religious beliefs, and if it largely employs and serves people of the same faith. That means a Catholic parish likely would qualify for a religious exemption; a large church-run soup kitchen probably would not.

Employers that fail to provide health insurance coverage under the federal law could be fined \$2,000 per employee per year. The bishops' domestic anti-poverty agency, Catholic Charities, says it employs 70,000 people nationwide. The fine for the University of Notre Dame, the most prominent Catholic school in the country, could be in the millions of dollars.

HHS says employers can appeal a decision on whether they qualify for an exemption. But Hannah Smith, senior counsel for the Becket Fund for Religious Liberty, said, "The mandate vests too much unbridled discretion in the hands of government bureaucrats."

Mandates for birth-control coverage are not entirely new for religious groups. Twenty-eight states already require contraceptive coverage in prescription drug plans. Of those states, 17

offer a range of religious exemptions, while two others provide opt-outs of other kinds. However, opponents of the HHS regulation say there is no state mandate as broad as the new federal rule combined with a religious exemption that is so narrow.

Even in states where the requirement already exists, the issue is far from settled.

Wisconsin's 2009 contraception mandate did not include a religious exemption, but allowed an exception for employers who self-insure. While some dioceses in the state were able to self-insure, others couldn't afford to do so. The Diocese of Madison, Wis., ended up offering a policy with birth-control coverage, but asked employees to follow church teaching and not use the benefit. Local bishops continued to lobby state lawmakers for an exemption. But leaders knew a national health care overhaul was in development and hoped the federal law would be an improvement, said John Huebscher, executive director of the Wisconsin Catholic Conference, the public policy arm of the state's bishops.

In California, whose religious exemption served as the model for the Obama administration, dioceses and some church-run agencies were able to self-insure, said Carol Hogan of the California Catholic Conference, but that option is for the most part unavailable under the federal health care law. Church-run groups could have stopped offering insurance to their employees, but considered that option unfair to workers.

The bishops have responded sharply to the regulation, launching a nationwide campaign against the mandate.

Bishops in more than 140 dioceses issued statements that were read at Mass last weekend. Bishop William Murphy of Rockville Centre, N.Y., called the requirement "a radical incursion on the part of our government into freedom of conscience." Bishop David Zubik of Pittsburgh wrote that "the Obama administration was essentially saying 'to hell with you,' particularly to the Catholic community by dismissing our beliefs, our religious freedom and our freedom of conscience."

The Becket Fund had previously filed two federal lawsuits over the regulations on behalf of Belmont Abbey College, a Catholic liberal arts school near Charlotte, N.C., and Colorado Christian University, an evangelical school near Denver. Both challenge the mandate as a violation of several freedoms, including the Religious Freedom Restoration Act, which says the government cannot impose a substantial burden on the free exercise of religion. The fine for Belmont Abbey would be more than \$300,000 for the first year, and more than \$500,000 for Colorado Christian, Smith, the Becket Fund counsel, said.

Many conservatives are also supporting legislation by Rep. Jeff Fortenberry, R-Neb., that would codify a series of exceptions to the new health care law on religious and conscience grounds

For religious-affiliated employers, the requirement will take effect Aug. 1, 2013, and their workers in most cases will have access to coverage starting Jan. 1, 2014. Women working for secular enterprises, from profit-making companies to government, will have access to the new coverage starting Jan. 1, 2013, in most cases.

Workplace health plans will have to cover all forms of contraception approved by the Food and Drug Administration, ranging from the pill to implantable devices to sterilization. Also covered is the morning-after pill, which can prevent pregnancy after unprotected sex and is considered

tantamount to an abortion drug by some religious conservatives.

There is no mandate to cover abortions. But that is little comfort to Catholic leaders, since the regulation violates other church teachings.

White House spokesman Jay Carney said Thursday that the administration will not reconsider the decision.

Associated Press writer Ricardo Alonso-Zaldivar in Washington contributed to this report.

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