



Secretariat of Pro-Life Activities

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Dear Senator:

The Catholic bishops of the United States have long supported the “Respect for Rights of Conscience Act” (S. 1467), now sponsored by Senator Roy Blunt with 36 other Senators. As you may soon have an opportunity to vote on this legislation, as either a free-standing bill or an amendment, I am writing to explain why we think its passage is more urgently needed than ever.

The bishops’ conference saw the need for this legislation when Congress, in approving the Patient Protection and Affordable Care Act (PPACA), authorized new lists of federally mandated benefits for all health plans without including language to preserve rights of conscience. PPACA authorized the Department of Health and Human Services (HHS) to develop lists of “essential health benefits” for all plans, as well as “preventive services” to be covered without co-pays or out-of-pocket expenses.

On August 3, 2011, HHS issued an interim final rule mandating coverage of all FDA-approved contraceptive drugs (including a drug that can cause an abortion in the first weeks of pregnancy), female sterilization methods, and related education and counseling as “preventive services for women.” The rule included an incredibly narrow four-pronged “religious employer” exemption. To qualify, an employer must: be a church, convention or association of churches, integrated auxiliary, or religious order; have the inculcation of religious values as its purpose; hire primarily people who share its religious tenets; and serve primarily people who share those religious tenets. It has been said that Jesus and his apostles would not be “religious enough” to qualify for the exemption, as they healed people of other faiths. This definition is illogical and counter-productive. It tells faith-based charitable, health care and educational institutions that they must violate their conscience, or stop advancing the common good by serving the poor, sick and needy.

Days ago, on February 10 – despite many thousands of comments urging it to change course – the Administration issued a regulation in which the rule of last August is “**adopted as a final rule without change.**” Thus it made permanent the policy that an organization does not deserve full respect for its religious freedom if it cares for the poor and needy of other faiths.

News of this regulatory action was obscured by the Administration’s simultaneous announcement that it would engage in new rulemaking next year, to develop a mechanism for applying the mandate to religious groups that are not exempt. It is proposed that, after a year’s delay in enforcement, these organizations’ health plans must include the same objectionable coverage as purely secular employers do – but the decision to do so will simply be taken away from them, as the coverage will be inserted into their plan directly by the insurer over their objections.

It is little or no comfort that, rather than being forced to propose such coverage, religious organizations will simply have it imposed on them. The argument that they will not really have to subsidize the coverage, because insurers will offer it “free of charge,” runs up against the reality that this coverage will be integrated into their overall health plan, and subsidized with the premiums paid by employer and employee for that plan.

The Administration’s rule makes no provision for the rights of insurers, even religiously affiliated insurers, but places responsibility for enforcing the mandate more squarely than ever on their shoulders. This is a radical departure from current law, under which a health plan that excludes contraception can be sold even to federal employees if the carrier has any religious objection to such coverage. Now, it seems, such an insurer will not be able to offer such a plan to almost anyone. The Administration admits it has only begun to work out what happens to the self-insured plans held by many religious organizations, where insurer and employer are identical.

In short, we are back to square one -- except that the rule so many hoped would change to accommodate Americans’ right of conscience is no longer subject to change, except by legislation. This brings me to the Respect for Rights of Conscience Act.

It is important to review what this legislation does and does not do. It states that the new lists of mandated benefits for private health plans created under PPACA will not *forbid* those who provide, sponsor and purchase health coverage to negotiate a health plan that is consistent with the religious beliefs and moral convictions of those involved. In this context I note that the federal government has granted numerous waivers from the requirements of PPACA for reasons far less serious than reasons of conscience.

What the legislation does *not* do is equally noteworthy:

1. It does not *require* any stakeholder in the health coverage enterprise to provide or accept such a plan. The *Washington Post* failed to realize this on February 10, when it editorialized against the legislation saying any conscience exemption for individuals would be “impossible to administer.” If it is impossible to administer, a health insurer will decline to grant it. But if *all* involved find an accommodation acceptable and workable, why would the federal government not allow it – as it always has in the past?

2. It does not free anyone of responsibilities they may have under other state or federal laws. I regret to say it does not reverse or alter the contraceptive mandates now in effect in many states (none of which, however, is as sweeping as the new federal mandate). Longstanding laws like the Pregnancy Discrimination Act, requiring coverage for pregnancy and childbirth (but not abortion) on the same basis as other health conditions in employee health plans, remain intact.

3. Because it relates to moral and religious objections to specific items or services, not objections to classes of people, it does not provide any support for discriminatory decisions to withhold basic coverage from some while giving it to others. The legislation specifically references an existing provision of PPACA against denying health care to people based on their disability, “quality of life,” or other factor that might be used to deny they have an equal right to life-supporting care. Therefore it does not protect, for example, a decision to deny life-saving care to people with HIV/AIDS, recognized as a disability in federal law.

4. It does not allow anyone to deny coverage for high-cost treatments, using morality and religion as a pretext. It specifically authorizes HHS to ensure that a plan with a conscientious exemption will be actuarially equivalent to the same plan without it. For example, a health plan without sterilization can offer more generous coverage for prenatal and maternity care.

This legislation is needed, reasonable, and carefully crafted. It simply ensures that new requirements under PPACA are not used to take away a freedom of conscience that Americans have enjoyed under federal law until now. To any hypothetical scenarios opponents may raise to attack this proposal – “What happens if someone does X or Y?” -- the simple answer is, “The same thing that would happen now, before enforcement of PPACA.”

There are many problems with the American health care system. One problem I have never heard anyone raise, until this past year, is that there is entirely too much respect for religious freedom. And this bill does not expand religious freedom rights but allows them to remain as they are now, before the mandate becomes effective. This is not extreme; it is simply common sense. If the needless dispute over this issue were resolved through this legislation, Congress and the Administration could return to the most pressing of all the real problems – the fact that many millions of Americans still lack *basic* coverage for health care that supports and sustains life.

The Catholic Church, driven precisely by its *faith*, is eager to work with Congress and the Administration to address that grave problem. Let us begin the task by respecting each other’s values that call so many of us to work for life-affirming health care for all in the first place. Please vote for the Respect for Rights of Conscience Act.

Sincerely,

A handwritten signature in black ink that reads "Cardinal Daniel DiNardo". The signature is written in a cursive, slightly slanted style.

Cardinal Daniel N. DiNardo
Archbishop of Galveston-Houston
Chairman, Committee on Pro-Life Activities
United States Conference of Catholic Bishops