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June 19, 2012

The Honorable Kathleen Sebelius
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: Advance Notice of Proposed Rulemaking for Certain Preventive Services under the Affordable Care Act [CMS-9968-ANPRM]

Dear Secretary Sebelius,

On behalf of the more than 68 million Catholics in the United States, 63 percent of whom support coverage for birth control in private or government-run plans[1] and more than 80 percent of whom believe that using contraception is a moral choice,[2] we applaud the Departments of Health and Human Services, Labor and the Treasury (herein after "the Departments") for seeking regulations for contraceptive coverage that "provide women access to the important preventive services at issue without cost sharing while accommodating religious liberty interests."[3] In recent debates regarding the accommodation, however, there appears to have been a misunderstanding about whose "religious liberty interests," and whose conscience, should be accommodated.

Religious Liberty and Conscience Protections: Meant for the Individual

Contraceptive coverage for each woman, regardless of where she works, respects employees' individual rights—both of conscience and individual religious liberty. Contraceptive coverage requirements infringe on no one's conscience, demand no one change her or his religious beliefs, discriminate against no woman or man, put no additional economic burden on the poor, interfere with no one's medical decisions and compromise no one's health. Some of the refusal clause language tells a different story, however. The existing refusal clause for certain religious employers, and the proposal to expand refusal clauses to include religious organizations or other employers, threaten both the conscience rights and religious liberties of every employee seeking access to contraception without co-pays. Individuals, after all, have consciences and religious liberty. Institutions do not.

Catholic teaching reflects this understanding by prioritizing respect for individual consciences in matters of moral decision-making. Our Catholic tradition also calls on us to honor religious liberty, which honors individuals' rights to both the freedom of religion, along with the freedom from being forced to live by another's beliefs. Neither this freedom of conscience nor the freedom of religion should be misconstrued as extending to institutions.

1436 U Street NW, Suite 301 • Washington, DC 20009 • tel 202-986-6093 • fax 202-332-7995
cfc@catholicsforchoice.org • catholicsforchoice.org

The restrictions already in place allow employers at certain "religious institutions"[4] to refuse to cover contraception while providing no workaround or recourse for these affected employees. They go far beyond any intention to protect conscience rights for all. Instead, they eliminate access to essential healthcare for the many workers in churches, diocesan offices, convents and certain schools. This will make it harder for many working Americans to get the healthcare they need at a cost they can afford.

Drawbacks to the Current Refusal Clause

To reiterate our earlier comments on this exemption for religious institutions, submitted on September 30, 2011, the current refusal clause allowing certain religious institutions to deny contraceptive coverage to their employees:

- leaves too many women without affordable access to the healthcare they need;
- constitutes state-sponsored discrimination by denying some women, simply on the basis of where they work, equal access to contraceptive coverage that is guaranteed to others;
- represents an affront to religious freedom by allowing certain elements of particular religions to trample the beliefs and practices of individual women workers; and
- flies in the face of Catholic ideals of conscience, workers' rights and social justice by leaving some women behind.

We therefore request that the Departments eliminate this existing broad, discriminatory refusal clause that allows certain religious institutions to deny contraceptive coverage to their employees.

Refocusing on the Individual

Barring this, when considering the proposed "accommodation" for additional "religious organizations" not exempted under the current final rule, we urge you to at least correct the current, misplaced deference to the false "conscience" claims of institutions rather than the actual conscience rights of individuals, and to avoid implementing any policies that would continue that dangerous trend. Rather than prioritizing what services are covered, what money is used and what institutions are granted exemptions, we ask that you prioritize the human impact of these exemptions and respect the consciences and religious freedom of all individual employees—whether at secular places of employment, "religious institutions" or "religious organizations"—by providing them with equal access to no-cost contraception. In our comments we ask questions addressing this human impact that we urge the Departments to consider when drafting any final rule. In addition, we hope these priorities inform the subsequent announcement of the final rule.

Out of respect for individual conscience, religious liberty, social justice, workers' rights and the human dignity of each person, we urge you not to expand these already expansive refusal clauses to include religious organizations. Instead, we call on you to ensure that each woman, no matter where she works, will be guaranteed timely, affordable access to contraception. We offer our expertise in voicing the lived reality of everyday Catholics, as well as our research into the devastating impact that restrictions upon reproductive healthcare services have already had at certain religious organizations. Data from both these sectors will demonstrate why certain proposals contained in the ANPRM would not serve the

Departments' stated goal of ensuring access to affordable contraception. Instead, they would serve to eliminate reproductive healthcare access for Catholics and non-Catholics across the country.

Regulatory Acrobatics: The Future According to ANPRM

» Who qualifies for the accommodation and for contraceptive coverage? / "What entities should be eligible for the new accommodation (that is, what is a 'religious organization')?"[5]

On this point, we agree with a statement made in another submission to the Departments: "The ANPRM raises various questions that should be resolved in favor of more religious freedom, not less."[6] We believe, however, that the Departments should respond to such questions by ruling on the side of true religious liberty—the freedom of religion, along with the freedom from being forced to live by another's beliefs that rightly belongs to individuals—rather than the troubling attempts to bestow such rights upon institutions.

Protecting the freedom of conscience for all Americans no matter what their beliefs may be is indeed the job of the government. Public policy should be implemented to further the common good and to enable people to exercise their conscience-based healthcare decisions. Refusal clauses that include exemptions for religious institutions would sacrifice these rights.

The administration has stated that the proposed accommodation for "religious organizations" will both ensure contraceptive access for employees and acquiesce to certain employers' wishes to remain uninvolved in providing contraceptive coverage. If this is the case, then it is particularly disappointing that the new proposal does not extend access to the employees of churches and other "religious institutions" who were left behind by the existing exemption. The gardeners, secretaries, cleaners, cooks and all those who work for churches around the country will continue to face discrimination.

Indeed, the very example of Catholic school teachers mentioned in the ANPRM itself[7] illustrates just how arbitrary the discrimination against these individuals is; according to the ANPRM, a Catholic school teacher's conscience matters if her school happens to provide its own healthcare insurance, but her rights are abrogated if the school receives healthcare coverage through its local diocese. These regulatory acrobatics serve only the interests of institutions and demonstrate a profound disregard for individual employees, who, unlike institutions, have tangible health care and religious liberty needs and who deserve government protection for both.

Last August, we heard from a Catholic school teacher who receives her insurance coverage directly from her local diocese and who would therefore explicitly be denied contraceptive coverage in the ANPRM. It is unclear to us why her conscience would be ignored by the Departments under her current circumstances but honored in another situation in which the only difference is a matter of which employer's group name is on her insurance card.

One Employee's Story

"Sandra," who uses a pseudonym for fear of repercussions from her employer, is a science teacher at a Catholic school in the Midwest. What is a reality for Sandra today is what, according to the ANPRM, many women can look forward to in their future.

As with almost all Catholic schools, Sandra's employers follow diocesan rules regarding employees' insurance—meaning no contraceptive coverage, regardless of medical necessity. When she first learned of the current contraceptive coverage exemption for "religious institutions," which was then just a proposal, she was outraged. As she explained to us, it added "insult to injury" by ignoring the healthcare needs of women like her and allowing her employers to continue to deny her coverage.

> "I just never assumed that in 2011 I would be denied birth control," she said. "I'm in my mid-twenties. I have no intention of having kids at the moment. I like teaching kids, but it's a whole other thing having them."

Sandra lost coverage when she began working under the jurisdiction of her local diocese.

> "I went to fill my birth control prescription like I always do. I say 'Here's my new insurance card,' and they say I'm not covered. They thought that it was weird and asked where I worked. As soon as I said I worked in a Catholic school, they said, 'Oh, 99 percent of Catholic schools will not cover it. We've never had it covered before.' I had no clue."

For Sandra, this posed a significant hardship. She had taken a salary reduction in order "to go to work every day saying that it's what I love." She and her husband had carefully considered their insurance plans and determined that it was more economical for them to remain on separate policies, but once she had to pay out of pocket for the birth control that was best for her, a non-generic prescription, their careful financial planning was all for naught.

> "Birth control is a lot of extra money on top of the salary reduction, but the principle of it is really what gets me. I don't like being told by some guy that I've never met that I can't use it. The bishops are not even having sex in the first place. How are they supposed to know how to tell me what to do in that situation?"

If it is true that Catholic school teachers whose health insurance is not offered by the diocese will receive timely, complete coverage of all contraceptive services, then we ask that Catholic school teachers like "Sandra" and employees at all other "religious institutions" be granted an equal opportunity to access affordable contraception. Ensuring such access avoids the untenable position of allowing the Departments to determine which employees' consciences—and health—matter, simply on the basis of where they work.

The (Employee's) Freedom to Choose the Right Contraceptive Method

Similarly, just as each employee's conscience matters no matter where she works, we believe that any final rule should protect individuals' rights to make their own conscience-based decisions about which

method of contraception is best for them.[8] Coverage for the full range of FDA-approved contraceptive methods is essential for allowing women to make their own decisions about which option is best for them, no matter their circumstances.[9] [10] [11]

The Departments have already embarked on a slippery slope by attempting to redefine, on the basis of employment, the appropriate subject of religious freedom and conscience protections. They should not compound this problem by allowing employers to single out certain types of contraception for different treatment under the rule than others. To do so would imply that emergency contraception (EC), long-acting forms of contraception such as IUDs—or any other type of contraception unspecified in the ANPRM—are somehow less worthy of being included in a list of "the full range of FDA-approved" methods. Further, it blatantly misrepresents the expert medical information about contraceptive methods currently available. Proposing to allow employers to pick and choose the contraception covered by their insurance would substitute an employer's amateur understanding of medicine for the advice of a medical professional; compromise women's health; and validate false claims about biological science and medication.

Such jettisoning would set a dangerous precedent of the Departments allowing employers, not medical professionals, to determine appropriate care. Under a proposal to allow certain employers to refuse to provide certain services, would employees receive the same notice of refusal as employees at institutions that refused to cover all forms of contraception? Or would their employers be allowed to leave an employee to discover at the pharmacy counter that the method best for her was not covered? In the case of emergency contraception, would an employee be guaranteed coverage and access during the narrow timeline when such medications are effective, or would a prohibitive reimbursement process or unclear guidelines stymie her efforts to exercise her conscience?[12]

The majority of Catholics support equal access to the full range of contraceptive services and oppose policies that impede upon that access, including access to EC. Two-thirds of Catholic women (65 percent) believe that clinics and hospitals that take taxpayer money should not be allowed to refuse to provide procedures or medications based on religious beliefs.[13] A similar number of Catholic voters, 63 percent, also believe that health insurance, whether private or government-run, should cover contraception.[14] A strong majority (78 percent) of Catholic women prefer that their hospital offer emergency contraception for rape victims, while more than half (55 percent) want their hospital to provide it in broader circumstances.[15] This support for the full range of contraceptive services is unsurprising, as restrictions such as refusal clauses or prohibitive costs affect Catholics just as often as non-Catholics—98 percent of sexually experienced Catholic women have used a modern method of birth control, mirroring the rates of the population at large (99 percent).[16]

To leave out some forms of contraception, including emergency contraception, in some employees' plans, and leave such coverage up to an undetermined alternative means of access, would mean leaving too much up to chance. Such inadequate coverage would ignore the reality of peoples' lives, the uniqueness of each woman's health needs and the circumstances under which she may need to utilize EC. We believe that an inaccurate portrayal of women's needs should not be the basis for putting

employers in the position to determine which forms of contraception are acceptable and which should be left up to the good will of third party administrators.

The Catholic View: the Conscience May Be Guided, But Not Coerced

» Who is protected by the administration of the accommodation? / Who administers the accommodation?

Our faith compels us to listen to our own consciences in matters of moral decision-making and to respect the rights of others to do the same. This deference for the primacy of conscience extends to all women and to their personal decisions about which family planning methods are best for them and their families. Our faith's respect for religious freedom does not require or condone telling people what they can and cannot believe and practice, but rather supports giving people the respect and ability to follow their own consciences in what they believe and practice. Religious freedom protections extend to one's personal religious beliefs and practices, but they do not give individuals or entire institutions license to obstruct or coerce the exercise of another's conscience. Indeed, our Catholic intellectual tradition emphasizes that consciences can be guided but never forced in any direction.

In keeping with these ideals, we ask that any ultimate regulation regarding the "accommodation" defer to the consciences of individual employees and ensure that their individual beliefs and decision-making abilities regarding contraceptive use are neither obstructed nor coerced. In keeping with the goals of the ANPRM, any contraceptive coverage must be "affordable, accessible, meaningful and stable,"[17] thereby ensuring that, no matter who they work for, employees are guaranteed consistent, reliable access to no-cost contraception.

Refusal Clauses: No Unnecessary Burdens on Access to Services

Some states have instituted contraceptive coverage refusal clauses for religious institutions and religious organizations similar to those proposed in the ANPRM. In some circumstances, the "notice" of refusal to cover contraception provided by these employers to their employees contained a requirement that employees sign statements acknowledging that they understood that their employers objected to contraception, but were worded in such a way as to imply that employees could face termination or other repercussions should they avail themselves of contraceptive coverage or utilize contraception themselves.

Such threats regarding termination due to the use of reproductive healthcare services are sadly not always empty. For example, during the past months, two Catholic school teachers were fired by their employers for utilizing assisted reproductive technologies to become pregnant.[18] [19]

Similarly, when Catholics for Choice studied reproductive healthcare coverage by Catholic HMOs in the early 2000s, we found that none of the 48 Catholic managed care plans at that time provided notification on their websites of limitations on reproductive health services, either by the plans themselves or by member hospitals—even though more than half had partial or full restrictions. A study of managed care plans in five regions with a high level of managed care found that only four percent of "plans reported

that they routinely notify employees that, for religious or personal reasons, some participating providers may not provide or refer for all covered contraceptive services." Furthermore, "only one-half of commercial plans and one-third of Medicaid plans ... reported that they routinely provide enrollees with a written list of the specific contraceptive methods covered by the plan."[20]

Refusing to provide information about available healthcare or threatening enrollees who utilize their insurance coverage is unacceptable, and any final rule should not act as a gateway to such treatment of employees who utilize contraception. We therefore hope that any notices to employees of their employer's refusal to provide coverage make it explicitly clear that employees are allowed to access contraception from another source and outline the precise means by which employees may do so, no what matter their employer's beliefs. Of course, we expect that any notices issued directly by employers during the one-year transition period are equally clear about employees' rights to exercise their conscience-based decisions regarding contraception without coercion.[21] In the interest of individual rights of conscience, religious liberty and equal justice, there must be no exemption from this requirement.

In protecting employees from coercion and unnecessary hoops, and in the interest of full transparency of information for accessing contraceptive coverage, we ask that the Departments ensure that any funding for such coverage genuinely reflects the ANPRM's stated commitment to stability. It is troubling that the Departments have taken some objecting organizations' false assurances that they have no problem with publicly funded programs for contraception as a suggestion that the Departments fund contraceptive coverage for certain employees via a government program. We applaud and whole-heartedly support government programs that fund contraception and that allow all individuals, including those with limited financial resources, to access reproductive healthcare services. These programs serve our Catholic tradition of social justice by providing equal healthcare access to the poor. We know, however, that the budgets for such programs have sadly become political bargaining chips in recent years, and that the appropriations they receive are already stretched razor-thin. Almost incredibly, some of those who advocate for shifting contraceptive coverage to government programs are also the same people who consistently lobby for elimination of their funding.

We hope that the Departments, if considering such programs as a means to augment contraceptive coverage requirements, seek and heed the advice of those who support such initiatives and who have experience in their administration, rather than the input of individuals who have consistently attempted to eliminate them altogether.[22]

Equal Access to Healthcare Services – No Second-Class Citizens

» Who could be harmed by the accommodation?

As stated previously, we hope that the Departments will temper the mistakes of the past several months by ensuring that the thousands of employees at religious institutions receive equal access to contraception. We further hope that the Departments will not add to the number of women and families adversely affected by the lack of contraceptive access by creating an even more expansive refusal clause. The more than 530,000 full-time and 235,000 part-time employees at Catholic hospitals[23] and their

dependents deserve access to contraceptive coverage. The hundreds of thousands of employees at the 251 Catholic colleges and universities in the United States also deserve such access. The workers at Catholic Charities, at Taco Bells, at businesses and non-profits large and small, secular and religious, all deserve equal respect for their consciences and their abilities to make their own healthcare decisions without employer interference. Each of these workers stands to lose such coverage if the Departments do not ultimately ensure that their rights are always considered first and foremost.

Indeed, as previously stated, evidence has shown that certain Catholic hospitals and Catholic colleges and universities already provide contraceptive coverage to their employees. Such schools and universities provide contraceptive coverage not in spite of our Catholic traditions of freedom of conscience and religious liberty, but because of it. For instance, Marquette University, a Catholic school in Milwaukee, Wisconsin, has covered contraception for its employees since 1990—nearly two decades before Wisconsin passed its contraceptive coverage requirement in 2009. As a spokesperson for Marquette explained in February, the provisions for contraceptive coverage at Marquette "recognize that a significant portion of the University's employees are not Catholic and that contraceptives are at times prescribed by physicians for purposes other than birth control.... It is also important to point out that the availability of a benefit does not require that an employee make use of it, as the choice to use a contraceptive is a matter of conscience."[24] Such contraceptive coverage, in other words, respects religious pluralism as well as the religious freedom and individual conscience of employees.

These employees would stand to lose this coverage should the Departments broaden current refusal clause exemptions or allow the authorities to demand a change in policy at those schools that have rightly covered contraception for their employees. We urge the Departments not to extend exemptions to include hospitals, colleges and universities, secular institutions or for-profit employers in the face of an already expansive refusal clause.

We cannot accept the idea that some women are somehow more deserving of healthcare coverage, their consciences more important than some others', simply because of where they work. This is unjust. In keeping with our Catholic tradition's commitment to the dignity of all people, we cannot accept a second-class citizenship for any woman.

Out of respect for the consciences and dignity of all individuals, including all workers, we answer the ANPRM's question as to whether religiously affiliated insurance companies should be granted an exemption with an unequivocal "no."[25]

Case Studies in Compliance—Catholic HMOs v. Employee Access to Care

Catholics for Choice is uniquely qualified to address the question from the Departments about whether religious health insurers or third-party administrators should be granted a refusal clause for contraceptive coverage. Catholics for Choice completed a comprehensive study of Catholic HMOs in the United States in 2000. That study included the number of Catholic HMOs and an overview of which reproductive healthcare services each provided. The report offered a comprehensive analysis and explanation of the ways in which Catholic health plans at that time made reproductive healthcare services available to enrollees by utilizing contracts with non-Catholic providers, third party administrators or contracts with

additional insurers. It demonstrated the ways in which a lack of employee notification posed a hindrance to employees availing themselves of those options. We are happy to provide copies of that study to interested parties from the Departments upon request and to answer any questions about its contents during one of the proposed listening sessions. A link to the online version of that study is included in the endnotes to these comments.[26]

Although the information in that study is dated, it was published within one year of twelve states passing contraceptive coverage requirements. The Departments may find it informative, as it provides a snapshot of compliance with state contraceptive coverage requirements by Catholic HMOs in those states during a timeframe similar to the one proposed by ANPRM for the implementation of contraceptive coverage requirements throughout the United States. The Departments may find that study instructive about the ways Catholic HMOs can and do provide contraceptive coverage without the actual or alleged infringement of constitutional rights.[27]

Twelve states instituted contraceptive coverage requirements between 1999 and 2000, the year that the study was published: California, Connecticut, Delaware, Georgia, Hawaii, Iowa, Maine, Nevada, New Hampshire, North Carolina, Rhode Island and Vermont.[28] Of these states, only two, California and Nevada, were within the markets for Catholic HMOs at that time.

During that period, California law required reversible prescription contraception to be covered in insurance plans but included an exemption allowing religious institutions—with a definition similar to the federal guidelines issued on February 10, 2012—to refuse to provide coverage. Nevada, meanwhile, also required coverage for all reversible prescription contraception and required coverage for related service such as contraceptive counseling and examinations, but allowed religious insurers and insurance plans affiliated with religious organizations to opt out. California was within the markets for St. Mary's Health First, a Catholic HMO that refused to provide coverage for contraception, and Western Health Advantage, a Catholic HMO that covered contraception. Nevada was also within the service market for St. Mary's Health First, which did not provide contraception. Thus, in California, which had a supposedly "narrower" religious exemption, only one of the two Catholic HMOs in the state provided contraceptive coverage. In Nevada, which had a supposedly broader exemption for both insurers and employers, the only Catholic HMO refused to cover contraception.

The sporadic access to contraceptive coverage available to enrollees in a Catholic managed care plan based in Nevada or California, was reflective of irregular coverage available on a national level. Of the 48 Catholic HMOs in 2000, though none were technically in violation of state laws regarding contraceptive coverage, only 25 covered contraception.[29] While we applaud those Catholic managed care plans that chose to do the right thing by offering their enrollees coverage for reproductive healthcare services, we would not want a national law to condone leaving employees with such sporadic access by codifying an option for employers to deny employees the right to follow their own consciences. Workers deserve better than a toss-up.

One of the founding promises of the Affordable Care Act was that people would be able to keep the insurance that they liked. We hope that this commitment will not be abandoned in the cases of those employees who are already accessing contraception through their insurance plans by virtue of state laws

that demonstrate respect for their individual consciences.[30] We hope that the Departments will protect the consciences and religious liberty of individual employees in those states that already ensure greater protections and access for employees than current federal proposals. Maintaining federal requirements as a floor rather than a ceiling will at least guarantee that those employees who live in states that require contraceptive access regardless of employer or insurer will not have their contraceptive coverage disrupted or, worse, eliminated, by more restrictive and onerous federal proposals.

Conclusion: Ensure Access to Affordable Contraceptive Services for All

The final exemption for "religious institutions" announced on February 10, 2012, already leaves too many women without affordable access to the healthcare they need. It continues to constitute state-sponsored discrimination against certain employees; represents an affront to religious freedom; and is anathema to our Catholic ideals of conscience, workers' rights and social justice. We request that this exemption be eliminated altogether.

Furthermore, the Departments should not compound earlier mistakes by extending refusal clauses to leave behind even more employees of religious organizations, secular institutions, religious insurers or other entities. Catholic hospitals, for instance, are already in the business of routinely denying reproductive healthcare services to those seeking care. They should not be granted a license to deny coverage for those services to their employees, regardless of their religious beliefs or health needs.

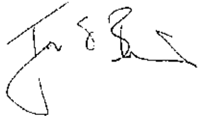
Expanding access to contraception by making it more affordable will make a difference in the lives of many women and their families. Our Catholic faith's dedication to workers' rights leads us to believe it is unethical and morally bankrupt, however, to leave any woman out of this equation simply because of where she works. Each woman's ability to prevent unintended pregnancies, regulate healthcare conditions, prevent sexually transmitted diseases and, in some cases, to avoid potentially life-threatening pregnancies, matters, and there is no acceptable religious or political justification to the contrary.

Coverage for contraceptive services and counseling also demonstrates sound judgment about the common good and complements our faith's social justice tradition. As Catholics, we are called to show solidarity with and compassion for the poor. Expanding access to contraception by making it more affordable will make a difference in the lives of many women and their families. By eliminating copayments for family planning and making these services more affordable, working women in the United States will have greater access to the healthcare services that are best for themselves and for their families.

We ask that the Departments not grant institutions a free pass to trample employees' consciences and religious freedom; instead, we hope that you will demonstrate a commitment to the common good by protecting the individuals who stand the most to lose. Barring the complete rescission of the refusal clause for religious institutions or the accommodation for "religious organizations," we hope that you will indeed ensure that contraceptive access is "affordable, accessible, meaningful and stable,"[31] and that religious liberty is protected for employees. It is the human impact on employees—individuals like

"Sandra," the Catholic school teacher in the Midwest; the professor at Marquette University; or the night attendant at a Catholic hospital in a state without refusal clauses—whose health needs and rights to conscience and religious liberty we hope you will deeply consider when making your decision.

Respectfully,



Jon O'Brien

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[1] Belden, Russonello & Stewart, "Catholic Voters' Views on Health Care Reform and Reproductive Health Care Services: A National Opinion Survey of Catholic Voters," September 2009.

[2] Gallup News Service, "Gallup Poll Social Series: Values and Beliefs," http://www.gallup.com/poll/154799/Americans-Including-Catholics-Say-Birth-Control-Morally.aspx, May 3-6, 2012.

[3] Federal Register, Vol. 77, No. 55, Wednesday, March 21, 2012, 16503.

[4] Ibid., 16502.

[5] Ibid., 16504.

[6] United States Conference of Catholic Bishops, "Re: Advance Notice of Proposed Rulemaking on Preventive Services," May 15, 2012, 18.

[7] Federal Register, Vol. 77, No. 55, March 21, 2012, 16502.

[8] "The Departments seek comment on whether the definition of religious organization should include religious organizations that provide coverage for some, but not all, FDA-approved contraceptives consistent with their religious beliefs.... The Departments could allow religious organizations to continue to provide coverage for some forms of contraceptives without cost sharing, and allow them to qualify for the accommodation with respect to other forms of contraceptives consistent with their religious beliefs." Federal Register, Vol. 77, No. 55, March 21, 2012, 16505.

[9] *National Catholic Reporter*, "Reveal Papal Birth Control Texts," April 19, 1967.

[10] National Survey of Family Growth, www.cdc.gov/nchs/nsfg.htm.

[11] Gallup News Service, "Gallup Poll Social Series: Values and Beliefs," http://www.gallup.com/poll/154799/Americans-Including-Catholics-Say-Birth-Control-Morally.aspx, May 3-6, 2012

[12] For example, despite their personal objections to contraception and their current statements regarding emergency contraception (EC), the bishops have for several years recognized EC as a health service that should be provided to patients in Catholic hospitals, as outlined in Directive 36 of the *Ethical and Religious Directives for Catholic Health Care Services* (USCCB, *Ethical and Religious Directives for Catholic Health Services*, Fourth Edition, 2010).

Furthermore, the Catholic Health Association has rightly recognized access to EC as absolutely critical to providing "sensitivity, compassion and assistance" to women seeking care, and their own hospitals are required to provide it. A special report on EC in the January-February 2011 edition of CHA's flagship publication directly refuted those objecting to emergency contraception, stating that typical claims against its use tend to be based on "outdated scientific literature or on mere supposition" (Ron Hamel, "Thinking Ethically About Emergency Contraception: Critical judgments require adequate and accurate information," *Health Progress*, January-February 2010.

[13] Belden, Russonello & Stewart, "Religion, Reproductive Health and Access to Services: A National Survey of Women," Catholics for Choice, April 2000.

[14] Belden, Russonello & Stewart, "Catholic Voters' Views on Health Care Reform and Reproductive Health Care Services," Catholics for Choice, 2009.

[15] Belden, Russonello & Stewart, "Religion, Reproductive Health and Access to Services: A National Survey of Women," Catholics for Choice, April 2000.

[16] National Survey of Family Growth, www.cdc.gov/nchs/nsfg.htm.

[17] Federal Register, Vol. 77, No. 55, March 21, 2012, 16507.

[18] For the story of Christa Dias, a single woman fired from her teaching position by the Archdiocese of Cincinnati for using artificial insemination to become pregnant, see: Kimball Perry, "Baby worth legal fight with church," *Cincinnati Enquirer*, http://news.cincinnati.com/article/20111226/NEWS010702/312270011/Baby-worth-legal-fight-church, December 27, 2011.
[19] For the story of Emily Herx, an English teacher at St. Vincent de Paul School in Ft. Wayne, Indiana, who was fired by the Diocese of Fort Wayne-South Bend for using fertility treatments to become pregnant, see: Leigh Remizowski, "Teacher who was fired after fertility treatments sues diocese," CNN, http://articles.cnn.com/2012-04-26/us/us_indiana-in-vitro-lawsuit_1_fertility-treatments-fertility-doctor-diocese-officials?_s=PM:US, April 26, 2012.
[20] Catholics for Choice, "Catholic HMO's and Reproductive Health Care," 2000.
[21] "The Departments do not anticipate that religious organizations would be required to provide such notice to plan participants and beneficiaries beyond the one-year transition period because responsibility to provide notice to plan participants and beneficiaries about the contraceptive coverage would be assumed by the independent entity. The Departments seek comment on how this notice should be provided." Federal Register, Vol. 77, No. 55, March 21, 2012, 16505.
[22] For example, Archbishop William Lori, referenced Title X and other publicly funded family planning programs while representing the United States Conference of Catholic Bishops during a congressional hearing this year, and later in an editorial (William Lori, "Bishop Lori Responds to 'America' Editorial,' http://www.catholicculture.org/culture/library/view.cfm?recnum-9874, *Catholic Culture*, march 2, 2012). He implied that employees whose employers refuse coverage could seek contraceptive coverage under Title X or another publicly funded family planning program, but failed to mention that such programs are only available for low-income individuals, or, significantly, that the bishops have consistently attempted to eliminate such programs for decades.

In 1965, five years before Title X was created, the bishops sent William Ball to testify before a Senate subcommittee that the bishops opposed publicly funded contraceptive services. When President Nixon created Title X in 1970, the director of the United States Catholic Conference (USCC) Family Life Division (later a bishop himself) testified before Congress that the bishops opposed such programs. In 1978, The USCC Secretary for Social Development and World Peace testified that the bishops supported universal health care—except for coverage of contraception. In 1989, Richard Doerflinger, who still serves as a spokesperson for the bishops, testified before a House committee that the bishops "have problems with" Title X. In 1991 and 1992, the bishops' stated list of public policy priorities included "oppose reauthorization" of Title X (Catholics for Choice, *Bishops on Birth Control: A Chronicle of Obstruction*, 1997).

If Archbishop Lori's statement reflects a change in the bishops' hostile stance toward family planning programs to one of support for Title X and other family planning safety net programs, we welcome such a turn of heart. Nonetheless, we ask that you seek the advice of those who genuinely have the best interests of those seeking contraceptive access—whether the poorest of the poor, as in the case of Title X, or whether individual employees in need of insurance coverage—in making any decisions regarding publicly funded contraceptive programs and what those programs could conceivably undertake.
[23] Catholic Health Association of the United States, "Catholic Health Care in the United States," January 2012.
[24] Matthew DeLuca, "Cardinal Timothy Dolan's Belated Health-Care Conversion," *The Daily Beast*, http://www.thedailybeast.com/articles/2012/02/22/cardinal-timothy-dolan-s-belated-healthcare-conversion.html, February 22, 2012.
[25] "One question that has arisen from religious stakeholders is whether an exemption or accommodation should be made for certain religious health issuers or third-party administrators with respect to contraceptive coverage. The Departments have little information about the number and location of such issuers and administrators and whether and how such issuers operate in the 28 states with contraceptive coverage requirements." Federal Register, Vol. 77, No. 55, March 21, 2012, 16507.
[26] Catholics for Choice, "Catholic HMO's and Reproductive Health Care," http://www.catholicsforchoice.org/topics/healthcare/documents/2000catholichmos.pdf, 2000.
[27] Ibid.
[28] National Conference of State Legislatures, "Insurance Coverage for Contraception State Laws," http://www.ncsl.org/issues-research/health/insurance-coverage-for-contraception-state-laws.aspx, February 2012.
[29] Catholics for Choice, "Catholic HMO's and Reproductive Health Care," http://www.catholicsforchoice.org/topics/healthcare/documents/2000catholichmos.pdf, 2000.
[30] "Generally, Federal health insurance coverage regulation creates a floor to which States may add consumer protections, but may not subtract. This means that, in States with broader religious exemptions than that in the final regulations, the exemptions will be narrowed to align with that in the final regulations because this will help more consumers. Organizations that qualify for an exemption under State law but do not qualify for the exemption under the final regulations may be eligible for the temporary enforcement safe harbor. During this transition period, State laws that require contraceptive coverage with narrower or no religious exemptions will continue." Federal Register, Vol. 77, No. 55, March 21, 2012, 16508.
[31] Ibid., 16507.