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## Catholic Health Association says it can live with HHS mandate

by Michael Sean Winters

Distinctly Catholic

The Catholic Health Association (CHA) on Tuesday issued a memorandum for its members regarding the final rule on the controversial contraception mandate ordered by the Department of Health and Human Services. Essentially, CHA believes the combination of exemptions and accommodations within the mandate are sufficient.

"HHS has now established an accommodation that will allow our ministries to continue offering health insurance plans for their employees as they have always done," the memorandum states. In addition to the memorandum, CHA issued comments on the final HHS rule, explaining how it will work for CHA members.

"We have prepared this explanation for members to help them understand the accommodation and how to implement it," the memorandum states. "Throughout this process, CHA has been in dialogue with the leadership of the Bishops' Conference, the Administration and HHS. We are pleased that our members now have an accommodation that will not require them to contract, provide, pay or refer for contraceptive coverage."

The CHA stance differs from that taken, so far, by the United States Conference of Catholic Bishops (USCCB), which continues to insist the mandate does require those Catholic organizations that are not exempt but that are subject to the accommodation to "facilitate or fund" the contraceptive coverage. In the "Summary of Final Rule" CHA sent its members, it outlines how the accommodation will work:

For eligible organizations that have insured plans, the first step will be to have an authorized individual execute a self-certification in the form specified by HHS prior to the first day of its first plan year beginning on or after January 1, 2014. All that will be asked on the form is for the organization to confirm that it satisfies the first three criteria of the "eligible organization" definition. The form does not have to be filed with any governmental agency, but does have to be maintained under the record retention requirements of ERISA and be made available for inspection on request.

The second step is for the organization to present the self-certification to its insurer. Once that is done, the eligible organization has no further obligations regarding contraceptive coverage, even if the insurer does not satisfy the requirements regarding contraceptive coverage imposed on it by the final regulations. Upon receiving the self-certification, the insurer is required by the federal government to assume sole responsibility, independent of the eligible organization and its plan, to pay for contraceptive services without cost-sharing, premium, fee, or other charge to plan participants and beneficiaries.

Here, CHA is undoubtedly right. There is no "fund or facilitate" mechanism unless you consider objecting in the first place to be a form of facilitation.

The USCCB also has raised other objections to the mandate, including the lack of a conscience exemption for individual for-profit employers. CHA addressed these differences in its memorandum, stating, "We also recognize that this resolution has not been what some organizations, including the Bishops' Conference, asked for on behalf of a wider group. Our contribution to the process has been to work for the protection of religious organizations, especially our members. We recognize the broader issues will continue to be debated and litigated by others."

"We have said from the start that our intention was to dialogue this issue to resolution," Sr. Carol Keehan told *NCR* in a phone interview Monday.

The CHA statement is decidedly different in tone from that issued last week by the USCCB. The CHA statement is directed at stakeholders, people who must learn to live, or not, with the HHS mandate, and takes a practical approach to the difficulties that mandate raises. The statements from the USCCB tend to be more theoretical, as if drafted with the intention of stating a legal brief. To be clear, CHA has lawyers also, and they have obviously been consulted. The difference is that the lawyers for the bishops' conference clearly wish to litigate the mandate and the lawyers for CHA are advising their members on how they can respond. I should note that bishops are also stakeholders, and it is a worthwhile question for them to ask themselves why the statements issued in their names reflect that fact not at all.

I am sure some bishops will be disappointed in the CHA statement. One of the mantras used to quell dissent from the party line emanating from the conference is that "no one can say anything that would harm the lawsuits." Of course, CHA's members, at all times, are seeking to hire new staff, and when the chair of the USCCB's ad hoc committee on religious liberty, Archbishop William Lori, is unwilling to say that the church will not close its ministries, the burden on Catholic hospitals is enormous. The law firm litigating the suits against the mandate may be working pro bono, but insofar as they are restricting bishops from reassuring Catholic institutions -- to say nothing of the Catholic people -- that our ministries will not close, they are exacting a price too high to pay. I am sure Catholic colleges and universities face the same challenge. Who wants to work at an institution when bishops speak cavalierly about closing them down?

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What is unlikely in the next few months is any kind of public fight between the bishops and CHA like the one that accompanied the legislative battle over the Affordable Care Act in the first place. Neither side seems eager for a repeat of that fight, and Cardinal Timothy Dolan happily lacks the "my way or the highway" intellectual approach that too often characterized the leadership of the USCCB under then-Msgr., now Bishop, David Malloy and Cardinal Francis George.

It is difficult not to compare the USCCB's handling of the immigration bill with its handling of the HHS contraception mandate. In April, on a conference call with reporters, Dolan, president of the USCCB, Archbishop Jose Gomez, chair of the USCCB Committee on Migration, and Bishop John Wester, chair of the USCCB Communications Committee, all expressed the hope that the final bill would lower the time requirement before undocumented immigrants could seek citizenship to less than 10 years. They did not succeed and, instead, the major change to the bill came in the form of increased spending on border security. Yet the USCCB continues to support the bill. In politics, the perfect can never become the enemy of the good.

To be clear, I do not think the contraception mandate is good, and I wish the conscience exemptions were more expansive than they are. But the Affordable Care Act is good. It will bring health insurance to millions of Americans who currently lack it. And we should only be fighting this fight, at this point, if the mandate would require our Catholic institutions to cooperate with evil in a way that is morally illicit. We can continue to challenge the mandate in the courts or seek relief in the legislature to uphold the principle of more expansive conscience exemptions. We should stop suggesting that the mandate will require our Catholic institutions to cooperate with evil in a morally illicit way, a suggestion that contains within itself the further suggestion that such institutions risk being closed or stripped of their Catholic identity. As the CHA statement makes clear, there is nothing in the mandate that requires morally illicit cooperation with evil. Not even close. And the bishops need to ask themselves why the conference continues to make claims that are tendentious, if not actually false. Veracity should matter to bishops.

A final point. The bishops will have their annual meeting in November. They need to figure out a way forward, one that takes account of their many responsibilities, not merely protecting the fortunes of the lawsuits against the mandate. Many bishops have reservations about some of the more extreme statements that have been made by their brother bishops regarding the mandate. It is time for them to speak up. I do not discern a widespread assault on religious freedom in this country, nor do most Americans, which is not to say that there are no political actors who would like to see the church's freedom restricted. There are. But to fight them, the bishops need to be bishops, not pretend at playing constitutional analyst. By talking endlessly about this mandate and its perceived threat to religious liberty to the exclusion of virtually everything else and talking in such extreme, tendentious ways, the bishops undermine their own credibility. They not only need to find a way to climb off the limb they are on; they need to ask some deep searching questions about how they got out on that limb in the first place.

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### **Final statement from Sr. Carol Keehan of the Catholic Health Association:**

From: Sr. Carol Keehan, DC

Sent: Monday, July 08, 2013

Subject: Women's Preventive Health Services Final Rule

Attached is an overview of the final rules governing the HHS contraception mandate. The document issued on June 28, 2013, is 110 pages. The first 82 pages are responses to the comments received during the official comment period.

Since the original rule was issued over a year ago, there has been considerable concern raised by many parties including CHA. CHA had two principal concerns. The first was the four-part definition of what constituted a "religious employer." That concern has been eliminated. CHA's second concern was establishing a federal precedent that mandated our members would have to include in their health plans, services they had well-established moral objections to.

HHS has now established an accommodation that will allow our ministries to continue offering health insurance plans for their employees as they have always done.

We have prepared this explanation for members to help them understand the accommodation and how to implement it. Throughout this process, CHA has been in dialogue with the leadership of the Bishops' Conference, the Administration and HHS. We are pleased that our members now have an accommodation that will not require them to contract, provide, pay or refer for contraceptive coverage.

We also recognize that this resolution has not been what some organizations, including the Bishops' Conference, asked for on behalf of a wider group. Our contribution to the process has been to work for the protection of religious organizations, especially our members. We recognize the broader issues will continue to be debated and litigated by others.

CHA is grateful for the respect and concern demonstrated by all parties in this dialogue. We will work with our members to implement this accommodation.

Summary of Final Rule for CHA members by National Catholic Reporter

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