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**Submitted electronically**

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 on Preventative Services, File Code No. CMS-9968-ANPRM

Dear Sir or Madam,

We write today to submit comments on behalf of the Center for Inquiry (CFI), a nonprofit educational and advocacy organization that promotes public policy based on science, reason, and secular values. Our commentary regards the final regulations proposed by the Department of Health and Human Services (HHS) on preventive health services under provisions of the Patient Protection and Affordable Care Act, specifically section 2713 of the Public Health Service Act (CMS-9968-ANPRM).

CFI urges policy makers at HHS to reject objections from some organized religious groups, and maintain unchanged regulations – proposed Aug. 1, 2011, confirmed on Jan. 20, 2012, and last modified on Feb. 15, 2012 – that would require all non-church health insurance providers and organizations providing health care plans to cover, or arrange coverage for, preventive health services, such as birth control and contraception, without charging a co-payment. We believe these rules are justified on both scientific and constitutional grounds.

As you are well aware, these measures have faced fierce opposition from some religious organizations. Groups like the United States Conference of Catholic Bishops (USCCB) have argued that the requirements make for bad health policy and violate the “conscience” of some religious individuals and religiously affiliated employers. CFI fully supports the free exercise of religion, and much of our work is dedicated to protecting freedom of conscience for believers and nonbelievers alike. However, we

believe the USCCB fails to recognize the scientific basis of the rules, and displays a regrettable lack of understanding of the concept of religious freedom. We also believe HHS has provided sufficient accommodation to religiously affiliated groups. The ensuing pages outline the reasons in support of our position.

First, although you probably do not need to be reminded of this, there are no sound scientific objections to the use of birth control and contraception. The HHS rules did not originate from a religious or political body, but from the Institutes of Medicine (IOM), which consists of dedicated medical officials with extensive knowledge on the subject (1). Their recommendations were based on the overwhelming scientific evidence that shows contraception and birth control are both safe and effective in dealing with a range of medical issues, and even have the potential to lower overall health care expenses. You recognized this very evidence in your Jan. 20, 2012 statement, when you wrote:

*“Scientists have abundant evidence that birth control has significant health benefits for women and their families, is documented to significantly reduce health costs, and is the most commonly taken drug in America by young and middle-aged women.”* (2)

Second, the proposed regulations in no way restrict the free exercise of religion guaranteed by the First Amendment of the U.S. Constitution. No one is being forced to use birth control, nor is any person’s ability to freely exercise his or her religion being limited or hindered. In fact, the rules apply to *organizations* that provide secular services, which by definition do not have consciences. As such, their free exercise cannot be restricted. And while the leaders of any given organization clearly have the right to the free exercise of religion – for instance, they can argue in the public square that birth control and contraception are immoral – that right does not extend to limiting an employee’s right to access legal and safe health care. True religious freedom does not restrict, but respects an individual’s right to make choices based on his or her conscience.

Third, contrary to objections from the USCCB, we believe HHS has properly defined “religious organizations,” and is justified in not exempting employers from the proposed rules merely because they are religiously affiliated. According to definitions employed by governmental agencies such as the Internal Revenue Service, churches a) exist mainly to promote religious values, b) serve a specifically religious population, and c) are subject to no government support or obstruction. On the other hand, religiously affiliated hospitals, charities, and universities a) exist mainly to provide secular services, b) serve the general public, and c) almost always receive some form of funding from the government (3). In order to protect religious freedom, one can reasonably maintain that churches should be exempt from the HHS rules. This is what the proposed rule provides. However, there is no reason why religiously affiliated hospitals, charities, and universities should be exempt in any form or fashion from ensuring their employees have access to free contraception.

It is significant that Catholic hospitals were first able to obtain public funding only because they argued that they were *not* sectarian institutions, but rather institutions providing secular services that just happened to be managed by individuals associated with the Catholic Church. *Bradfield v. Roberts*, 175 U.S. 291 (1899) (holding “nothing

sectarian” in the nature of Providence Hospital, despite its affiliation with the Catholic Church). The Catholic Church cannot have it both ways: it cannot maintain that its affiliated hospitals, and other organizations, are secular institutions when they seek public funds, and then claim these same organizations are exempt from generally applicable laws and regulations because they are sectarian institutions carrying out the Church’s mission.

Our opponents would counter argue that there remains a problem with *self-insured* religiously affiliated groups, which they argue should not have to arrange third party coverage. But again, there is no reason why organizations that provide secular services to the general public – often with taxpayer assistance – should be exempt from, at the very least, arranging for their employees to receive legal and required coverage through some third party. This would not violate religious liberty in any sense. On the contrary, this approach arguably goes further than necessary in accommodating objections from religiously affiliated employers. This approach aligns with the accommodation offered individuals who object to providing services on freedom of conscience grounds.

For example, a medical official should only be allowed to refuse to perform a health-related service if he or she can ensure the patient can secure the requested service elsewhere, in a timely and unburdened manner. Organizations should not have greater rights than individuals. Accordingly, religiously affiliated employers that object to certain services should be required to make sure their employees can receive said services through some outside party, in a fashion that does not unreasonably burden the employee.

In closing, it is worth noting that USCCB has stated that it will be satisfied with nothing less than a complete withdrawal of the rules, or else a widely expanded exemption clause that would include religiously affiliated hospitals, charities, and universities (4). Such an outcome would leave hundreds of thousands of women without preventative health coverage simply because of their employer’s religiously motivated objections. Women should have full control over their reproductive systems and ought to have the ability to exercise this legal right and make decisions without delay or interference from their employers. Anything less is unacceptable.

But the USCCB’s admission that it is unwilling to compromise points to another important fact: that there is little HHS can do to meet the USCCB’s objections—apart from denying many women essential health care coverage. While we maintain that the Feb. 15 “accommodation” for religiously affiliated groups went beyond what was necessary, it represents a fair, and what should be final, concession (5). There is no need for, and no point to, further discussion. This prolonged debate over something as fundamental as birth control is a perfect example of the harmful influence religious institutions have on public policy. It’s time for us to move on.

As it happens, most Americans agree. Several national surveys have shown that a majority of Americans (~55 percent) believe that employers and insurance providers should be required to offer their employees free health care coverage for birth control and contraception. In fact, these surveys found that ~58 percent of *Catholics* share this sentiment (6).

**In light of these arguments, we respectfully request that you make final proposed rules that require all non-church organizations to provide or else arrange reproductive health coverage for women.**

Thank you for your consideration of our comments. Please do not hesitate to contact us with any questions or concerns.

Sincerely,



Ron Lindsay  
President and CEO, Center for Inquiry



Michael De Dora  
Director, CFI-Office of Public Policy

**Notes:**

1. Please see the IOM's July 19, 2011, report, which can be found here: <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>
2. The HHS news release can be found here: <http://www.hhs.gov/news/press/2012pres/01/20120120a.html>
3. Please see the Internal Revenue Code, section 7.25.3: [http://www.irs.gov/irm/part7/irm\\_07-025-003.html](http://www.irs.gov/irm/part7/irm_07-025-003.html)
4. This can be found on page 3 and 18 of the U.S. Conference on Catholic Bishops' May 15, 2012, commentary: <http://www.usccb.org/news/2012/12-084.cfm>
5. The Center for Inquiry's Feb. 13, 2012 statement is available here: [http://www.centerforinquiry.net/opp/news/center\\_for\\_inquiry\\_urges\\_obama\\_administration\\_not\\_to\\_retreat\\_any\\_further\\_on/](http://www.centerforinquiry.net/opp/news/center_for_inquiry_urges_obama_administration_not_to_retreat_any_further_on/)
6. For example, please see this survey by the Public Religion Research Institute, released Feb. 7, 2012: <http://publicreligion.org/research/2012/02/january-tracking-poll-2012/>