

IN GOOD CONSCIENCE

September 30, 2011

The Honorable Kathleen Sebelius
Secretary
United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius,

On behalf of the more than 68 million Catholics in the United States, the majority of whom support access to comprehensive reproductive healthcare services, I write today to thank you for including contraceptive services, education and counseling as part of the preventive health benefits required under the Affordable Care Act.

Our appreciation for your decision is tempered by our distress that you chose to include a burdensome refusal clause in the interim final rule (CMS-9992-IFC2). We are deeply concerned that this exemption for some employers means many women will be unable to access this benefit. The Department of Health and Human Services (HHS) has deemed contraception and family planning services an integral component of women's healthcare. Women who work for Catholic and other religious institutions deserve the same, complete access to these services that HHS has approved for others.

Respect for individual conscience is at the core of Catholic teaching. Allowing religious institutions to dictate the medical care available to their employees would encroach on this conscience. If allowed to stand, this refusal clause will endanger many women's access to the healthcare they need and will constitute state-sponsored discrimination against women based on where they are employed. Granting entire institutions the rights of conscience that should be left to individuals is an affront to the Catholic ideals of conscience, workers' rights, social justice and religious freedom.

The proposed refusal clause leaves too many women without affordable access to the healthcare they need. We know that each and every woman—her health and her conscience—matters. Similarly, we know that social justice is not served by excluding some from opportunities available to others. Our Catholic faith values the well-being of all women, regardless of their financial circumstances or whom they work for, and respects each woman's conscience and ability to make her own moral decisions. It is simply unjust to leave even one woman without access in order to gain coverage for a few. Restricting access for select groups is in fact counter to the ultimate goal of the Affordable Care Act, which is to expand healthcare access for all Americans.

The women who work for religious institutions, as well as the spouses and dependents who are covered by an employee's policy, deserve to be included—not excluded—in this important step forward toward affordable, comprehensive care for all.

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Whether they work as administrators or school teachers, secretaries or maintenance staff, cooks or gardeners, their healthcare options should not be limited by their employers' beliefs. Certainly included among the women left behind by the proposed refusal clause will be the many women who utilize birth control for both family planning and healthcare reasons, both Catholics and non-Catholics.

The proposed refusal clause constitutes state-sponsored discrimination. 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.

The list of services for women's preventive healthcare as recommended by the Institutes of Medicine and accepted by HHS have been determined by medical experts to represent the most basic, critical service that promote women's essential health and well-being.¹ It is downright discriminatory for the government to decide—as it would by allowing some employers to refuse coverage for any of these basic services—that some women's well-being simply does not count.

The proposed refusal clause is an affront to religious freedom. Our faith also compels us to respect religious pluralism and religious freedom. In keeping with our Catholic tradition, we must also advocate for each woman's ability to follow her own conscience about which healthcare services are best for her and for her family, regardless of where or if she works. Religious freedom is an expansive rather than restrictive idea. It is not about telling people what they can and cannot believe or practice, but about giving people the space to follow their own conscience in what they believe or practice. The protections extend to one's personal religious beliefs and practices, but they do not give entire institutions or individuals license to obstruct or coerce the exercise of another's conscience.

Refusal clauses such as the one proposed in the interim rule fly in the face of true religious freedom by promoting the interests of certain elements of particular religions over the consciences and beliefs of individual women workers. They ignore the moral agency of the many women who do not share the beliefs of a particular, conservative ideology. This list of services for women's preventive healthcare does not force anyone to use contraception, but the decision to utilize or not utilize contraceptive coverage should be up to each individual woman, according to her conscience and personal beliefs, not the beliefs of her employers or those seeking to impose their ideologies on others.

The proposed refusal clause goes against Catholic ideals of conscience, workers' rights and social justice. 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.

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. More than 40 years ago, the majority of the pope's hand-picked advisors agreed that there was no moral, theological or pastoral reason to bar Catholics from using contraception. Catholics throughout the US rely on their consciences to choose services that are banned by the bishops, including contraception.²

¹ The Institute of Medicine of the National Academies, "Clinical Preventive Services for Women: Closing the Gaps," 2011.

² *National Catholic Reporter*, "Reveal Papal Birth Control Texts," April 19, 1987.

In fact, despite their personal objections to contraception and their current statements regarding this expansion of coverage, even the Catholic bishops have officially recognized emergency contraception (EC) as a health service which should be provided to patients in Catholic hospitals under limited circumstances, as outlined in Directive 36 of the *Ethical and Religious Directives for Catholic Health Care Services*.³ Furthermore, while the Catholic Health Association (CHA) recently has decried coverage of EC under the Affordable Care Act, their own reports have rightly touted 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 under the *Ethical and Religious Directives for Healthcare Services*. 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.”⁴ It is these same suppositions and discredited ideas that CHA, the United States Conference of Catholic Bishops and others now use to justify excluding some women from access to EC and to derail what has heretofore been a process committed to scientific evidence and accurate medical information.

To leave out access to emergency contraception as part of the important coverage for preventive services would be to 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. It is hypocritical and unjust that the bishops and their allies in opposition to this rule would have employees at religious institutions excluded from coverage for the same services that Catholic hospitals themselves are required to provide. We believe that such “supposition” and inaccurate information should never stand in the way of women’s access to care.

Catholicism requires deference to the conscience of others in making one’s own decisions. Our intellectual tradition emphasizes that conscience can be guided but not forced in any direction. Allowing some employers to dictate what services their employees may access does not respect the individual capacities of women to form their individual conscience, nor does it respect their right to make their own decisions about what is best for their own health, and that of their families.

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 directly 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.

The majority of Catholics support equal access to contraceptive services and oppose policies that impede upon that access. Two-thirds of Catholics (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.

³ USCCB, *Ethical and Religious Directives for Catholic Health Services, Fourth Edition*, 2011.

⁴ Ron Hamel, “Thinking Ethically About Emergency Contraception: Critical judgments require adequate and accurate information,” *Health Progress*, January-February 2010.

A similar number, 63 percent, also believes that health insurance, whether private or government-run, should cover contraception.⁵ A strong majority (78 percent) of Catholic women prefer that their hospital offers emergency contraception for rape victims, while more than half (55 percent) want their hospital to provide it in broader circumstances.⁶ 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 active Catholic women have used a modern method of birth control, mirroring the rates of the population at large (99 percent).⁷

You have heard from many conservative Catholics on this issue, but it would be a grave mistake to confuse the individual positions of a few with the majority view of the more than 68 million Catholics in the United States. We respect each of their consciences and abilities to act in accordance with their personal beliefs—we expect them, however, in keeping with the teachings of our shared Catholic faith, to respect our consciences and those of women working in religious institutions, too.

We therefore respectfully request, on behalf of the many women who would be left behind and the majority of Catholics who support contraceptive access, that you eliminate the proposed exemption for certain religious institutions and resist any attempts to broaden that exception.

Sincerely,

A handwritten signature in blue ink that reads "Jon O'Brien". The signature is stylized with a large, sweeping "J" and "B".

Jon O'Brien
President
Catholics for Choice

⁵ Belden Russonello & Stewart, "Catholic Voters' Views on Health Care Reform and Reproductive Health Care Services: A National Opinion Survey of Catholic voters conducted for Catholics for Choice," September 2009.

⁶ Ibis Reproductive Health. Second chance denied: Emergency contraception in Catholic hospital emergency rooms. A report for Catholics for Choice, 2002.

⁷ US Department of Health and Human Services, National Center for Health Statistics, "National Survey of Family Growth," 2008.