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September 28, 2011

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9992-IFC2  
Room 445-G, Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, D.C. 20201

Re: Interim Final Rule defining Religious Employer Exception for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act, RIN 0938-AQ07

Dear Sir or Madam:

St. Joseph Community Health urges you to broaden the proposed definition of “religious employer” in this Interim Final Rule (IFR) to include essential conscience protections for Catholic health care organizations providing health insurance for their employees. My organization is part of Catholic Health Initiatives, a faith-based, mission-driven health system that includes 73 hospitals; 40 long-term care, assisted living, and residential units; two community health-services organizations; and numerous physician practices and home-health services across 19 states.

In response to requirements of the Patient Protection and Affordable Care Act (ACA), the Health Resources and Services Administration has issued guidelines for additional women’s preventive services that must be covered by health plans at no cost to the patient. These guidelines mandate coverage under employer group health plans for contraception services that are morally objectionable to the Catholic Church and include sterilization and drugs that could cause an abortion. Our mission and our ethical standards in health care are rooted in and inseparable from the Catholic Church’s teachings about the dignity of the human person and the sanctity of human life from conception to natural death. Our religious and moral convictions are the source of both the work we do and the limits on what we will do.

The IFR acknowledges these moral objections and attempts to accommodate them by creating a religious employer exemption. However, the proposed definition of “religious employer” is wholly inadequate to protect the conscience rights of Catholic hospitals and health care organizations as an

employer-sponsor of group health insurance for its employees. The current exemption within the existing IFR language would, among other things, require a religious employer to “primarily serve persons who share its religious tenets.” St. Joseph Community Health and other Catholic health care providers serve people of all ages, races and religions as part of our health care ministry and concern for the common good. As the term “primarily” is presently undefined in the existing IFR exemption, it would be difficult if not impossible for St. Joseph Community Health or any other religious employer to know if it factually meets the intended definition and correspondingly would seem equally challenging for the regulators to enforce thereby creating unnecessary cost of compliance and regulatory enforcement.

The definition that has been proposed in the IFR is also not drawn from current federal law, nor is it consistent with current federal conscience protections for Catholic health systems and other faith-based health care providers with religious or moral objections to providing certain health care services. The proposed definition of “religious employer” is instead taken from the narrowest state definition that is found in only three states. Religious employers in these states are at least afforded the ability to offer plans to their employees that are consistent with their beliefs by becoming self-insured ERISA plans to which state mandates do not apply, or in the majority of all other states where such provisions are less strenuous, operate in a legally-compliant manner that maintains their moral and religious boundaries.

This new federal contraceptive coverage mandate, with its broad inclusion of sterilization procedures and drugs that can cause abortion and extremely limited religious employer exemption, represents an unacceptable change in the statutory protection of conscience that has long been afforded to religious organizations in this country. The IFR, as currently drafted, would require Catholic hospitals to pay for procedures under their employer-sponsored group health plans that they are not required to perform or provide as a Catholic health care provider under other existing federal conscience protections.

We respectfully submit that the definition of “religious employer” within the IFR should be rewritten and broadened using guidance that already exists in Title 26 under current federal law. Section 414(e) of the Internal Revenue Code includes a “church plan” exemption that was developed specifically to avoid such church-state entanglements in religious governance related to pension, health and welfare plans offered by religious entities. The principles that Congress developed in 1980 to define organizations that are “associated with a church” serve as an appropriate model for the religious employer exemption applicable to the contraceptive coverage mandate.

***Recommendation: St. Joseph Community Health urges the Centers for Medicare and Medicaid Services (CMS) to rewrite the IFR definition of “religious employer” for exemption from federal contraception coverage mandates to reflect the principles of Section 414(e) of the Internal Revenue Code and exempt organizations that share common religious bonds and convictions with a church.***

The proposed religious employer exemption must be expanded to allow Catholic hospitals and health care providers to continue their ministry in fidelity to their religious beliefs and values, but also remain consistent with long-standing rights of conscience since our country's founding. We urge CMS to review and adopt the more specific recommendations for revision proposed by the Catholic Health Association in its comments on this IFR.

Sincerely,



Allen Sánchez

President and Chief Executive Officer