Hospital Sisters
HEALTH SYSTEM

HSHS Division
EASTERN WISCONSIN

Green Bay, WI
St. Mary's Hospital Medical Center
St. Vincent Hospital

Sheboygan, WI
St. Nicholas Hospital

September 29, 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, DC 20201

Re: Interim Final Rules 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 1210-AB44

Dear Sir or Madam:

On behalf of St. Vincent Hospital and St. Mary's Hospital Medical Center, I am writing to express our opposition to the mandate for coverage of contraception as a preventive service. I am asking that the regulation be rescinded, and if it is not, that the Interim Final Rules noted above be modified to expand the religious exemption to cover organizations such as ours that are committed to a public ministry.

As a part of Hospital Sisters Health System, St. Vincent Hospital and St. Mary's Hospital Medical Center carries out a healing ministry guided by the historic mission of the Hospital Sisters of St. Francis. We are a Catholic ministry, providing care to all who need it with a special emphasis on the poor and underserved.

The Interim Final Rules on Preventive Services includes two objectionable provisions: (1) a mandate on all private health care plans to cover prescription contraceptives approved by the FDA (including abortifacient drugs), surgical sterilizations, and related patient education and counseling; and (2) an unnecessarily narrow definition of religious employer for exemption from the mandate.

Our opposition to the mandate itself stems from religious belief. The moral objection of the Catholic Church and others to contraception and sterilization are well known. As a Catholic health care provider, we are committed to upholding the dignity of the human person and the sanctity of life from conception to natural death. We do not believe the government should classify pregnancy as a disease to be prevented or terminated.

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Moreover, the Rules directly contradict previous law and the will of Congress. Many proposed mandates of this type have been introduced and failed in Congress. Also, the Patient Protection and Affordable Care Act, the Weldon Amendment, the Church Amendment and conscience protections in Medicare, Medicaid and federal employee health benefit programs establish clear prohibitions on requiring abortion coverage. The mandate and Rules would undermine this history of legislative intent. They would also abrogate a long standing bipartisan consensus to protect religious freedom and rights of conscience in health care.

If the contraception mandate is not rescinded, I urge you to broaden the proposed definition of "religious employer" to ensure conscience protections that will allow us to continue our health ministry as a Catholic employer.

Hospital Sisters Health System and Catholic health care nationally have long worked to ensure that everyone has access to the health care they need. For this reason, we welcome the Administration's decision to require health plans to cover women's preventive services, such as critical screenings that will make preventive care more widely available and affordable. However, the inclusion in that mandate of contraceptive services that the Catholic Church finds morally objectionable, including sterilization and drugs that could cause an abortion, makes it imperative that the Final Rule include broader conscience protections. While I appreciate that the Interim Final Rule acknowledges the need for conscience protections, I am deeply concerned that the proposed religious exception falls far short of the level of protection needed.

The proposed definition of "religious employer" is narrower than any conscience clause ever enacted in federal law. As currently written, the definition of religious employer would not consider Catholic health care institutions—including Catholic hospitals and long-term care facilities—religious employers. This runs contrary to a 40-year history of federal conscience statutes that have been in effect to protect individuals and organizations like ours from being required to participate in, pay for, or provide coverage for certain services that are contrary to our religious beliefs or moral convictions.

The proposed definition would require religious employers to "primarily serve persons who share its religious tenets." For over 135 years, hospitals like ours that belong to HSHS have served the common good of our nation and its citizens by caring for persons of **all** ages, races and religions, in a manner consistent with our religious and moral convictions.

These convictions are the source of both the work we do and the limits on what we will do. Our ethical standards in health care flow from the Catholic Church's teachings about the dignity of the human person and the sanctity of human life from conception to natural death. These values form the basis for our steadfast commitment to the compelling

accessible, affordable health care, to caring for persons at the end of life, to defending and preserving the conscience rights of all, including but not limited to Catholic organizations.

The definition that has been proposed is not drawn from current federal law and is instead lifted from the narrowest state definition of a religious employer—found in only three states in the nation.

I request that the definition be rewritten as specified in comments submitted by the Catholic Health Association of the United States (CHA). In President Obama's Executive Order of January 19, 2011, he directed the agencies to "promote…
coordination, simplification, and harmonization." As such, we support the CHA recommendation that the definition of religious employer be consistent with the standards already established at the federal level. CHA recommends using the principles behind the "church plan" exemption found in section 414(e) of the Internal Revenue Code, which was developed specifically to avoid church-state entanglements in religious governance relative to pension, health and welfare plans offered by religious entities. This is the statute that should be used as a guide for determining the definition of a religious employer. Section 414(e) of Title 26 considers whether an organization or institution "shares common religious bonds and convictions with a church" when determining if the organization qualifies as a "religious employer." This definition more adequately defines religious employers to include all employers that work in ministries of the church.

Our country has acknowledged and respected the rights of conscience since its founding, and our society's commitment to pluralism lies at the heart of our diverse and vibrant nation. I recognize that many do not share the Catholic Church's beliefs regarding contraception, sterilization, and abortion – but our nation's founders did not define the free exercise of religion by the number of believers who claim it. On the contrary, they promised it to all people, whether they are members of a large majority or of a small minority who hold a sincere conviction as to what their faith asks of them. Rather than narrowing the definition of what it means to be a religious organization, the Administration should continue to protect religious liberty as it has in the past.

Thank you for your consideration.

Sincerely,
Timothy Jahn, MD
Chief Medical Officer/Chief Quality Officer
HSHS Division – Eastern Wisconsin