SISTERS *of* CHARITY
HEALTH SYSTEM

September 30, 2011

Donald M. Berwick, MD, MPP
Administrator
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 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 Dr. Berwick:

On behalf of the Sisters of Charity Health System, a twenty-organization Catholic health system of five acute care hospitals (in Ohio, St. Vincent Charity Medical Center, Cleveland; St. John Medical Center*, Westlake; and Mercy Medical Center, Canton; and in South Carolina, Providence Hospital and Providence Hospital Northeast, Columbia), three grant-making foundations, and many exceptional health and human service ministries in Ohio and South Carolina, I write to offer comment on the Interim Final Rule.

Our family of ministries employs more than 7,500 persons. And like the many employers who value their employees' health and wellbeing, each of our ministries offers employer-sponsored health insurance coverage to our team members and their families; this coverage has been offered throughout the post-World War II era and has consisted of a benefit offering in complete alignment with our Catholic identity. The Interim Final Rule will require significant change to our package of health benefits, forcing adherence to public policy requirements in direct conflict with our core Catholic moral tenets. Joining with leaders of Catholic institutions from across the country, 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 Catholic employers. This comment letter will echo the comments shared with you by the Catholic Health Association of the United States.

Our faith motivates us; we carry out the healing mission because of God's call. And we are joined in our ministry by a diverse and inclusive workforce. As Catholic Health Association President and CEO Sister Carol Keehan, DC noted in her comments to your agency:

> Through its ministries the Church serves millions of people each year, regardless of their faith or lack of faith. As the late James Cardinal Hickey said, 'We serve [them] not because they are Catholic, but because we are Catholic. If we don't care for the sick, educate the young, care for the homeless, then we cannot call ourselves the church of Jesus Christ.' Men and women of any or no faith who are willing to serve with us in a manner faithful to the teachings of the Catholic Church are welcomed to join us as colleagues and employees. We communicate our religious values through our deeds and our actions. (Sept. 22, 2011)

For years, the Sisters of Charity Health System ministries have worked in collaboration towards a new vision for health care in this country, for health care coverage and access for everyone. With the passage of the Affordable Care Act (ACA), we witnessed an important day for all Americans but especially for those persons who are uninsured. If implemented fully, this new law will extend quality health care coverage to 32 million Americans and contains important insurance market reforms. Furthering the common good, the measure offers health care solutions and has delivery system reforms that will improve quality of care and patient outcomes. We remain hopeful and excited during the ACA implementation process.

Indeed, Catholic health care has 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 of mandated contraceptive services that we as Catholics find morally objectionable, including sterilization and drugs that could cause an abortion, makes it imperative that the Final Rule include broader conscience protections. While the Interim Final Rule acknowledges the need for conscience protections, we are deeply concerned that the proposed religious exception falls far short of the level of protection needed.

The proposed definition of "religious employer" determines whether a religious organization qualifies for conscience protections, thereby exempting it from providing coverage of contraceptive services that are against its religious teaching. The proposed definition as written 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, our hospital affiliated corporations, grant-making foundations, direct service ministries 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 —services that are contrary to our religious beliefs or moral convictions.

In 1851 —160 years ago —our ministry was founded by my community, a religious order of women, the Sisters of Charity of St. Augustine (CSA). These Catholic Sisters continue to co-lead and cosponsor our work. Our health system and its sponsored ministries have standing under Canon Law of the Catholic Church, and the faith-based mission of the Sisters continues into the future with our health system and our sponsored ministries. And yet under this proposed definition we are not a "religious employer"? This result is untenable.

The proposed definition would require a religious employer to "primarily serve persons who share its religious tenets." For over 200 years, Catholic health care providers have served the common good of our nation and its people 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 moral implications of our ministry—from insisting on the right of all to accessible, affordable health care, to caring for persons at the end of life, and 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 but instead is drawn from the narrowest state definition of a religious employer—found only in three states in the nation. I request that the definition be rewritten 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 request that you broaden the definition of "religious employer" as described above and as specifically laid out in the comments of the Catholic Health Association of the United States.

Furthermore, I encourage CMS to attentively review the full comments offered the Catholic Health Association of the United States and the U.S. Conference of Catholic Bishops.

Thank you for the opportunity to comment. The Sisters of Charity Health System is committed to our healing ministry as a Catholic health care provider. May God bless you and our nation as we continue to journey on this new path to better health care for all.

Sincerely,

Sr. Judith Ann Karam, CSA
President and CEO

*jointly owned by Sisters of Charity Health System and University Hospitals