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Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act

Comment On: EBSA-2010-0018-0002

Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under Patient Protection and Affordable Care Act: Amendment

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Comment on FR Doc # 2011-19684

Submitter Information

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General Comment

See attached file(s)

These comments are submitted pursuant to the Interim Final Rule published on August 3, 2011, at Fed. Reg. 46621-01. In part, the Interim Final Rule established an exemption for certain religious employers from the requirement that health insurance plans -including those offered by employers - cover the full range of birth control drugs, as well as drugs which many believe to result in an abortion such as "Ella" and "the morning after pill."

I vigorously oppose the illegally narrow religious exemption created in the Interim Final Rule. Please see attached file.

Attachments

Religious Exemption

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
Hubert Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Sebelius:

These comments are submitted pursuant to the Interim Final Rule published on August 3, 2011, at Fed. Reg. 46621-01. In part, the Interim Final Rule established an exemption for certain religious employers from the requirement that health insurance plans -including those offered by employers - cover the full range of birth control drugs, as well as drugs which many believe to result in an abortion such as "Ella" and "the morning after pill."

I vigorously oppose the illegally narrow religious exemption created in the Interim Final Rule. This exemption requires that a religious organization show the following in order to receive an exemption:

- (1) The inculcation of religious values is the purpose of the organization;
- (2) The organization primarily employs persons who share the religious tenets of the organization;
- (3) The organization serves primarily persons who share the religious tenets of the organization; and
- (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

This proposed religious exemption would apply almost exclusively only to houses of worship, and possibly some denominational seminaries. I believe that the religious exemption should be broadened.

The Problem: religious and conscientious objections to paying for certain drugs

Under the guidelines released on August 1, 2011 by the Health Resources and Services Administration (HRSA), most health insurance plans in the United States - including those offered by private employers - must provide full access to birth control drugs, as well as abortion-inducing drugs such as "Ella" and the "morning after pill." Numerous medical professionals in the pro-life and medical communities believe that "Ella," the "morning after pill," and similar drugs have been shown to harm women, and actually kill the developing baby by starving it of nutrients.

As a result of the HRSA guidelines, employers who have a pro-life, religious, or

other conscientious objection to facilitating the use of birth control drugs or abortion-inducing drugs are now required to provide the very drugs that they believe result in the death of a human being. According to the dictates of their conscience, this would be murder and sinful.

Birth control drugs and abortion-inducing drugs like "Ella" and the "morning after pill" are commercially available. Women who desire to use them can easily obtain these drugs. I, a US Citizen, am not suggesting trampling the rights of other US citizens who would want to obtain or use these drugs by making it illegal to do so. However, now that employers will be *required* to pay for these drugs, the religious and conscientious rights of employers *are* being trampled by these guidelines and the narrow religious exemption. Numerous religious organizations and religious businessmen and women will now have no choice but to either violate their religious and conscientious objections, or drop their health insurance coverage for their employees, leading to great hardship for millions of employees and the families around the nation not to mention face fines for not providing health insurance.

Having set forth the problem, I will now demonstrate specifically how the proposed religious exemption is illegally narrow.

1. The Proposed Religious Exemption violates the Religious Freedom Restoration Act

President Clinton signed into law and Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA) in response to *Employment Division v. Smith*, 494 U.S. 872 (1990). Congress wanted to ensure that religious freedom maintained a constitutionally high degree of protection.

Although the U.S. Supreme Court ruled in *City of Boerne v. Flores*, 521 U.S. 507 (1997) that the RFRA was unconstitutional as applied to the states, it is still in force as applied to the federal government's actions. See *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

The RFRA reads at 42 U.S.C. 2000bb-1:

(a) In General: Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception: Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person-

- (1) is in furtherance of a compelling government interest; and
- (2) is the least restrictive means of furthering that compelling

governmental interest.

How will HHS' proposed religious exemption withstand scrutiny under Clinton's RFRA? HHS must draft a new religious exemption – one which protects the religious freedom rights of ALL employers – in order to avoid legal challenges and ultimately defeat for this illegally narrow proposed religious exemption.

2. The Proposed Religious Exemption does not protect ordinary employers who have sincerely held religious beliefs

The proposed religious exemption requires an employer to meet all four requirements of the religious exemption in order to be exempted from having to provide coverage for birth control and abortion-inducing drugs.

But the very first problem is readily apparent – there are many businesses whose owners have strong religious beliefs, but the business or the employees are unable to fit into the narrow criteria set forth to obtain the exemption.

Our nation was built on a foundation of religious freedom. Our founders fled to these shores so that they could worship (or not worship) according to the dictates of their conscience. The proposed religious exemption – by virtue of its narrowness – shows bigotry against business men and women of faith.

3. The Proposed Religious Exemption does not protect Religious organizations

There are many religious employers (religious or faith-based organizations, religious primary/secondary schools, colleges and universities, etc) which *do* meet the first two criteria of the proposed religious exemption; they have the inculcation of religious values as their primary purpose and primarily employ persons who share their religious tenets. However, very few religious organizations meet the third requirement, which is that the entity primarily serves persons who share its religious tenets because most are motivated by their faith to reach out to and serve people and groups who *do not* share their religious tenets. Every single major world religion teaches that adherents should help those who are suffering, or who are disadvantaged, in other words be a “Good Samaritan”

4. The Proposed Religious Exemption specifically *only* applies to churches and other houses of worship

In addition to the problems raised above, the fourth criteria of the proposed religious exemption makes it abundantly clear that only houses of worship meet the requirements due to the constraining non-profit status of said organization.

As a result, it does not matter that the previous three criteria of the proposed religious exemption would eliminate most religious employers, organizations, and others. The fourth criteria makes it abundantly clear that the federal government only believes it is necessary to protect houses of worship.

This is unconscionable. As stated above, all religious and conscientious employers should be protected, not just churches and other houses of worship.

Conclusion: protect the freedom of religion and the freedom of conscience for all Americans

When Congress passed the Patient Protection and Affordable Care Act and resident Obama signed the bill into law, the intent was to ensure that all Americans have health coverage, not to force religious employers into a Hobson's choice between violating their religious convictions or ending their insurance plans for their employees and face fines.

In keeping with this intent, we urge HHS to adopt a robust religious exemption that will allow all employers who have religious and conscientious objections to providing birth control drugs or abortion-inducing drugs to their employees to opt out of the new HRSA guidelines. This religious exemption should also specifically exempt all religious organizations under section 501(C) of the IRS code.

If HHS adopts these common sense suggestions for a new religious exemption, it will demonstrate that the Department and the Obama Administration want to protect the religious freedom of all citizens in the United States.

Sincerely,

Kimberley Stoddard