



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

October 28, 2011

To: Members, Subcommittee on Health

From: Majority Staff

Re: November 2, 2011 Hearing Memorandum

On Wednesday, November 2, 2011, at 10:00 a.m., the Energy and Commerce Committee Subcommittee on Health will hold a hearing in 2322 Rayburn House Office Building entitled “Do New Health Law Mandates Threaten Conscience Rights and Access to Care?”

WITNESSES¹

William J. Cox
President and CEO
Alliance of Catholic Health Care

David Stevens, MD, MA (Ethics)
Chief Executive Officer
Christian Medical Association

Jane G. Belford
Chancellor
Archdiocese of Washington

BACKGROUND AND ISSUES PRESENTED

On August 3, 2011, the Department of Health and Human Services (HHS) published an interim final rule, under the authority of the Patient Protection and Affordable Care Act (PPACA), to require almost all private health plans to cover contraception and sterilization as preventive services for women.² This provision is part of a broader requirement under PPACA that group and individual health insurance coverage provide benefits for and prohibit the imposition of cost sharing for a wide range of preventive services for women. The Health Resources and Services Administration (HRSA), an agency within HHS, was charged with developing comprehensive guidelines for preventive care and screenings. The HRSA guidelines include all FDA-approved contraceptives as well as sterilization. Concerns have been raised that

¹ Additional witnesses may be added by the Majority.

² Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under PPACA. 76 Fed. Reg. 46621 (Aug. 3, 2011).

the interim final rule violates conscience rights by forcing entities to provide coverage for services for which they have a moral or ethical objection.

This interim final rule was promulgated before the proposed rulemaking and the formal comment period were conducted by HHS. In issuing the rule, HHS acknowledged that it bypassed the normal rulemaking procedures in order to expedite the availability of preventive services recommended in the guidelines without cost sharing. “Many college student policy years begin in August and an estimated 1.5 million young adults are estimated to be covered by such policies,” it stated. HHS argued that there would be a year’s delay in the receipt of the new benefit if the public comment period delayed the issuance of HRSA guidance for over a month.³

The religious employer exemption allowed under the preventive services rule -- at the discretion of the HRSA -- is very narrow. To qualify for the exemption, an entity must (1) have as its purpose the inculcation of religious values, (2) primarily *hire* people who share its religious tenets, (3) primarily *serve* persons who share its religious tenets, and (4) be 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. This definition offers no conscience protection to individuals, schools, hospitals, or charities that hire or serve people of all faiths in their communities.

Cardinal Daniel N. DiNardo, Chairman of the United States Conference of Catholic Bishops (USCCB) Committee on Pro-Life Activities, sent a letter to Members of Congress on September 7, 2011, in which he expressed particular concern about the rule’s requirement to cover: surgical sterilization; all prescription contraceptives approved by the FDA, including drugs like Ella (ulipristal) that can cause abortions in the early weeks of pregnancy; and, “education and counseling” to promote these to “all women of reproductive capacity.”

The Christian Medical Association, representing 16,000 healthcare professionals, sent comments to HHS on September 29, 2011, stating that the mandate violates the Constitution, federal law, and the Administration’s stated policies. “The mandate violates the religion and free speech clauses of the First Amendment of the Constitution, by coercing faith-based health care ministries to not only violate the very faith-based tenets that have motivated patient care for millennia, but also to *pay for* that violation,” wrote Chief Executive Officer David Stevens, MD, MA (Ethics).

Dr. Stevens further stated that the narrow potential conscience exemption is “far more restrictive than any other genuine religious exemption in federal health care law.” Until now, no federal law of any kind, or at any time, has required private health plans to cover contraceptives or sterilization.

More than 20 states have no contraceptive mandate whatsoever. Of the states with some type of contraceptive mandate, none is as sweeping as the one adopted by HHS. For example, state contraceptive mandates generally do not apply to self-insured health plans. Also, no state (except Vermont) requires coverage of sterilization.

³ Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under PPACA. 76 Fed. Reg. 46624 (Aug. 3, 2011).

Reps. Jeff Fortenberry (R-NE) and Dan Boren (D-OK) have introduced H.R. 1179, the Respect for Rights of Conscience Act of 2011, that would address the lack of adequate conscience rights protections in PPACA. The legislation has 84 cosponsors; a companion bill (S. 1467) introduced by Senator Roy Blunt (R-MO) has 22 cosponsors.

H.R. 1179 would not change any other state or federal mandate for health coverage, but simply prevent any new mandates under PPACA from being used to infringe on the freedom of conscience Americans now enjoy. Under the bill, a health plan or health care provider shall not be considered to have failed to provide the essential benefits package described in section 1302(b) of PPACA (or preventive health services described in section 2713 of the Public Health Service Act) if it declines to provide coverage of specific items or services because such coverage “is contrary to the religious beliefs or moral convictions” of the entity. The HHS Secretary may still require that such health plans “have an aggregate actuarial value at least equivalent to that of plans at the same level of coverage that do not exclude such items or services.”

For further information or questions about this hearing, please contact Marty Dannenfelser or Paul Edattel at (202) 225-2927.