



Office of the President
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April 8, 2013

Submitted Electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-9968-P
P.O. Box 8013
Baltimore, MD 21244-1850

Dear Secretary Sebelius:

I write to express concern about the February 1, 2013 Notice of Proposed Rulemaking (NPRM) to the regulations entitled Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventative Services Under the Patient Protection and Affordable Care Act (78 Fed. Reg. 8456).

I have several concerns about the NPRM. First, I am concerned that the exemption created in this proposed change still does not exempt Wheaton College as a distinctively Christian institution. Second, the NPRM does not offer a concrete proposal for self-insured entities like Wheaton College, thus leaving us to face uncertainty about what precisely we will be asked to do and how the process will work. Wheaton cannot either directly provide health insurance coverage for abortion-causing drugs and devices or facilitate access to those drugs and devices. Without concrete and fully fleshed-out proposals, it is impossible to evaluate what Wheaton is being asked to do. Finally, the NPRM's refusal to protect religious liberty for individuals and institutions in the business world concerns us insofar as we, as an institution of Christian higher education, prepare our students to be witnesses to Christ in all facets of their life, including in the operation of for-profit businesses.

The "religious employer" exemption

Our mission is "to help build the church and improve society worldwide by promoting the development of whole and effective Christians through excellence in programs of Christian higher education." As a systemically religious institution, we incorporate our Christian faith into every facet of our work. Yet the NPRM's religious employer exemption defines "religious employer" in a way that makes clear that Wheaton does not qualify and will not be exempt from the contraceptive mandate.

The exemption defines "religious employer" as a "nonprofit organization described in section 6033(a)(1) and (a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order." These

categories from the IRS Tax Code govern certain reporting requirements, but they bear no relationship to the legitimate religious nature of our institution. Despite this irrelevance of the categories to our religious nature, they disqualify us from being considered a “religious employer.”

Moreover, the NPRM’s definition of “religious employer” serves to distinguish between the constitutional rights of churches and other religious organizations. Wheaton College is not affiliated with a larger church organizational or denominational structure. By denying Wheaton the exemption other religious groups receive, the NPRM treats Wheaton as a second-class religious organization. Wheaton has the right to be religious without being pressured by the government to affiliate with a larger church organization in order to protect its rights.

No concrete guidance for self-insured non-profits

The NPRM also fails to articulate a concrete proposed rule with respect to self-insured organizations like Wheaton. Instead of a concrete proposal that we can fully evaluate, the NPRM merely offers broad outlines for several possible alternative schemes. Without a concrete proposed rule, we have no clarity on what we will be asked to do and how the process will work. Accordingly, we cannot fully consider whether the government will be trying to force us to facilitate access to abortion-causing drugs and devices—which we cannot do—or not.

No protection for for-profit businesses

Finally, the NPRM specifically rejects any accommodation for the religious objections of business owners. As explained earlier, our mission at Wheaton is “to help build the church and improve society worldwide by promoting the development of whole and effective Christians through excellence in programs of Christian higher education.” We seek to develop student-leaders who will be witnesses to Christ in all areas of life and are concerned by the lack of protection the NPRM offers for the religious liberty of individuals and institutions in the business world, as it will hinder the ability of our students to fully live out their faith. Wheaton graduates exercise their religion in many different facets of life, and their religious liberty should be protected broadly.

In light of these considerations, we ask the Department to eliminate the mandate altogether. If the Department chooses to keep the mandate in place, we ask the Department to expand the scope of the exemption to include all religious individuals and institutions who cannot comply with the mandate without violating their religious beliefs.

I appreciate your attention to this crucially important matter and am happy to speak with you or your department’s representatives if that would be helpful.

Sincerely,



Philip G. Ryken
President

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