

Dioceses find various ways to cope with contraceptive insurance mandate

LEVITTOWN, Pa. - A new federal regulation that would require employer insurance plans to provide contraceptives that some consider abortifacient and voluntary sterilization among cost-free preventive care measures such as inoculations and Pap smears is being greeted with varying levels of dismay in Catholic dioceses across the country.

The regulation provides a narrow religious exemption for an employer that “(1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a nonprofit organization” under specific sections of the Internal Revenue Code.

This definition is “a direct infringement on our ability to do ministry,” said George Wesolek, communications director for the Archdiocese of San Francisco. “It’s part of a larger issue,” he said. “The room for religious liberty is getting narrower and narrower” in the United States.

The Health and Human Services Department regulation, announced Aug. 1, has a 60-day comment period ending Sept. 30, and could go into effect in August 2012. It is part of the Patient Protection and Affordable Care Act, and Wesolek said it “could have been avoided by a unified effort by the Catholic Church when the health care bill was being considered.”

James F. Sweeney, legal counsel to the Diocese of Sacramento, was among the

Californians who unsuccessfully fought a similar state law through the California courts and tried to take it to the U.S. Supreme Court, which declined to hear the case.

He called the exemption “a complete sham” because it omits the reality of the church at work in the world. He said “there was a time when government attempted to protect religious exercise” but this regulation is instead “tolerating (religion) in the least significant ways possible.”

He said a lot of dioceses in states that instituted mandated coverages contrary to Catholic teaching were able to establish self-insurance plans which came under federal regulation and so were exempt from the state laws. Others, such as the Diocese of Burlington, Vt., were able to avoid state mandates by using insurance companies based in states without mandates.

According to Richard Doerflinger, associate director of the U.S. bishops’ Secretariat for Pro-Life Activities, 28 states have some kind of mandated coverage for contraceptives, but none is as sweeping as the HHS regulation. Nineteen of those states have some kind of religious exemption, most of which simply state an employer may be exempt “for religious reasons.”

California and New York, both states that fought the mandate to their highest state courts and were declined hearing by the Supreme Court, have exemption descriptions similar to the new regulation, which Doerflinger said is “quite unprecedented in federal law.” He said the new federal regulation takes away the option of self-insurance: “Your last refuge is gone.”

The U.S. Conference of Catholic Bishops is preparing to submit a formal comment on the proposed religious exemption, and most state Catholic conferences are deferring to the national office for that purpose.

Doerflinger said even the narrow exemption is offered only to employers, not to individuals or to insurance companies that have conscience problems with participating in a plan that goes against Catholic teaching. In addition to covering birth control pills and voluntary sterilization, the regulation specifically covers “emergency contraception” such as the drug ella, which operates in a way analogous to the abortion drug RU-486 and is considered abortifacient by Catholic teaching though not by federal law.

Deacon Patrick Brannigan, executive director of the New Jersey Catholic Conference, said his conference sees the regulation as “an unprecedented threat against religious individuals and institutions.” For one thing, he said, the regulation says the agency “may” establish a religious exemption - it doesn’t read “shall.”

More importantly, by saying that an exempt organization must be one that serves primarily those who share its beliefs, it ignores the fact that “while we hope that people see Christ in all that we do,” Catholic agencies offer services to people “without asking who they are.”

Sister Patricia Codey, a Sister of Charity of St. Elizabeth who is president of the Catholic HealthCare Partnership of New Jersey, agreed. “Catholic hospitals across the country provide care to all those who come to their doors, especially the poor. We don’t refuse treatment to anyone.”

Dennis Poust, director of communications for the New York State Catholic Conference, said the narrowness of the proposed exemption “goes against everything our religion stands for.”

Some dioceses have responded or intend to respond in different ways for their diocesan central offices and schools, which they believe are covered by state exemptions, and for such separately incorporated entities as Catholic hospitals and

Catholic Charities.

In some cases the latter are complying with state mandates, under protest. Some offer employees a choice of insurance plans, with or without coverage for contraception and other services which go against church teaching.

Sister Jennifer Votraw, a Sister of St. Joseph who is director of communications for the Diocese of Ogdensburg, N.Y., said, “We’ll abide by the law, but are complying under protest. We feel our consciences are being violated and not respected.”

Chuck Thibaudeau, director of human resources for the Archdiocese of Atlanta, takes an opposite tack; he said he’s been advised that the 5,000 employees of the church there are exempt from the state mandate although it is not one of the states that spells out a formal exemption. He said he expects the church to be exempt from the federal regulation as well.

“They’ve used the word ‘primarily,’ ” he said, and although employees may not necessarily be Catholic, they share the major tenets of the Catholic Church and serve people who also do.