April 5, 2013

Submitted Electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Public Comments for CMS-9968-P

Department of Health and Human Services, 45 CFR Parts 157, 148, and 156,
Coverage of Certain Preventive Services Under the Affordable Care Act
(“Proposed Religious Exemption”)

Dear Sir or Madam:

On behalf of Eternal Word Television Network, Inc., (“EWTN”) we respectfully submit the following comments on the Notice of Proposed Rulemaking (“NPRM”) on preventive services. 78 Fed. Reg. 8456 (Feb. 6, 2013). In short, and based on the comments herein below, religious beliefs and conscience objections to contraceptive services are held by people who are not churches and the current proposed rule does not permit anyone other than a Church to be exempt. To this extent, the rule is deficiently erroneous and must be corrected.

Summary: EWTN is a nonprofit public charity dedicated to advocating the teachings of the Roman Catholic Church, which include the belief that voluntary sterilization, contraception, and abortion are evil. The government is forcing EWTN and others to call these things good and provide them despite moral and conscience objections. Although it claims to provide exemption, this rule literally reduces religious exemption to churches thereby forcing EWTN and anyone else with valid objections to comply. In essence, this rule only permits churches, but no one else, to have religious beliefs contrary to the government’s. Although the proposed rule claims to provide an “accommodation” to nonprofit organizations, this accommodation does not equate to actual exemption because it would increase administrative fees of accommodated organizations, and the claimed offsets appear meaningless. Furthermore, there appears to be no provisions made for non-church, non-religious employers and no provision at all for individual persons who object. This proposed rule must provide for anyone, individual
or organization, to escape being compelled by government force to accept or provide contraceptive, sterilization, and abortion-causing services.

About EWTN

Founded August 15, 1981, EWTN is a section 501(c)3 public charity with the mission “dedicated to the advancement of truth as defined by the magisterium of the Roman Catholic Church.” The EWTN mission statement says such dedication is “best evidenced by the acceptance of the Dogmas, Rules and Regulations of the Church in all matters” and that EWTN “exists to provide a media for orthodox endeavors.” EWTN is not a church, but it is founded to be Catholic and reliably express the teachings of the Catholic faith in media. It follows that EWTN believes these teachings sincerely.

EWTN comments here because it is being forced to act in a manner contrary to its religious beliefs by the government through this proposed rule.

The Government is Acting on a False Premise and Forcing EWTN to Agree with the Error

The Government has erred by concluding that certain preventive services are valid health care, when in fact they are contrary to health. From this error, it now seeks to mandate that EWTN, and any individual with similar beliefs, must agree, and pay money to support, provide, and worse, accept such services to be provided to themselves or others. At the heart of this dispute is whether EWTN or persons with similar beliefs must use their bodies and money to support this erroneous belief under government force. The Constitution restrains the government from forcing its beliefs on individuals, particularly any religious belief. Yet, this mandate persists to force EWTN and others to part with money and their health under threat of government force.

Thus, this fight is not about providing health care, it is about an erroneous belief, which the government accepts as a foregone conclusion, that contraceptives, voluntary sterilizations, and abortion-inducing drugs are health care. EWTN refuses, by exercising the rights guaranteed to it by the same government to swallow this error and merely “go along.”

For the sake of itself and other people who hold similar religious beliefs in good conscience, by understanding what these so-called “preventive services” are, it is apparent that the government is asking them to act contrary to common sense and sincerely held beliefs that people should not be injured and damaged by their government. It does not matter what flowery auspices are put on the concerns that propel the government action, the so-called services subject of this mandate are not healthy and represent the intentional destruction of healthy persons. The government should not force EWTN, or anyone else, to intentionally inflict bodily harm on another person.
Health Care Does not include Contraception, Voluntary Sterilization, or Abortion

The Merriam-Webster Medical Dictionary defines health care as “the maintaining and restoration of health by the treatment and prevention of disease especially by trained and licensed professionals (as in medicine, dentistry, clinical psychology, and public health).” Thus, health care is the maintenance and restoration of health by the prevention of disease. It follows that the restoration of health includes the remediation of injuries as well. Intentionally damaging a healthy person is not health care. While treatment of injuries or disease may cause harm, the harm is done with the intent of removing disease or injury. There is no disease or injury being cured by contraception, voluntary sterilization, or by abortion-inducing chemicals.

Contraceptive hormones do not cure a disease or injury. In the ordinary healthy reproductive system, ovulation and subsequent fertilization lead to the growth of a new person. Along the way, this person implants in the womb and is nurtured to growth by the mother’s healthy body. The introduction of contraceptive hormones to a healthy mother for the purpose of causing the womb to reject the implantation of a growing person is the intentional destruction of a person. Beyond this point, there is still discussion as to whether this type of treatment causes harmful side effects. In any case, there is no disease or injury remedied by contraceptives when taken for the purpose of preventing conception and pregnancy – pregnancy is not a disease or injury. To utilize contraceptives in this way is therefore not health care.

Voluntary Sterilization is the intentional mutilation of a healthy body to render it incapable of healthy performance. It is an intentional injury and one that damages health, destroys the functional integrity of the person’s body, and is intentionally done for this purpose to destroy healthy function. It is not health care.

Abortion-inducing drugs, or abortifacients, cause an already growing person to fail to implant in the womb, or an already implanted person to be discharged from the womb and die. Whatever else this is, the implantation of a fertilized egg in the womb is healthy. It is not an injury or disease that needs remediation. Furthermore, the fertilized egg that implants in the womb develops into a person unless injured or diseased. These abortion-inducing drugs therefore cause injury and cannot be called health care.

All three of these categories are regularly questioned as to whether they present harmful side effects as well, in addition to the damage they do directly.

Roman Catholic Teaching on Health Care Specifically Denounces Contraception, Abortion, and Voluntary Sterilization

Roman Catholic faith has been clear since early in its inception that the use of contraceptives, voluntary sterilization, and taking steps to intentionally induce an abortion, or otherwise terminate a pregnancy, are grave moral errors. The import of this teaching is that a Catholic
following the teachings of the faith will not assist another to do something wrong, certainly not a grave moral error, let alone one that has the only purpose to mutilate healthy persons or cause the death of another. This prohibition applies on the concepts, and does not matter whether or not it is merely dubbed "health care" for the convenience of labels. Precisely on this point, and because contraceptives, abortifacients such as Ella, and voluntary sterilizations are defined to cause these immoral ends, EWTN follows the teachings of the Roman Catholic faith and does not believe they are moral or validly called "health care."

The United States Catholic Conference of Bishops directs that "[a]ll persons served by Catholic health care have the right and duty to protect and preserve their bodily and functional integrity." This teaching extends to any form of contraception that "either in anticipation of the marital act, or in its accomplishment or in the development of its natural consequences, have the purpose, whether as an end or a means, to render procreation impossible." This teaching thus implicates and thereby prohibits voluntary sterilization as well. While the Roman Catholic teaching on abortion is widely discussed, it bears repeating that "Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted."

Abortion-causing drugs do not escape being abortion, as it is clearly defined that "Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo."

Roman Catholic teaching on the so-called "preventive services" subject to this mandate could not be clearer: they are intentional injury of another and are not health care. They are wrong and morally grave acts. A person following the faith will not see it otherwise, and will see the use of these services as harming and killing innocent persons. The government is forcing EWTN, or anyone else with these beliefs, to agree with their error – an act that will cause a reasonable person to see that the government is forcing EWTN and others to call evil good, and pay for it.

This use of government force is not theoretical or philosophically abstract. Rather, it is a real, concrete, and earthly injury being performed with the disguise of health care. Whatever else the so-called "preventive services" purport to prevent, it is obvious that they don't prevent or remediate injury or disease, and are therefore not health care. Rather they appear to prevent health, and are contrary to health care. They may in this sense be called evil, yet the government is using its force to make persons who believe otherwise call it good.
That EWTN or any Individual is not Entirely Exempt Immediately is Absurd

Given these beliefs, any proposed rule that does not entirely exempt an individual or an employer such as EWTN from this mandate is unconstitutional use of government force. Moreover, it is absurd that it takes 80 pages on a third attempt by the government to promulgate the instant “rule” that has no clear exemption or correction to the underlying error. Rather, the instant proposed rule makes the matter of exemption abstract and nebulous and does nothing to abrogate the erroneous conclusion that the so-called “preventive services” are health care. First, the concept of exempting churches as a distinct group, as if they are the only persons who can hold the beliefs elaborated above, is specious. It is even more specious when considering the Establishment Clause implications.

The American public is free to hold religious beliefs whether or not they declare themselves to be a church. Similarly, the public is protected from being forced to call evil good at the tip of the government’s whim and threat of force. This should seem apparent regardless of whether the person is an individual, a church, a nonprofit, or anyone else. Yet, this rule segregates religious beliefs from the public and herds them into churches and a few nonprofits. No one but a Church is allowed to live by their religious beliefs under this rule – and given how contrary the government’s error is to these religious beliefs, it is absurd that such an elaborate scheme has been erected.

EWTN, and any other employer, is necessarily implicated by the virtue that this mandate is forcing the employer to provide insurance coverage, and this instant proposed rule is forcing the employer to provide the so-called “preventive services” as if they were health care. The individual is left without option to decline based on their personal beliefs, and the organization employing them is left as the middleman to pay for what the government mandates it do.

EWTN notes that the proposed rule itself appears at the end of page 69 through page 77 of the 80-page document. In that section, the operative rule proposals appear. EWTN is a public charity with a religious purpose. Yet, under the proposed § 147.131 (a), despite the tag “Religious Employers” being prominent on the text, the definition is of an employer that “operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (a)(3)(A)(iii) of the Internal Revenue Code of 1986, as amended.” As promising as that appears, the pertinent Internal Revenue Code sections define that to be “(i.) churches, their integrated auxiliaries, and conventions or associations of churches,” and “(iii) the exclusively religious activities of any religious order.” EWTN is not a church. It is not a convention or auxiliary thereof, nor is it a religious order. In short, the proposed rule only excludes churches from the mandate. Again, the tag “religious employer” to describe this total exemption when in fact buried in legal definitions it is determined that the rule only means churches is misleading and absurd. What the proposed rule is attempting to define is that only a church can be exempt. Nobody else is allowed to hold religious beliefs and live them.
No Exemptions for Non-Churches, but "Accommodations"

The second section of the proposed rule does not use the word "exemption" but "accommodation" and appears at § 147.131 (b), "Eligible Organizations." The proposal lists three criteria, that:

(1) The organization opposes providing coverage for some or all of any contraceptive services required to be covered under §147.130(a)(1)(iv) on account of religious objections.
(2) The organization is organized and operates as a nonprofit entity.
(3) The organization holds itself out as a religious organization.

This proposed section for an "accommodation" requires that the objection be made on religious beliefs, by an organization, and only an organization that "holds itself out as a religious organization." These limitations exclude anyone else, except churches proper, who opposes the so-called "preventive services" labeled "contraceptive services." That there is no provision for individuals to be exempt and that permitted exemptions are limited to merely religious beliefs is specious and too narrow. The second item requiring that a person operate as a nonprofit is equally specious. Because item (1) already limited this to religious beliefs, the import of item (2) means that only nonprofits can hold religious beliefs. While EWTN is a nonprofit, the third item (3) is problematic in its requirement that to be "accommodated," EWTN, or anyone else is required to "[hold] itself out as a religious organization." It's not clear what is intended by this proposal that one "hold itself out." How precisely does one maintain that requirement? It is more troublesome that one is required to identify themself as religious in order to be exempt, much less "accommodated," when the religious beliefs above declaring the so-called "preventive services" can be held by any individual. That EWTN believes these things to be immoral is not dependant on whether it declares itself to be religious - religious beliefs, or any other sincerely held conviction is not obtained by public declaration.

Any person is free from being forced to do what is contrary to their religious beliefs. The Constitution restrains the government from forcing its beliefs on people. Yet, by operation of these arbitrary labels in the qualification for a mere "accommodation", the government is narrowly limiting who escapes its use of force to mandate acts contrary to religious belief and conscience. The government should not condition its restraint on how EWTN defines and "holds itself out." The Free Exercise Clause does not limit to whom it applies by their tax status and self-applied labels.

The "Accommodation" for Non-Church Nonprofits is Meaningless

The meaning of the word change from exemption to "accommodation" becomes clear in Item (4) of the section 147.131(b) proposed rule. This section has filing requirement for
"accommodated" employers. An "accommodated" (not exempted) employer is one who has conscience convictions opposite the government’s erroneous determination of the validity of these mandated contraceptive services and is lucky enough to qualify for the strange and arbitrary requirements in (1)-(3). The process of obtaining the “accommodation” is a symbolic gesture of putting self-generated paper in a file. A mere formality of sorts, but it becomes apparent that they are not, by the government’s definition, “exempt.” Thus, the accommodation involves holding one’s self out as religious and filing papers in the closet.

The accommodation changes nothing in practice. Despite all these excessive limitations to the exemption and the ceremonial act of filing a sheet of paper, the insurance administrator is still required to provide the contraceptive services anyway. In other words, the “accommodation” is meaningless as the preventative services are still going to be provided, and provided through the relationship with the employer. Thus, any objection to the government force to call evil good is rendered silent, filed away in a filing cabinet, and the evil is still forced onto the covered individuals as if nothing happened. It is an empty meaningless ceremony to be conducted in the privacy of the accommodated employer’s filing cabinets, and meanwhile the employer is required to still provide the very things it objects to. Whatever else it is, the accommodation is not an exemption.

Even if “Accommodated,” under the Proposed Rule, Mandated Fee Hikes Force Compliance

The accommodation is worse, because it comes with higher fees. EWTN, or anybody else who does not want to be forced to pay for evil, and who self-insures runs the risk of paying for this coverage. In fact, despite language to the contrary, the rule proposed makes it clear that there will be costs to the coverage, and that persons who exercise their religious or conscience beliefs may well be penalized by higher administrative fees! On page 37, the following is discussed:

HHS notes that the estimate of the cost of the contraceptive coverage could include a reasonable margin. HHS seeks comment on the magnitude of a reasonable margin, and notes that the proposed HHS Notice of Benefit and Payment Parameters for 2014 proposes a presumed margin of 3 percent within allowable administrative costs for the risk corridors program.

The proposed inclusion of reasonable administrative costs and margin in the estimate of the cost of the contraceptive coverage is intended to ensure that issuers receive reasonable compensation for providing the contraceptive coverage, as they would expect to receive in their other commercial businesses.

Not only does the government force us to comply by mandating coverage and the providing of these evils, but it appears that it is going to raise our administrative cost by at least 3%! What's
worse is that it looks like the government will entertain a higher fee by “seeking comment on the magnitude of a reasonable margin.” No margin increase is acceptable for a self-insured provider or any individual who believes these services are evil and does not want them in their plan.

Although the government makes noises about rebates or offsets for these costs, those offsets are by no means guaranteed. The actual proposed rule does not say what it will do to protect self-insured groups, and it does not guarantee that they will not be charged the additional administrative costs. The offsets will not work if there is no administrator, or if the administrator cannot join the federal exchange, or if the administrator chooses not to join and pay the fees. This so-called offset is nothing more than an accounting gimmick, and the costs are likely to be passed back to the religious objector.

Such a “margin increase,” “administrative fee” or price hike can be called whatever arbitrary label, but the purpose of it appears to be a penalty fee levied on those who disagree with the government’s belief system. Rather than a true exemption, the government has created a complicated workaround that increases costs and then likely passes them back to EWTN. In other words, EWTN is going to pay one way or another, but it must pay even though it believes that the contraceptive services are evil. So much for the free exercise of religion – it is rendered meaningless by this scheme.

Under this scheme, the government is forcing itself into the private contract EWTN makes with its administrator and creating a higher administrative margin to cover things EWTN believes are evil and would be the intentional injury of its employees. No employer, religious or not, should be forced to accept such a delusional scheme. No individual should be forced or left without option to object on personal belief, either.

Individuals are Left Without Recourse

EWTN sees no option for an individually insured person to exercise their beliefs, especially ones that hold beliefs similar to EWTN. Nowhere in the scheme or proposed rule is there provision for individual persons to be exempt from the mandate. In other words, the mandate not only appears to force everybody other than churches to accept the contraceptive services and provide them, but it would also force individuals to accept these as valid health care when in fact individuals may object on far more grounds, especially if such services are being indicated to them. This mandate would force these evils into the option of available treatments as if they were valid choices. The individual is left without recourse of any kind.

Forcing Everyone to Call Evil Good

The proposed rule has done nothing but make it more clear that the government intends to force individuals and persons to accept the intentional injury of these contraceptive “preventive
services” and by use of their force, pay for it, accept it, and treat it as “good.” This rule must be changed to allow EWTN, any other employer, and individuals to say “no” to the government’s erroneously held belief that “good” health care includes contraceptives, voluntary sterilization, and abortion-inducing drugs. Religious beliefs, and conscience beliefs, are not confined to churches, and the rule must recognize and permit anyone to freely exercise those beliefs without force of government and without being ignored and sidestepped by administrative fees and similar gymnastics.

EWTN merely asks that this rule provide appropriate recognition of the constitutional protections of religious liberties afforded to every person, not just churches.

Respectfully submitted,
ETERNAL WORD TELEVISION NETWORK, INC.

Michael P. Warsaw
Its President and Chief Executive Officer

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Its’ General Counsel

\[ ^{1} \text{Definition retrieved from http://www.merriam-webster.com/medical/health\%20care (last visited on March 22, 2013).} \]


\[ ^{5} \text{id.} \]