

United States Senate
WASHINGTON, DC 20510

February 22, 2012

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We are writing to express our concerns with the final rule, promulgated on February 10th by the U.S. Department of Health and Human Services (HHS), under which virtually all private health care plans would have to cover sterilization procedures and all forms of contraceptive methods that have Food and Drug Administration (FDA) approval. We urge you to revisit this rule due to the fact that its implementation will unjustly impact religiously-affiliated organizations and individuals.

The implementation of this rule will jeopardize access to vitally important health care services by undermining the religious practices of employers that regard certain contraceptive methods or sterilization procedures as morally objectionable. The Department's recent actions suggest a disregard for the Constitution's guarantee of religious liberty and do not adequately reflect all the public comments received by HHS. The final rule is inconsistent with your stated commitment to avoid skirting constitutional and customary limits on executive branch power.

Implementing a mandate that health insurance plans must provide coverage for all FDA-approved contraceptive methods and sterilization procedures, even if the organization purchasing the plan believes one or more of these services to be immoral, will have troubling consequences. Letting employees receive coverage through their insurance company, rather than receiving coverage directly through an employer, as the Administration proposed last week, would not forestall such consequences:

- First, in merely shifting the costs of contraceptives from policyholders to insurers, the final rule neglects to adequately protect the conscience rights of many religious organizations and individuals. Faith-based institutions will have to subsidize services they regard as inherently immoral, in the likely event that the additional costs of providing sterilization services and abortifacients without cost-sharing are passed on to religious organizations in the form of higher insurance premiums.

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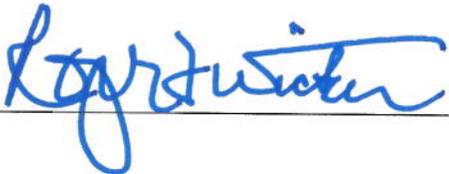
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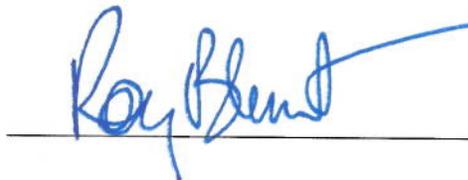
- Second, because many religious institutions are self-insuring, we are concerned that non-exempt religious organizations with self-funded insurance plans still could be required, as indicated recently by Secretary Sebelius, to provide services they regard as morally objectionable. We also question whether individual employers who object to subsidizing all FDA-approved contraceptive services and sterilization procedures on moral grounds would have an exemption to the requirements in the final rule.

The final rule leaves few viable options for religiously-affiliated organizations and individuals to avoid using their funds to pay, directly or indirectly, for services they consider morally objectionable. One option, of course, would be to simply stop offering insurance coverage to employees. If forced to choose between their moral obligations and insurance coverage, some religiously-affiliated employers will choose the former. It defies logic that this Administration would promulgate a rule which would have the effect of reducing the availability of health care coverage when the Administration has long maintained that enacting health care reform would expand access to health insurance. A second option for faith-based institutions would be to restrict the individuals they hire and serve to only those sharing the organization's religious tenets in order to meet the rule's narrow definition of a religious employer. Because religiously-affiliated hospitals and other organizations are major employers in many communities, and because such organizations extend services to those in need without regard to the religious affiliation of those they serve, it is hard to comprehend why this Administration would deliberately implement a policy that would have such a detrimental impact.

As you stated on June 26, 2006: "I think we make a mistake when we fail to acknowledge the power of faith in people's lives—in the lives of the American people—and I think it's time that we join a serious debate about how to reconcile faith with our modern, pluralistic democracy." With the above in mind, we urge you to revisit this final rule and ensure the adoption of any changes necessary to ensure the fair treatment of faith-based institutions and all people of faith, consistent with the Constitution's guarantee of religious freedom for all.

Sincerely,





James McLaughlin

Jerry Moran

James O'Rourke

Dan Coak

Sayby Chaublin Kelly A. Ayotte

John Houn

Mike Johnson

Pat Roberts

Chuck Grassley

Richard A. Lugar

John Boozman

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