

ROBERT P. CASEY, JR.
PENNSYLVANIA

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United States Senate

WASHINGTON, DC 20510

September 30, 2011

The Honorable Kathleen Sebelius
Secretary
United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

I am writing to ask for your assistance in ensuring that as the Department of Health and Human Services (HHS) promulgates regulations for the Affordable Care Act (ACA) it puts in place protections to guarantee that no religious organization is compelled to take actions that violate its conscience rights.

As you know, I supported the inclusion of no-cost preventive care benefits in the ACA as a way of ensuring that every American has access to treatments and services that have been proven to save lives and improve health. However, I oppose recent actions taken by HHS which may force most religious employers, including Catholic organizations, to provide coverage for health procedures that they find morally objectionable and that violate their religious tenets. Our country has acknowledged and respected the rights of conscience since its founding, and for over 40 years federal conscience laws have been in effect to protect those with religious or moral objections to providing certain services.

On August 3, 2011, HHS issued an Interim Final Rule relating to coverage of preventive services for group plans and health insurance issuers. While I applaud the agency's decision to include an exemption for religious employers, the concept and definition of "religious employer" is far too narrow. In fact, the proposed definition, as written, is narrower than any conscience clause promulgated under federal law. Under the current regulation, the vast majority of Catholic organizations would not meet HHS' proposed definition of religious employer, which requires that the organization inculcate religious values as its purpose and primarily employ and serve persons who share its religious tenets. In effect, this regulation as proposed would force Catholic hospitals, nursing homes, social service agencies and universities to provide coverage of services that violate their religious beliefs.

In Pennsylvania, there are 15 acute care Catholic hospitals, 25 Catholic nursing facilities, 8 Catholic Charities agencies, 29 Catholic Universities and colleges, and over 15 other Catholic-sponsored service organizations including hospice, home health, assisted living and senior housing that employ and serve all Pennsylvanians regardless of religious faith. These Catholic institutions, because of their mission, open their doors to care for and educate all Pennsylvanians. However, under the proposed definition, these institutions and organizations would be subject to mandates contrary to the Catholic tenets that were fundamental to the founding of these facilities as well as their ongoing mission.

Therefore, I would ask that you ensure that the concept and definition of "religious employer" is broadened. One possible solution to the problem would be rewriting the definition using the principles behind the "church plan" exemption found in Section 414(e) of the Internal Revenue Code (IRC), which was developed specifically to avoid church-state entanglements in religious governance relative to pension, health and welfare plans offered by religious entities. Another alternative would be language based on the religious exemption to the contraceptive mandate in the appropriation that covers the Federal Employees Health Benefit Program.

Thank you for your attention to this matter. I look forward to your reply at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Bob Casey, Jr." in a cursive, slightly stylized font.

Robert P. Casey, Jr.
United States Senator