



## The National Catholic Bioethics Center

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January 11, 2018

### **Submitted Electronically**

Department of Health and Human Services  
Attention: Office of Civil Rights  
200 Independence Avenue  
HHH Building, Room 509F  
Washington, DC 20201

**Subj: Violations of Religious Freedom by State and Local Agencies in Health Insurance Mandates**

Dear Sir or Madam:

I am writing on behalf of The National Catholic Bioethics Center to comment on the violation of religious freedom resulting from the Massachusetts law: *An Act Relative to Advancing Contraceptive Coverage and Economic Security in Our State* [November 2017: <https://malegislature.gov/Laws/SessionLaws/Acts/2017/Chapter120>], as well as the California law mandating insurance coverage of abortion.

The Massachusetts law was promulgated to provide similar contraceptive, abortifacient, and sterilization mandates incurred under federal regulations implementing the *Affordable Care Act*. The related “Interim Final Rules” modify the existing federal “accommodation” designed for religious ministries such as Catholic charities, universities, and hospitals, as well as closely held for-profit employers, allowing them to choose to remain accommodated or be exempt from the mandate [*Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act*, at <https://www.federalregister.gov/documents/2017/10/13/2017-21852/moral-exemptions-and-accommodations-for-coverage-of-certain-preventive-services-under-the-affordable>]. Furthermore, publicly traded for-profit companies with a religious objection may avail themselves of these options, as can non-publicly traded for-profit companies with moral objections. The Massachusetts law negates all of these provisions

at the state level, providing very limited conscience relief for faith-based providers of services to the community.

At the same time the California mandate of abortion coverage in health insurance plans has resulted in similar violations of conscience and religious freedom of all of those opposed to facilitating abortion regardless of the source of the objection, be it religious or philosophical [Michelle Rouillard, Director of Department of Managed Health Care letter to Mark Morgan, California President of Anthem Blue Cross, RE: Limitations or Exclusions of Abortion Services. August 22, 2014, at

<http://accesswhj.org/sites/default/files/docs/NHeLP-CAAbortionCoverageFactSheet-Web.pdf.>].

The National Catholic Bioethics Center is a nonprofit research and educational institute committed to applying the moral teachings of the Catholic Church to ethical issues arising in health care and the life sciences. The Center has 2500 members throughout the United States, many of whom employ and/or serve thousands of persons, and thus its collective membership is significant. The Center provides consultation to thousands of institutions and individuals seeking its opinion on the appropriate application of Catholic moral teaching to these ethical issues. These mandates, and other similar mandates, place burdens and far-reaching negative implications upon our membership who regularly seek our ethical advice on the moral quandaries imposed upon them.

The impact on faith-based employers following the passage of the Massachusetts law is the reinstituting of the very procedures objected to by the Little Sisters of the Poor, who sought and received relief by the United States Supreme Court [DAVID A. ZUBIK, ET AL., PETITIONERS 14-1418 v. SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL]. Under Massachusetts law employers must submit Form 700 to their insurers, or if self-insured, their third-party administrators, to exercise a religious “accommodation” and thus purportedly to “opt out” of contraception, abortifacient, and sterilization coverage. The problem is that by submitting Form 700, (a) the employer’s health insurance plan becomes the vehicle through which immoral coverage (contraception, abortifacients, and sterilization) is provided to employees, and (b) the form acts as the mechanism that triggers the insurer or third-party administrator’s legal duty to provide such immoral coverage in violation of the religious freedom of the employer. Prior to the passage of the Massachusetts law, the employer was not required to submit Form 700, it simply had to inform the government that it would not provide immoral coverage under its health care plan, avoiding immoral cooperation in the provision of contraception, abortifacients, and sterilization.

Neither the California law [*Foothill Church v. Rouillard*], nor the Massachusetts law [Section 3(j), narrowly defining a “qualified church-controlled agency”] provide sufficient protection for faith-based entities. Whether the mandates be for coverage of a direct

abortion or for contraception, medical and mechanical abortifacients, and sterilizations, they represent a direct attack on religious freedom as protected by the First Amendment of the U.S Constitution as well as the *Religious Freedom Restoration Act*. We seek intervention and relief from the U.S. Department of Health and Human Service Office of Civil Rights.

We are grateful for your interest in protecting the civil rights of all Americans, especially those whose religious or philosophical beliefs are the foundation for being subject to discrimination.

Sincerely yours,

A handwritten signature in black ink that reads "Marie T. Hilliard". The signature is written in a cursive, flowing style.

Marie T. Hilliard, JCL, PhD., RN  
Director of Bioethics and Public Policy