



Little Sisters of the Poor
Caring for the Elderly Poor throughout the World

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April 8, 2013

Submitted Electronically

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

Re: Notice of Proposed Rulemaking on Preventive Services
File Code No. CMS-9968-P

Dear Sir or Madam:

On behalf of the Little Sisters of the Poor, we respectfully submit the following comments on the Notice of Proposed Rulemaking on preventive services.¹

The Little Sisters of the Poor are an international Congregation of Catholic women religious serving 13,000 needy elderly people of all faiths in thirty-one countries around the world. Thirty of our homes for the aged, which together care for over 2,500 elderly poor, are located in the United States.² We are filing these

¹ 78 Fed. Reg. 8456 (Feb. 6, 2013).

² These homes are located in Queens Village, New York; Bronx, New York; Latham, New York; Enfield, Connecticut; Flemington, New Jersey; Pawtucket, Rhode Island; Philadelphia, Pennsylvania; Scranton, Pennsylvania; Somerville, Massachusetts; Totowa, New Jersey; Baltimore, Maryland; Cincinnati, Ohio; Cleveland, Ohio; Indianapolis, Indiana; Mobile, Alabama; Newark, Delaware; Oregon, Ohio; Pittsburgh, Pennsylvania; Henrico, Virginia; Washington DC; Palatine, Illinois; Chicago, Illinois; Denver, Colorado; Evansville, Indiana; Gallup, New Mexico; Kansas City, Missouri; Louisville, Kentucky; Saint Louis, Missouri; Saint Paul, Minnesota; San Francisco, California; and San Pedro, California. *See*

comments because the HHS Mandate threatens the operation of these homes. After the safe harbor ends, we may be subjected to steep financial penalties for not changing our health coverage arrangements at these homes to ensure coverage of female sterilization and all FDA-approved contraceptives, including abortifacient drugs and devices.

We have explained our religiously based objections to the HHS Mandate in our public statements, which we have included with these comments.³ These comments do not repeat these objections, but instead explain why the proposed exemption and proposed accommodation do not alleviate the burden that the HHS Mandate imposes on our religious exercise. By describing how the proposed exemption excludes our homes and by explaining why the proposed accommodation does not address our situation, these comments amplify and illustrate the more extensive and more detailed comments separately filed by the United States Conference of Catholic Bishops and by the Church Alliance, among others.

The proposed “religious employer” exemption does not cover our homes because the exemption extends only to group health plans offered by a nonprofit entity referred to in 26 U.S.C. § 6033(a)(3)(A)(i) or (iii).⁴ Those provisions relate to the obligation to file an informational return and exempt “churches, their integrated auxiliaries, and conventions or associations of churches”⁵ and “the exclusively religious activities of any religious order”⁶ from this obligation. Each of our homes is a separate corporate entity that files an annual Form 990 for purposes of compliance with the tax code. Because each home is a “large employer” under the Patient Protection and Affordable Care Act and is not exempt from filing under the

Little Sisters of the Poor, Homes Directory, at <http://www.littlesistersofthepoor.org/resources/our-homes-directory>.

³ See Statement of the Little Sisters of the Poor on the HHS Mandate (March 1, 2012), at <http://www.littlesistersofthepoor.org/44-news-a-events/259-lsp-statement-on-hhs-preventive-services-mandate>; Little Sisters of the Poor, Update on Our Position on the HHS Mandate (Dec. 23, 2012), at <http://www.littlesistersofthepoor.org/component/content/article/44-news-a-events/303-update-on-our-position-on-the-hhs-mandate>; see also Mary Frances Boyle, *If God Fills the House, He Will Not Abandon It: Little Sister of the Poor Offers Insight on HHS Mandate and Its Consequences*, National Catholic Register (Sep. 28, 2012), available at <http://www.ncregister.com/site/article/if-god-fills-the-house-he-will-not-abandon-it>;

⁴ See Notice of Proposed Rulemaking, 78 Fed. Reg. 8456, 8461 (Feb. 6, 2013).

⁵ 26 U.S.C. § 6033(a)(3)(A)(i).

⁶ 26 U.S.C. § 6033(a)(3)(A)(iii).

Code provision that currently defines the scope of the proposed “religious employer” exemption, the group health plan offered by each home is not exempt from the HHS Mandate under the proposed exemption.

The fact that we have separately incorporated the homes in which we carry out our ministry to the elderly poor does not deprive our order’s religious exercise of its religious nature. Saint Jeanne Jugan, our foundress and the first Little Sister of the Poor, began her ministry by bringing an elderly and infirm woman into her own apartment and caring for her there. Since 1839, we have continued this tradition with our homes, which now operate in one of the most highly regulated segments of care providers. We have always done our best to comply with all government regulations that apply to our homes and to the highest standards of nonprofit financial stewardship. The Form 990 is an important tool for financial accountability in our religious charitable work, but it makes no sense to use the requirement to file it as a disqualifier for the religious employer exemption.

The Little Sisters of the Poor should receive a religious exemption because of what we believe and do rather than the corporate forms through which we carry out our ministry. The Notice of Proposed Rulemaking observes that a church should not lose its exemption simply because it “maintains a soup kitchen that provides free meals to low-income individuals.”⁷ We agree. The same should hold true for our religious order. We should not be deprived of an exemption because we maintain homes to provide shelter and loving care to the elderly poor.

In our homes, the Little Sisters work with dedicated employees who are an integral part of our ministry. Each home employs approximately one hundred employees. Our employees understand our commitment to Catholic teaching and they understand that they are “an important extension of our hands in ministering to the elderly.”⁸ The health coverage that we offer has always explicitly excluded sterilization, contraception, and abortion from its coverage.⁹ This longstanding policy has never been a matter of controversy in our homes.¹⁰

⁷ 78 Fed. Reg. at 8461.

⁸ Little Sisters of the Poor, *Employment*, at <http://www.littlesistersofthepoor.org/placeforyou/employment>.

⁹ See Statement of the Little Sisters of the Poor on the HHS Mandate (March 1, 2012), at <http://www.littlesistersofthepoor.org/44-news-a-events/259-lsp-statement-on-hhs-preventive-services-mandate>.

¹⁰ *Id.*

Our homes provide coverage for their employees through the Christian Brothers Employee Benefits Trust. The Trust is a self-funded church plan that provides health and welfare benefits to employees of Catholic employers nationwide.¹¹ As a church plan, the Trust provides benefits consistent with Catholic teachings and doctrines.¹² The Trustees of the Christian Brothers Employee Benefits Trust have contracted with Christian Brothers Services as a third-party administrator to administer and manage the Trust.¹³ Christian Brothers Services is a nonprofit Catholic ministry that operates in accordance with Catholic teachings and doctrines.¹⁴

Although our homes qualify as “eligible organizations,” the proposed accommodation in the Notice of Proposed Rulemaking does not address the situation that they face under the HHS Mandate. The Notice identifies three alternative ways in which the third-party administrator of a self-insured plan might be made responsible for arranging the objectionable coverage. Each of these alternatives presupposes that the third-party administrator itself has no religious objection to arranging that coverage. But Christian Brothers Services, as another Catholic organization, shares our commitment to Catholic teaching and also objects to the HHS Mandate.¹⁵ Accordingly, the proposed accommodation does not offer us a path to compliance.

The federal government should not force us to counteract through the health benefits that we arrange for our employees the very same Gospel of Life that we attempt to live out in communion and solidarity with the needy elderly.¹⁶ But under

¹¹ See Christian Brothers Services Statement on Mandate Regarding Contraception, at <https://www.cbsecurities.org/newsroom/Statement-on-HHS-Mandate-Regarding-Contraception-CBS-2012.pdf>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Christian Brothers Services Statement on Mandate Regarding Contraception, at <https://www.cbsecurities.org/newsroom/Statement-on-HHS-Mandate-Regarding-Contraception-CBS-2012.pdf>. Christian Brothers Services is a member of the Church Alliance, which is filing a comment designed to address the impact of the HHS Mandate on self-funded church plans like the Christian Brothers Employee Benefits Trust.

¹⁶ See John Paul II, *Evangelium Vitae*, 25 Mar. 1995, n. 91 available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html. (“It is . . . morally unacceptable to

the proposed exemption and proposed accommodation, there is no way that we can comply with the HHS Mandate without taking affirmative steps to change our health coverage arrangements to ensure coverage of female sterilization and all FDA-approved contraceptives, including abortifacient drugs.

There are a number of ways for the federal government to accomplish its health-related goals while respecting religious freedom. The Little Sisters of the Poor support the expanded exemption advocated by the United States Conference of Catholic Bishops. We hope that it is unnecessary for us to join the scores of employers that have already resorted to the federal courts for protection. But we are only one group among hundreds who will be adversely affected by the HHS Mandate and we respectfully request the Departments to reach a just resolution that respects the religious freedom and conscience rights of all.

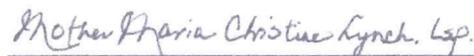
Sincerely,



Mother Loraine Marie Maguire, l.s.p.
Provincial Superior, Baltimore Province
Little Sisters of the Poor



Mother Margaret Regina Halloran, l.s.p.
Provincial Superior, Brooklyn Province
Little Sisters of the Poor



Mother Maria Christine Lynch, l.s.p.
Provincial Superior, Chicago Province
Little Sisters of Poor

encourage, let alone impose, the use of methods such as contraception, sterilization and abortion in order to regulate births.”); *id.* at n. 8 (condemning the “lack of solidarity towards society’s weakest members—such as the elderly, the infirm, immigrants, [and] children”).

Statement of the Little Sisters of the Poor on the HHS Mandate*

March 1, 2012

The Little Sisters of the Poor are an international Congregation of Catholic women religious serving 13,000 needy elderly persons of all faiths in 31 countries around the world. Thirty of our homes for the aged, accommodating over 2,500 low-income seniors, are located in the United States. In these homes we quietly spend our lives in the humble service of the elderly, accompanying them with love and respect until God calls them to Himself.

Long-term care is considered the most highly regulated segment of health care in America. The Little Sisters of the Poor have always done their best to comply with all the government regulations applicable to our homes. We are not prone to making statements on politics or public policy. But at this moment in our country's history we cannot refrain from speaking out regarding the U.S. Department of Health and Human Services rule for "preventative services," and the "compromise" announced by President Obama regarding religious liberty.

We Little Sisters of the Poor stand with the Catholic Bishops of the United States, and leaders of many other religious communities, in strongly objecting to this mandate. We believe that it violates the individual and collective religious liberty and freedom of conscience of the Little Sisters serving in this country. To quote Cardinal Timothy Dolan, president of the United States Conference of Catholic Bishops, "Surely it violates religious freedom to force religious ministries and citizens to buy health coverage to which they object as a matter of conscience and religious principle." Even the indirect subsidizing of such benefits, which would still be the case through the President's "compromise," is unconscionable to us.

As Little Sisters of the Poor we are not strangers to religious intolerance. Our foundress, Saint Jeanne Jugan, was born in the midst of the French Revolution and established our Congregation in its aftermath. In 1851 the first group of Little Sisters ventured beyond France to begin establishing homes for the elderly in Great Britain, where their selfless charity triumphed over the rampant anti-Catholic sentiments of the time.

* This statement is available at <http://www.littlesistersofthepoor.org/44-news-a-events/259-lsp-statement-on-hhs-preventive-services-mandate>

In 1868 the first Little Sisters of the Poor to set foot on American soil were amazed at the warm welcome and generosity of the people of this country. For over 140 years Little Sisters have cared for the elderly poor, welcomed the collaboration of volunteers and benefactors from their local communities and employed lay staff and consultants to help in our mission – all without discriminating on the basis of race or religion. Nor have the Little Sisters of the Poor ever faced religious discrimination or persecution in this great nation.

The health insurance offered to employees of the Little Sisters of the Poor has always explicitly excluded sterilization, contraception and abortion from its covered services. This longstanding policy has never been a matter of controversy in our homes. Policy revisions put in place as a result of the Patient Protection and Affordable Care Act clearly state that to the extent the Act would legally require our insurer to provide a particular benefit, they will do so, “unless providing the benefit would conflict with the doctrine or tenets of the Roman Catholic Church.”

Because the Little Sisters of the Poor cannot in conscience directly provide or collaborate in the provision of services that conflict with Church teaching, we find ourselves in the irreconcilable situation of being forced to either stop serving and employing people of all faiths in our ministry – so that we will fall under the narrow exemption – or to stop providing health care coverage to our employees. Either path threatens to end our service to the elderly in America. The Little Sisters are fervently praying that this issue will be resolved before we are forced to take concrete action in response to this unjust mandate.

Beyond the immediate issues related to sterilization, contraception and abortifacients, we are deeply concerned about the erosion of religious liberty and freedom of conscience which the HHS mandate signals and the impact this could have on our health care ministry. We fear that the successful implementation of this rule could set a precedent for further intrusion of government into health care, with an increasingly broad array of medical treatments and procedures – preventive or otherwise – falling under federal mandates. If the federal government succeeds in enforcing this rule, what is to stop it from rationing health care to seniors or including euthanizing procedures on the list of required “preventive services” as a way of eliminating the costs associated with caring for our aging population? Would health care providers like the Little Sisters of the Poor then be forced to cooperate in such practices?

In 1991 Mother Marie Antoinette de la Trinité, then Superior General of the Little Sisters of the Poor, took a public stand and made the Congregation’s voice

heard against just such measures when the European Parliament was debating euthanasia. We now find ourselves at a similar crossroads in our nation's history. We wish to affirm that the HHS mandate is an unjust and dangerous infringement upon the natural and Constitutional rights of Americans and that the only just solution is to rescind it. The Little Sisters of the Poor call upon Congress and the Executive Branch to reverse this decision as soon as possible and we pledge our prayers and sacrifices for the true good of our beloved country.

Update on Our Position on the HHS Mandate[†]

December 23, 2012

In the past week the Little Sisters of the Poor have received quite a bit of online media coverage, and it hasn't even been related to football! Comments about the impact of the HHS Mandate on our mission made by a Little Sister during a recent parish visit set off a virtual avalanche of stories and blogs. In the midst of last minute Christmas preparations, the HHS Contraceptive Mandate, part of Obamacare, suddenly took center stage.

For many of the journalists who have contacted us, the burning question has been, **“Will the Little Sisters really have to leave the United States due to the HHS Mandate?”** Driving this question are the considerable fines to be imposed on those who refuse to comply with the Mandate based on religious or conscience objection claims.

There are a few points we'd like to clarify at this time:

- Because of the one-year exemption for religious groups, the issue won't affect us directly until January 1, 2014.
- Some people have asked why a mandate involving contraception affects us at all, since we are a religious congregation caring for the elderly. It affects us primarily because we offer health insurance to our many employees across the country.
- At this time the fine for those who stop providing health insurance to their employees is \$2,000 per employee. The fine for those who provide insurance without the objectionable services is \$100 per day per employee.

Either of these fines would present serious financial burdens for each of our homes across the United States, since we already rely on donations for 40–60% of our operating expenses.

We would like to make it clear that despite these seemingly insurmountable difficulties, **we have no plans to close any of our homes, nor to leave the United States, as a result of the HHS Mandate.** Our Congregation was founded in France in the wake of the French Revolution.

[†] This statement is available at <http://www.littlesistersofthepoor.org/component/content/article/44-news-a-events/303-update-on-our-position-on-the-hhs-mandate>.

Throughout the years, Little Sisters in numerous countries have remained with the elderly through two World Wars, national and regional conflicts, natural disasters and various forms of social unrest. Although, as we have previously stated, we have left several countries because of religious intolerance, we have done so only when forced to leave.

We would like to assure those we serve and their families, as well as our employees, friends and supporters, that we have absolutely no plans to leave the United States and cannot envision doing so **unless given no other alternative.**

We ask all those reading this to continue to pray with us for a just resolution to this issue — a solution that will respect the religious freedom and conscience rights of all those who disagree with this Mandate, regardless of their faith community. We are only one group among hundreds who will be adversely affected by the HHS Mandate.

Like our foundress, Saint Jeanne Jugan, we put our trust in God's Providence and say, with her, *"If God is with us, it will be accomplished. ... If God fills the house, he will not abandon it."*

Finally, we wish everyone a Blessed Christmas!