

# Gender agenda, conscience, and health care mandates



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*by Jim Graves*

Colorado Springs Chapter Legate, Doug Wilson, Chief Executive Officer of the Catholic Benefits Association, is concerned.

In April, the U.S. Department of Health and Human Services is expected to announce that organizations that provide their employees with health benefits packages must include coverage for both surgical abortions and a full range of transgender services.

The CBA came into being in the aftermath of the 2013 HHS mandates under President Barack Obama that said such plans must include contraception (including abortifacients, or those that cause abortion) and sterilization. These anticipated 2022 mandates would be a further shift away from services morally permissible under Catholic teaching “and will constitute an existential threat to our Catholic hospitals,” Wilson believes.

Wilson is a former hospital CEO who took the helm of the newly established CBA in 2015. He accepted the role, he said, “Because I realized I was a blessed individual, and it was my way of giving back for all I’d been given.”

The CBA was established by Archbishop William Lori of Baltimore and other U.S. archbishops in the aftermath of the Obama HHS mandates. While supportive of much of Obama’s Affordable Care Act, the archbishops saw the contraceptive, abortifacient, and sterilization mandates as “an infringement on religious freedom,” because such practices violate Catholic teaching.

While limited exemptions were granted for health plans offered by churches and dioceses, other religious organizations as well as private businesses could not receive such exemptions. Among the most famous cases, the Little Sisters of the Poor, a women’s religious community that provides health care for the elderly poor, were refused an exemption. The case ultimately went to the U.S. Supreme Court.

“This regulation implementing the ACA’s women’s preventive health provision is a denial of First Amendment rights because it mandates cooperation with something that violates your conscience,”

explained Wilson.

Since the Obama years, he added, it has been the tactic of the political left to use bureaucracies to impose their agenda by regulatory fiat, as such measures could never be passed through the regular legislative process. “We refer to it as ‘the Administrative State,’” Wilson said.

“If the Democrats lose control of Congress, this tactic will become more important to them as a way to advance their ideological agenda,” he continued. “So, in that sense, I predict things will get worse.”

Martin Nussbaum of Nussbaum Speir Gleason, CBA’s general counsel and also a Colorado Springs Legate, said that in order for the ACA to pass, President Obama had to pledge to pro-life Democrats, led by Rep. Bart Stupak of Michigan, that the ACA would not result in government funded abortion. But with April’s new HHS mandates, “The government may be ordering employers themselves to pay directly for employees’ abortions,” he said.

### **IN DEFENSE OF CATHOLICS’ RIGHTS**

The CBA, which has 74 dioceses (about a third of U.S. dioceses) and 1,200 Catholic organization and business as members, is an advocacy association that helps Catholic employers defend their constitutional rights. The organization “pools the costs of lawsuits, allows members to take strength from one another, and provides access to insurance, legal, and ethical experts,” Wilson said. “We protect against threats to religious freedoms and look out for future attacks.”

The CBA initiated and won two lawsuits to acquire a permanent injunction for present and future members from the 2013 contraceptive and abortifacient mandate. It also filed and won a third lawsuit against both HHS and the EEOC’s enforcement of Title VII of the Civil Rights Act of 1964 to require the same.

However, the anticipated April announcement of expanded HHS mandates may be an “exponential leap forward” beyond previous mandates. The CBA website summarizes what the new mandates will likely include (see sidebar).

The mandates affect all employers with health plans and organizations receiving federal funding, along with their contractors, insurance companies, and third-party administrators. Enforcement will be by various government agencies, as well as by employees, patients, health plan enrollees, and “whistle-blowers,” such as activists. Sanctions include loss of funding, fines, and imprisonment.

### **‘A SEXUAL RIGHTS SUPER STATUTE’**

In his two-page summary, Nussbaum said the new mandates will turn the ACA’s prohibition on sex discrimination into “a sexual rights super statute.” He explained: “It will mandate a host of coverages in health plans contrary to Catholic values and similar services performed by physicians and hospitals while aggressively denying all religious exemptions.”

Among those most threatened by the new mandates, Wilson believes, are Catholic health care providers and hospitals, which he notes provide one in six hospital beds in the country. He said that under previous legislation, patients asking for morally objectionable services would be directed to go elsewhere, but under the new guidelines “if you have the facilities and doctors to provide the services, you have to provide the services. This puts our Catholic hospitals in a difficult situation.”

Nussbaum noted that under the expected HHS mandates, for the first time ever health plans must include elective or cosmetic transgender services. A man ‘transitioning to a woman,’ for example, might wish to have an elective surgery on a large Adam’s apple or square jaw “so that he would have a more feminized appearance.” Previously, insurance would only pay for the costs of surgery for parts of the body which are damaged and in need of repair; surgery to alter a part of the body merely because of the patient’s preferences would have to be paid out of pocket. New mandates may see the transitioning individual’s elective surgeries covered while the non-transgendered general population’s elective surgeries would not.

In 2020 under the Trump Administration, HHS issued a regulation that sought to address Catholic employers’ moral concerns with HHS’s 2016 gender transition services mandate. Opponents challenged these protections in court, resulting in two courts enjoining the 2020 regulation.

When the Biden administration entered office in 2021, however, a coalition of 30 “pro-choice,” gay, lesbian, and transgender groups calling themselves the Leadership Conference composed a 74-page document (available on the CBA website), Wilson explained, “that told the Biden Administration what it had to do to ‘fix’ the 2020 HHS regulation and expand the earlier mandates from the Obama Administration.”

Wilson called it an “utterly astounding” document. When his group learned about it, they briefed the U.S. Conference of Catholic Bishops and alerted Becket Law, a firm that defends religious liberty.

They also reached out to the National Catholic Bioethics Center and the Catholic Bar Association. “We will mount a defense, because these new rules are coming,” he said.

Nussbaum, a consultant to the USCCB’s religious liberty committee, said that “for Legatus members who provide health care coverage to employees, it is going to be a disaster and a moment of reckoning.”

He noted that although he expected the new HHS mandates to be announced in April, there would be a public comment period of one to six months before the regulations become final and take effect. Barring interventions, the new rules could be effective as early as mid-summer.

“It is important that we make our Catholic voices heard,” Nussbaum said. “This is not the way America should operate.”

## **IRONY OF THIS THREAT**

The irony of this threat to Catholic beliefs in health care, Wilson said, is that both Biden and the head of

the HHS, Xavier Becerra, are self-described Catholics. Becerra, he added, is a political appointee with no background in health care administration; in fact, as California's attorney general, he sued to take away HHS religious exemptions offered to the Little Sisters of the Poor. "Becerra also enforced a California law that pro-life pregnancy counseling centers must provide information to clients on where they could obtain free and low-cost abortions," Wilson said.

The Biden administration has eliminated the Hyde Amendment, which prohibits federal funding of abortion, and the Weldon Amendment, which provided conscience protection for medical providers. It also abandoned the Mexico City Policy, which required nongovernmental organizations to agree as a condition of receiving federal funding that they would not perform or promote abortion, he added.

Wilson encourages concerned Catholics to become involved in the CBA or other organizations that champion conscience protections. "Our First Amendment protections allow us to live and operate our businesses in a Catholic way," he said.

Nussbaum concurred. "As Catholics, we're called to be light and leaven in a secular world," he said. "This is an opportunity for us to say 'yes' to the Church teaching that it is good for people to have health care, but 'no' to that which is intrinsically disordered or evil even as it masquerades under the banner of health care."

### **The Devil in the details**

According to the Catholic Benefits Association, based on the best information available, the expanded U.S. Department of Health and Human Services mandate will require coverage in health plans and performance by medical professionals and hospitals of the following:

- Surgical abortion;
- Transgender services, including cross-sex hormones, gender-transition services, gender-affirming cosmetic surgeries, and voice modification for those transitioning);
- Reproductive health care, including for those who are "socially infertile";
- Contraceptives, abortifacients, sterilizations, and related counseling.

The new mandate will likely apply to all employers with health plans, organizations receiving Medicare or Medicaid, health insurers, third-party administrators, and the contractors of these entities. Enforcement can be brought by HHS or the EEOC, by employees, patients, health plan enrollees, and activists. Sanctions include damages, fines, and even imprisonment. Catholic hospitals and physicians could even face loss of Medicare and Medicaid funding.