Considerations for Further Participation of Religious
in Government Assistance Programs

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Members of religious institutes, as well as the general public, participate in several government programs such as Social Security, SSI (Supplemental Security Income), Medicare and Medicaid. Prior to a determination of the extent of participation in these and other government programs, consideration needs to be given to the social and political issues raised among members of the religious institute around participation. This paper is offered to give some background information and perspective to the participation of members of religious institute in government programs.

Addendum A includes a list of definitions of the government programs referenced in this paper to provide a common understanding of the programs. Exhibit 1 is an overview of, and accessibility to, the basic programs. The programs listed in the second column are based on contributions tied to the earning history of the individual and are available to the general public, regardless of income or resources. In the case of persons with a vow of poverty, the Social Security Benefit is generally based on a standard Fair Market Value calculated by the religious institute rather than on earnings because we don’t receive W-2 forms stating the amount of earnings. The third column identifies qualifying participants as those with limited income and resources.

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Medicaid and SSI programs are state based, but federally monitored and jointly funded. The definition of Title 19 (Medicaid) states that “The federal government appropriates from federal funds for each fiscal year a sum sufficient to carry out the purposes of this title.” The states then “share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;”

www.ssa.gov/OP_Home/ssact/title19/1902.htm

Title 19 is an entitlement program so everyone who qualifies is included in the program. There are no census or monetary constraints that determine the number of participants. However, several states are experiencing budget deficits, and frequently the programs that are most needed for those with limited resources are the first ones cut or down-sized.

History of Government Decisions Pertaining to Religious Institutes

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Social Security/Medicare

Upon occasion, the U.S. Government has been pro-active in assisting members of religious institutes. For instance, issues pertaining to the vow of poverty have been identified by Congress, and “fixes” were
developed in support of religious institutes. Following are examples of the attention that the government has given to religious institutes to enable them to continue to provide charitable works.

In 1977, Revenue Ruling 77-290 was approved by Congress. Under this ruling, for tax purposes only, the religious institute would be considered the agent for a member who has taken a vow of poverty and who is providing services to a church employer listed in the Official Catholic Directory. Therefore, her compensation will not be subject to federal income or employment taxes. This tax exemption is not based on a right of the individual, but because she is a vowed member of a religious institute. Because the vowed religious contributes 100% of the income earned in Church ministry to the congregation, in essence, the government is contributing from 20% - 40% of her income to the religious institute by making her income tax exempt.

Another example is Internal Revenue Code Section 3121 (i) and (r) which provided a means for members of religious orders to participate in the Social Security Program. For the general public Social Security Benefits (SSB) are determined by the amount of FICA payments deducted from each earner’s payroll. Because the income of vowed religious who work for the Church is not taxable, there is no base for withdrawing FICA payments. Therefore, this IRS Code created a definition of “wages” for religious so that they can receive SSB. For this purpose the Internal Revenue Code devised the concept of fair market value and defined it to include “any board, lodging, clothing, and other perquisites furnished to such member” to enable participation in the Social Security program. The government recognized the need for members of religious institutes to be able to receive SSB to assist with their retirement costs, and created a way to enable that to happen through Internal Revenue Code Section 3121.

In addition to creating a means for religious to be eligible for SSB, the method created generally allows religious to pay into the program at a rate lower than if FICA was based on the stipend received through Church ministry. The national Social Security program was created so that individuals with less income receive a proportionately higher benefit, which is true for vowed religious.

Another benefit of participation in the Social Security program is the parallel benefit of being eligible for Medicare. Regardless of the amount of FICA payments, everyone who is eligible for Social Security receives the full benefits of Medicare.

**Government Motivation**

Many religious take for granted the ability to participate in Social Security and Medicare, but in fact, the government specially created the means for religious to fully participate with reduced contributions. This raises the question of “Why?” Why would the government implement these means so that religious can participate in these programs?

In the history of the United States, the government has recognized religious institutes as eleemosynary (pertaining to charity) organizations. Society recognizes that it is more cost effective for not-for-profit organizations to carry on their work than for the government to fund it all. As a result, laws have been passed to decrease the financial burdens of not-for-profits in general, and religious institutes in particular, which in turn impacts their ability to continue their charitable works. Charitable works benefit the whole, so society is willing to provide benefits to not-for-profits to assist them in being able to continue their mission. Examples include:

- Grants to charitable institutions
- Grants to colleges and universities
- Grants by regulations, i.e. Social Security for vowed religious
- Tax-exempt income for vowed religious
• Tax-exemption on property specifically used for congregational purposes (State specific)

In turn, society expects not-for-profits to utilize the special considerations they provide so that they can continue their mission, which benefits the whole. Services provided by religious institutes often include the “added value” dimensions of faith, care, and commitment to systemic change. These dimensions are recognized by society as valuable contributions, and for the most part are encouraged.

In a personal conversation with an associate at the Center for Medicare and Medicaid Services (CMS), I asked the staff person if CMS had any concerns about vowed religious participating in SSI, Medicaid, or other assistance programs because they are not paying the same level of taxes as the general public. In her response, which is not an official CMS response, but is reflective of her position, she stated that:

Religious take vows for life and during their active years contribute to the common good through their service and ministry. When Religious are elderly, they do not discontinue that vow. The way they minister changes, but we would not discount all that they have done for society when they were active, so why would we even consider non-participation in programs that will assist the Order to continue its mission? They spent their lives for mission. Now in their retirement, participation in Medicaid is a continuation of their ability to serve by freeing up money for mission.

Constance Neeson, a former CMS employee who now works for religious institutes by assisting them in participating in government programs, gives another perspective:

When our members are in Title 19 licensed Care Centers, we become advocates for those around us who are without voice – if we are involved, we speak through the voice of one who understands. We stand in solidarity with the poor – we use the same vendors as others on the program.

Brother Peter Campbell, CFX, a civil lawyer who has assisted many religious institutes through the years on issues related to government assistance programs gives another perspective. He says, “One irony … is that SSI benefits may be helping some eligible members of a religious institute allow the religious institute’s tax exemption to be more secure by assuring continued fulfillment of the exempt purposes of the religious institute. If the religious institute must turn in on itself and seek only to support itself, real questions would exist as to what exempt public charity purpose is operating.” (from January 1987 memo on SSI to LCWR, CMSM and NATRI)

Financial Implications for the Government Program

The comment is often heard, “If we participate in government programs, we are taking money away from those who need it more than we do.” Following are two points for consideration:

1. If the members of the religious institute do not participate in the program, does the money that would have gone to them get re-distributed to others on the program, or is it directed to other programs? In essence, the amount spent for each participant is predetermined. If the funds are not accessed, they will not be redistributed to others in need. The money will then be used for other purposes, not all of which may be where we would choose to see the money spent. However, if those resources are used for the care of Sisters, thus freeing up more funds for Mission, we know that others in need will benefit.

2. Although the following figures are dated, the implications are applicable. When I last reviewed the figures, approximately $250 billion was spent nationally on Medicaid. A very rough calculation of the per person expenditure multiplied by the total number of religious in the U.S. over age 65 would indicate that a maximum of 1/5 of 1% of Medicaid benefits would be attributed to religious if every Sister in the United States was fully participating in the Medicaid program.
Eligibility Criteria

Each of the government assistance programs has a different income level to be eligible. Income is determined for each individual member of the religious institute. Primary sources of income include Social Security Benefits and pensions plus an amount determined by the government for food and rent when a person lives in a congregate setting and does not pay for their food and rent. This amount is called In-Kind Support and Maintenance (ISM), and is about $258/month in 2013.

Further, money and goods received from ministry don’t accrue in the name of vowed religious. Ownership is not maintained by the vowed member. Earnings from Church ministry belong to the institute, and members have no claim to property of the institute, so there are few countable resources. The resources of the religious institute are not factored into the eligibility criteria for government assistance programs for individual members.

There are many compelling arguments that support the participation of members of religious orders in programs for which they are eligible. In addition, the religious order needs to do some soul searching prior to accessing additional government programs by looking at its own resources. The following is a short list of considerations:

1. If a community is fully funded for retirement and can also support its mission and operations, what would justify participation in the government assistance programs?
2. Do members have “hidden” resources? For example, most government programs do not consider patrimony when they measure accessible resources. What is the proper law of the religious institute regarding the use of personal patrimony? If members are allowed to spend patrimony at their discretion, then it could be considered “available” and countable when looking at resources of the Sisters.
3. What about fixed assets of land and property? As a “going concern” religious institutes wouldn’t expect to liquidate everything to pay for retirement. However, if there are assets that are scheduled to be liquidated that would have a multimillion dollar impact on the bottom line, those should be considered as part of the decision-making process.
4. Lifestyle choices: are members willing to live within the resource limits and guidelines of SSI? Could the public perception of members receiving SSI or Medicaid, but living a middle class lifestyle, be an issue?

Closing Remarks

There are many factors to be considered when making decisions about participation in government assistance programs. Because there is a continuum of programs available with differing financial criteria, one decision will not satisfy all scenarios and all needs. The ability of the members of the religious order to be part of the decision-making process, and their commitment to be advocates for those with financial need, whether or not they participate personally, will contribute to the process and ownership of the decision.
DEFINITIONS

Medicaid (Title XIX)

Title XIX was established for the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care. The federal government appropriates from federal funds for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under Title XIX shall be used for making payments to States which have submitted plans for medical assistance. The program does

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;
(2) provide for financial participation by the State equal to all of non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;
(3) provide that payment may be made under a State plan approved under this title for nursing facility services.

Medicare

Medicare Part A pays for a percentage of inpatient hospital care, care in a licensed skilled nursing facility (rates of reimbursement vary: up to 21 days of full coverage; from days 21-100 there is a co-payment per day), home health and hospice care. Part A does not pay for nursing home care in unlicensed facilities (such as many infirmaries operated by religious institutes), nor levels of nursing home care other than skilled care, i.e. assisted or intermediate care.

Medicare Part B is optional and purchased with a premium ($96.40/month in 2008.) It can help pay for medically necessary doctors’ services and outpatient care.

Medicare Part D covers outpatient prescription drugs exclusively through private plans or through Medicare Advantage plans that offer prescription drugs and in some cases are owned by pharmacies

Medicare D Subsidy: The Part D Low Income Subsidy is referred to as “Extra Help” on the Social Security and CMS Web sites. It helps low-income Medicare beneficiaries pay for the premium of a Part D plan, as well as co-pays and deductibles. It is worth about $4,000 per year to a person eligible for the full subsidy. And many people are eligible for a partial subsidy if their income level is too high for a full subsidy. To qualify in 2013 a Medicare beneficiary:

- Must reside in one of the 50 states or the District of Columbia. U.S. Territories have similar programs run by territorial governments;
- Must have resources limited to $13,300 for an individual or $26,580 for a couple. This includes bank accounts and investments, but does not include a home, car, or life insurance;
• Must have annual income limited to $17,235 for an individual or $23,265 for a couple. Those with higher incomes may be eligible if they support other family members in the same household, have earnings from work, or live in Alaska or Hawaii.

PACE

Programs of All-inclusive Care for the Elderly (PACE) serve people aged 55 and older who live in an established geographic service area, qualify for state nursing home level of care, and can be safely cared for in a community setting at the time of enrollment. Rather than place people in nursing homes, PACE programs provide a comprehensive range of services that enable the people they serve to continue living in the community. PACE programs receive a capitated monthly payment from Medicare and Medicaid in exchange for all health and aging services required to meet the needs of the people they serve. PACE is a permanent provider under the Medicare program and a state option under state Medicaid programs.

PACE is a fully capitated managed care program, and PACE providers have the flexibility to tailor care and services to meet the unique individual needs of each individual enrollee. Because PACE is financially at risk for all the care and services enrollees need, the clinical and financial incentives for providing high quality care and services are aligned. One result is that care is much more focused around prevention of health status decline so that people can continue to live as independently as possible. A key difference between PACE and other managed care models is that PACE, the actual providers of care and services are the ones that make the decisions for each person utilizing an interdisciplinary team process. Care is managed for each person taking into account the circumstances of their health, abilities to care for themselves, the complexity of family relationships and participant goals and desires.

Patrimony

“Patrimony" is defined as "An estate inherited from one's father or other ancestor; legacy or heritage". According to canon law, a member of a religious order with the vow of poverty may not administer personal goods or income, also called patrimony, nor may these goods be used for his/her personal benefit. The member freely chooses someone to administer the patrimony, often the order itself, and designates the beneficiary of income from patrimony (unless the order's proper law provides otherwise). If a member leaves the order, the member regains full possession of the asset. When a member dies, any remaining patrimony will be disposed of by his/her will.

The proper law of a religious institute will determine whether, in fact, the individual member has access to patrimony for personal use. If the member can request use of patrimony for personal purposes, then the discounting of patrimony as countable resources comes into question. The key to understanding what patrimony is, and to eliminating ambiguities, is for the religious institute to define what an individual’s patrimony is in its proper law. An example from proper law states: “The patrimony of the individual member consists of all property, personal or real, owned, or which the member has a right, at the time of first profession, as well as all property received from family by way of gift or inheritance. Everything else that comes to the member from any other source belongs to the institute. Patrimony is distributed upon death as directed in the will of the individual. Income from the patrimony will be allocated as directed in the Cession of Administration document of the member, but may not be used for her personal benefit.”

When patrimony is unavailable for the individual religious while that person remains under vows, it is not counted in calculating the asset total of the individual. Also, because the interest income is unavailable, it is not countable in calculating Medicaid eligibility. Patrimony is an unavailable asset for SSI, and therefore is an unavailable asset in most states for Medicaid (i.e. in 1634 and SSI states). Other
state Medicaid rules may follow the federal SSI rule for patrimony or may make a separate determination. (Freeman Blackman Letter) Notwithstanding the above discussion, patrimony income remains taxable.

Qualified Medicare Beneficiary (QMB)

For an individual whose income is below the current federal poverty level and has resources of under $4,000, their State will use Medicaid funds to pay the Part B Medicare premiums for the year plus all deductibles and coinsurance. This can eliminate the need to purchase supplemental insurance to cover deductibles and co-insurance payments. QMB is applied for at the State’s Office for Medical Assistance.

Revenue Ruling 77-290 (Rev. Rul. 77-290)

Revenue Ruling 77-290 was issued by the IRS [3] in the fall of 1977, and set forth the basic schema for the taxability of compensation of members of religious orders. Under this ruling, for tax purposes only, a member of a religious institute who is providing services to a church employer may be deemed to be an agent of the order. Compensation paid by the church employer to that religious will not be subject to federal income or employment taxes, provided three criteria are met. These criteria are: first, the religious must be subject to a vow of poverty; second, the religious must be providing services for an employer listed in the OCD (Official Catholic Directory) at the direction of his or her order; and third, the compensation must be remitted to his or her religious order [4]. If the religious fails to meet any of these Rev. Rul. 77-290 criteria, the religious is taxable individually on compensation received.

Social Security

Old Age, Survivors and Disability Insurance Benefits (Title II of the Social Security Act of 1935) is an entitlement program – that is, a person qualifies because of age, relationship, or disability when they or a family member have worked in covered employment and paid into the Social security system for the required number of quarters (40 quarters.) Since 1972, religious whose Institutes elect coverage can pay into the system and receive old age or disability benefits. Election is irrevocable and applies to all current and future members of the institute.

Religious institutes not currently participating in Social Security may elect social security coverage for its members at any time by filing a Form SS-16 (Certificate of Election) with the IRS under provisions of section 3121 of the Internal Revenue Code. The order may choose to make such an election effective retroactively for as many as five years. There are no specified "windows of opportunity" during which the certificate must be filed.

Eligibility to participate in the Social Security Program: Excerpt from Internal Revenue Code Section 3121 (i) and (r) [www.fldfs.com/aadir/bosp/Section3121.pdf](http://www.fldfs.com/aadir/bosp/Section3121.pdf)

(i) Computation of wages in certain cases...

(4) Service performed by certain members of religious orders; For purposes of this chapter, in any case where an individual is a member of a religious order (as defined in subsection (r)(2)) performing service in the exercise of duties required by such order, and an election of coverage under subsection (r) is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a)(1), include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.
(r) Election of coverage by religious orders

(1) Certificate of election by order

A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of such order, may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) electing to have the insurance system established by title II of the Social Security Act extended to services performed by its members in the exercise of duties required by such order or such subdivision thereof.

*Fair Market Value (FMV)*

By virtue of the vow of poverty, most religious do not receive “wages” from church related employment. Legislation provides for a method called “Fair Market Value.” Fair Market Value is the amount that the religious institute has determined to be the value of the board, lodging, clothing and other perquisites a member receives from the institute, and on which FICA payments are based. The FMV is the average cost among active members. NRRO reports the average FMV paid by religious orders from 12/31/2012 data is $6,306.

The effect of the use of FMV figure is that the FICA paid for each member is based on income that is lower than the U.S. average taxable income, but consequently, the Social Security monthly benefits are also much lower. Religious whose employment is not church related pay income taxes, so the employer pays FICA taxes based on actual wages.

*Specified Low Income Medicare Beneficiary (SLMB)*

For people who are not eligible for QMB, another program allows those with slightly higher incomes (120% of national poverty level) to have Medicaid pay the Part B Medicare premiums, but does not cover deductibles and coinsurance.

*Supplemental Security Income (SSI)*

SSI is a program of monthly cash assistance for those who are aged (65 and above), blind, or disabled and who have limited income and resources. It is a NEED BASED program. Its purpose was summarized in a 1992 report: “The main objective of the SSI program when it was enacted in 1972 was to provide a national income floor for needy people who are aged, blind, or disabled. More specifically, it was intended that the program would lift them out of poverty via use of national uniform standards.” (from the August 1992 SSI Modernization Project: Final Report of the Experts.)