

The HHS Mandate for Contraception/Sterilization Coverage: An Attack on Rights of Conscience



“The decision of the Department of Health and Human Services is a radical incursion into freedom of conscience, which is central to the Constitution. Freedom of religion is not freedom from religion. I ask that we pray for the reversal of this decision and as citizens we let our elected leaders know that the rights of conscience and religious liberty are to be respected and this mandate rescinded.”

Most Rev. John M. Quinn
Bishop of the Roman Catholic Diocese of Winona

The following statement is given by Cardinal designate Timothy M. Dolan, Archbishop of New York and President of the United States Conference of Catholic Bishops:

Religious liberty stands front and center in debate these days – and that’s good.

Some days ago, many of us Americans cheered a unanimous decision of the United States Supreme Court. The Court said churches have the fundamental freedom to choose their own ministers without government interference. Nothing could be truer.

All nine justices of the Supreme Court rejected the Obama Administration’s incredibly narrow interpretation of religious liberty in that case. The Court’s decision was a home run for the First Amendment and for our democracy.

But the Administration is on the wrong side of the Constitution again. Now it has ordered almost every employer and insurer in the country to provide sterilization and contraceptives, including some abortion-inducing drugs, in their health plans. And it is requiring almost all Americans, even those with moral or religious objections, to pay for this coverage. The Administration offered a narrow religious exemption to some employers – such as churches – but the government will still require most Americans to pay for this coverage even if it violates their consciences. That’s a foul ball by any standard.

Never before has the federal government forced individuals and organizations to go out into the marketplace and buy a product that violates their conscience. This shouldn’t happen in a land where free exercise of religion ranks first in the Bill of Rights.

Let your elected leaders know that you want religious liberty and rights of conscience restored and that you want the Administration’s contraceptive mandate rescinded. We can’t afford to strike out on this one.

Talking Points:

How important is the right of conscience in American tradition?

It has always been of paramount importance: “No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority” (Thomas Jefferson, 1809).

In the past, has the federal government respected conscientious objections to procedures such as sterilization that may violate religious beliefs or moral convictions?

Yes. For example, a law in effect since 1973 says that no individual is required to take part in “any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services” if it is “contrary to his religious beliefs or moral convictions” (42 USC 300a-7 (d)). Even the Federal Employees Health Benefits Program, which requires most of its health plans to cover contraception, exempts religiously affiliated plans and protects the conscience rights of health professionals in the other plans. Currently no federal law requires anyone to purchase, sell, sponsor, or be covered by a private health plan that violates his or her conscience.

How has the Department of Health and Human Services departed from this policy?

By issuing a mandate for coverage of sterilization and contraceptives (including long-lasting injections and implants, and “morning-after pills” that may cause an early abortion) in virtually all private health plans. In August 2011 HHS included these procedures in a list of “preventive services for women” to be required in health plans issued on or after August 1, 2012.

Is it appropriate to require coverage of these as “preventive services”?

No. The other services on HHS’s list seek to prevent serious disease – breast cancer, lung cancer, AIDS. Pregnancy is not a disease, and an unborn child is not a parasite or a tumor. The Institute of Medicine committee that compiled the “preventive services” list for HHS said in its report that unintended pregnancy is “a condition for which safe and effective prevention *and treatment*” need to be more widely available – setting the stage for mandated coverage of abortion as the “treatment” when prevention fails. Note that women who suffer from infertility, which really *is* an illness, were ignored in this mandate.

Didn’t HHS include a religious exemption?

Yes, an incredibly narrow “religious employer” exemption that fails to protect many, perhaps most, religious employers. To be eligible an organization must meet four strict criteria, including the requirement that it both hire *and serve* primarily people of its own faith. Catholic schools and hospitals would have to eject their non-Catholic employees, students and patients, or purchase health coverage that violates their moral and religious teaching. Jesus and his apostles would not have been “religious enough” for the exemption, since they healed and served people of different faiths. The exemption provides no protection at all to sponsors and providers of health plans for the general public, to pro-life people who own businesses, or to individuals with a moral or religious objection to these procedures.

What solution to this dispute would be acceptable?

Ideally, HHS can leave the law the way it has always been, so those who provide, sponsor and purchase health coverage can make their own decisions about whether to include these procedures without the federal government imposing one answer on everyone. If HHS refuses, it will be especially urgent for Congress to pass the “Respect for Rights of Conscience Act” (HR 1179/S. 1467), to prevent health care reform act from being used to violate insurers’ and purchasers’ moral and religious beliefs.