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Twelve Things Everyone Should Know About the “Contraceptive Mandate”

On July 2, 2013, the Obama Administration published a final [rule](#) mandating contraception and sterilization coverage in almost all private health plans nationwide, with an extremely narrow “exemption” for some religious employers. The final rule leaves earlier versions of the mandate unchanged, except that it makes minor changes in the “accommodation” determining how the mandate will be applied to the employees of religious organizations not eligible for the exemption. Important points to understand:

- 1. The mandate forces coverage of sterilization and abortion-inducing drugs and devices as well as contraception, along with “counseling and education” to promote them.** Though commonly called the “contraceptive mandate,” the federal mandate also forces employers to sponsor and subsidize coverage of female sterilization. And by including all drugs approved by the FDA for use as contraceptives, the mandate includes drugs that can induce abortion such as [“Ella”](#) (Ulipristal), a close cousin of the abortion pill RU-486.
- 2. The mandate generally does not exempt hospitals, colleges, universities, separately incorporated elementary or high schools, or other ministries of service.** These ministries are vital to the mission of the Church, but the Administration does not deem them “religious employers” deserving conscience protection because they are not covered by a narrow provision of the tax code primarily aimed at “houses of worship.” Yet it is precisely these organizations’ religious motivation that drives them to serve the common good of society—a purpose that government should encourage, not punish.
- 3. The mandate forces these institutions and others, against their conscience, to pay for or facilitate things they consider immoral.** Under the mandate, the government forces religious insurers to write policies that violate their beliefs; forces religious organizations such as schools to facilitate coverage that violates their beliefs; and forces conscientiously objecting employees and students to purchase coverage that violates their beliefs.
- 4. The federal mandate is much more sweeping than existing state mandates.** Employers have generally been able to avoid the contraceptive mandates in 28 states by self-insuring their prescription drug coverage, dropping that part of their coverage altogether, or opting for regulation under a federal law (ERISA) that pre-empts state law. The HHS [mandate](#) closes off all these avenues of relief. HHS’s policy of mandating surgical sterilization coverage is reflected in only one state (Vermont). HHS also chose

as its model the narrowest state-level religious exemption, drafted by the ACLU and existing in only 3 states (New York, California and Oregon).

5. Many others have joined the Catholic bishops in speaking out against the mandate. Many recognize this as an assault on the broader principle of religious liberty, whether or not they agree with the Church on the underlying moral question. For example, at a February 2012 congressional [hearing](#) on this issue, testimony supporting the USCCB's position was heard from the President of the Lutheran Church-Missouri Synod, a distinguished Orthodox rabbi, and officials and professors from several Protestant institutions of higher learning. The nation's largest non-Catholic denomination, the Southern Baptist Convention, has strongly [criticized](#) the contraceptive mandate. A joint [statement](#) urging full protection for religious freedom under the mandate was issued this summer by over a hundred individuals representing a broad spectrum of religious groups, including the Church of Jesus Christ of Latter-day Saints and the International Society for Krishna Consciousness, as well as Orthodox Christian and Jewish leaders, scholars, and heads of faith-based institutions and civil rights organizations. An online [declaration](#) supporting the Church's position has been signed by over 40,000 Catholic and non-Catholic women, including many health professionals, academics and businesswomen.

6. The rule that created the uproar has been finalized without significant change. After earlier versions of the rule were widely criticized as attacks on religious freedom, the Administration in February 2013 simplified its definition of an exempt "religious employer," removing three of the four parts of the definition. But it said this change is *not* intended to "expand the universe" of those exempt (*78 Fed. Reg.* 8456 ff. [Feb. 6, 2013] at 8461). As a result, many religious organizations dedicated to serving the needy are still not exempt as "religious employers."

7. The "accommodation" will do nothing to help objecting insurers or third-party administrators, non-profit employers that are not explicitly "religious," for-profit companies owned and operated by religious individuals and families, or individuals who simply want a health plan that comports with their religious values. In its August 2011 comments, and many times since, the Catholic bishops' conference identified all the stakeholders in the process whose religious freedom is threatened—all employers, insurers, and individuals, not only those who meet the government's definition of "religious." It is now [clear](#) that all insurers, and the third-party administrators for self-insured plans, must provide or arrange for the coverage; for-profit companies, and non-profit organizations that are not explicitly religious (such as pro-life groups that object to abortifacient drugs), must provide the objectionable coverage to all employees; and almost all individuals who pay premiums (whether enrolled in an individual plan or an employer plan) have no escape from that coverage.

8. The basic structure of the "accommodation" applied to religious charities, schools, and hospitals has not changed since it was first proposed in 2012. As USCCB president Cardinal Timothy Dolan said in [September 2013](#), the final changes are "only minor," so that these institutions continue to receive "second-class treatment." The

mandate will still apply with full force to all their employees, and to the employees' dependents such as teenage children. As the assembled bishops of the United States said in [November 2013](#), the mandate still "compels our ministries to participate in providing employees with abortifacient drugs and devices, sterilization, and contraception, which violates our deeply-held beliefs."

9. The final "accommodation" is in some ways worse than in previous versions of the rule. Two new changes are especially troubling. (1) Earlier, HHS had proposed that employees would receive a separate "contraceptive only" policy from the insurer; the final rule says that instead there will be added "payments" for the objectionable items, for every woman and girl of reproductive age in the religious entity's own health plan. As Cardinal Dolan has [said](#): "Now, there is only one policy, and it is the one sponsored by the Catholic employer." (2) Earlier HHS had proposed three different ways it might deal with "self-insured" plans, those not purchased from an insurer. The final rule settled on the third option, which (as Cardinal Dolan [observed](#)) had been criticized by USCCB as "the most objectionable of the three": When the Catholic entity files a religious objection to particular items with its third-party administrator, that very objection will be taken as authorizing the administrator to provide the items.

10. The "women's health" claims behind the mandate are doubtful at best.

Pregnancy itself is not a disease, but the normal way each of us came into the world – and there are other ways to avoid an untimely pregnancy than the surgical procedures and prescription drugs mandated here that risk only women's health. Many [studies](#) have found contraceptive programs failing to reduce unintended pregnancies or abortions. Hormonal contraceptives have been associated with an increased [risk](#) for stroke, heart attacks, vascular disease and breast cancer, some of the most serious killers of women today. Injectable contraceptive drugs are associated with an increased [risk](#) for contracting and transmitting AIDS, a deadly disease the "preventive services" mandate is supposed to help prevent. Male and female medical experts raising such concerns cannot be accused of waging a "war on women."

11. This is not about any legitimate medical use for hormonal or other drugs.

Contrary to some media claims, Catholic ethical directives on health care (and the health plans based on them) allow use of medications for serious non-contraceptive purposes, even if the same drugs could also be prescribed for contraception. The idea that Catholic moral objections to using such drugs for contraception endangers their legitimate use to heal disease is a red herring.

12. Beware of claims, especially by partisans, that the Catholic bishops are partisan.

The bishops [warned](#) Congress about the need for clear conscience protection in the face of new health coverage mandates throughout the debate on health care reform; they were arguing against the proposed contraceptive mandate and other new threats to religious freedom in [2010](#). Since then, they have simply continued advocating the same moral principles. The bishops did not pick this fight — others did. The Church forms its positions based on principles — here, religious liberty for all, and the life and dignity of every human person — not polls, personalities, or political parties.