

Further cave-in by Obama on contraceptives

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For the second time in a year, the Obama administration has caved in to the Catholic Church and the religious right on requirements that employers provide their employees with free access to contraceptives as part of their health insurance packages.

As written, the 2010 Patient Protection and Affordable Care Act (ACA), which takes full effect in 2014, requires that contraceptive coverage be provided at no cost under all employer-provided health insurance plans. The provision on contraceptives took effect on January 1 of this year.

In a new policy announced by the Department of Health and Human Services (HHS) on Friday, HHS officials expanded the category of religiously affiliated employers exempt from providing contraceptives as part of their health care plans. The definition of what constitutes a “religious employer” will now exclude requirements that an institution have religious values in its statement of purpose, that it primarily employ people who share in the institution’s religious views, or that it primarily serve persons who share its religious tenets.

The guidelines, set forward in a fact sheet by HHS, are a further capitulation to right-wing religious forces that have lobbied against the ACA birth control requirement. They constitute a new blow against the fundamental democratic principle of separation of church and state laid down in the First Amendment to the US Constitution. Despite White House insistence to the contrary, the move will jeopardize the ability of women to access vital health care services.

When the Obama administration announced the provisions of the ACA related to contraceptives on January 20, 2012, it made clear that churches were already exempted from the requirement. However, Catholic leaders and Republican presidential aspirants and legislators claimed that requiring church-affiliated

universities, schools, hospitals and charities to fund free access to contraceptives as part of their health care plans was an attack on religious liberty and constituted a “war on religion.”

It took only three weeks for Obama to capitulate to this right-wing agitation, egged on by the media, and agree last February that such “religiously affiliated” employers should also be exempt from the requirement. The new guidelines announced Friday will utilize the looser definition of “religious employer” stipulated in the Internal Revenue Code.

To qualify as exempt, organizations will have to oppose providing coverage “for some or all of any contraceptive services required under the health care reform” and be “organized and operating as a nonprofit entity.” They will simply have to identify themselves as religious organizations and “self-certify” that they meet these criteria.

Any and all of these exemptions are an affront to the democratic rights of women, who will face discrimination in the provision of health care based on the religious outlook of their employers. The White House persists in its cave-in concerning this basic right despite overwhelming popular support for free access to contraceptives, including among a substantial majority of Catholics.

In a statement, HHS Secretary Kathleen Sebelius claimed, “Today, the administration is taking the next step in providing women across the nation with coverage of recommended preventive care at no cost, while respecting religious concerns.” The reality is that the process by which women’s rights will supposedly be protected—while granting exemptions to employers on the basis of religion—in no way guarantees access to contraceptive services.

As with many provisions of Obama’s health care overhaul, the mechanisms by which access to free contraceptives will be implemented at these exempted

religious employers is convoluted. The government states that employees at these workplaces would receive a stand-alone private insurance policy that would provide birth control coverage at no cost.

The costs will be covered by fees paid by private insurers to participate in the new federal health care exchanges being set up under the health care law. Government officials also insist that insurers will save money in the long run by providing these services, due to reduced costs from fewer unwanted pregnancies.

However, the exempted employers would not even be required to notify their employees of the existence of such plans. The HHS fact sheet states, “Under the proposed accommodations, the eligible organizations would not have to contract, arrange, pay or refer for any contraceptive coverage to which they object on religious grounds.”

This statement is apparently in response to fears on the part of religious non-profits that their premium dollars might in some way help pay for the stand-alone plans.

HHS official Chiquita Brooks-LaSure also stated in a media call Friday afternoon, “In no instance would there be federal funds flowing and in no instance would employers’ dollars be used” in the provision of contraceptive coverage through a third party.

Jesuit priest Thomas Reese, a Catholic commentator and senior fellow at Georgetown University’s Woodstock Theological Center, acknowledged to the *National Catholic Reporter* that the Obama administration has “gone out of their way to resolve the concerns of religious institutions that object to covering contraceptives in their insurance programs.”

New York Archbishop Cardinal Timothy Dolan, president of the Catholic Health Association of the United States, reserved comment, issuing a statement that the bishops “welcome the opportunity to study the proposed regulations closely.”

Private businesses with no affiliation to churches or non-profits were dissatisfied with Obama’s latest climb-down. A number of business owners are fighting the requirement that they provide contraceptive coverage on their insurance plans, claiming they object to it on personal religious grounds.

“We were extremely disappointed with this inadequate proposal,” Kyle Duncan, general counsel for the Becket Fund for Religious Liberty, told the

Washington Post. His group represents private employers and nonprofits fighting the contraceptive provision of the ACA. “This is not what many of our clients were hoping and praying for: That they would be given a way of not being subject to the mandate at all.”

Four US circuit courts have heard separate challenges brought by business owners to the requirement and have split on whether these businesses should have to comply with the law while it is being challenged. The legal challenges may make their way up to the US Supreme Court.



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