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The HHS Mandate for Contraception/Sterilization Coverage:

An Attack on Rights of Conscience

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. On January 20, 2012, HHS reaffirmed its mandate while deferring enforcement against some religious employers until August 2013.

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. 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.

Isn't this an aspect of the Administration's drive for broader access to health care for all?

Whether or not it was intended that way, it has the opposite effect. People will *not* be free to keep the coverage they have now that respects their convictions. Organizations with many employees will have to violate their consciences or stop offering health benefits altogether. And resources needed to provide basic health care to the uninsured will be used instead to facilitate IUDs and Depo-Provera for those who already had ample coverage. This is a diversion away from universal health care.

But won't this provide “free birth control” for American women?

That claim is false for two reasons. First, the coverage will be mandatory, not a matter of free choice for any woman. Second, insurance companies will not be able to charge a co-pay or deductible for the coverage, so they will simply add the cost to the standard premium everyone has to pay – and among those being required to pay will be people who oppose it on conscience grounds. That is no victory for freedom.

By objecting to this coverage, is the Catholic Church discriminating against women?

Not at all. The Church's teaching against early abortion is based on respect for all human life, male and female. Its teaching against contraception and sterilization is based on respect for the power to help generate a new human life, a power held by both men and women – so health plans in accord with Catholic teaching do not cover male or female sterilization. It is the HHS mandate that shows disregard for women, by forcing them to purchase this coverage whether they want it or not.

Do religious employers violate the consciences of women who want birth control, by refusing to cover it in their employee health plans?

No, they simply decline to provide active support for procedures that violate their own consciences. If an employee disagrees, he or she can simply purchase that coverage or those procedures elsewhere.

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.