

COERCING FAITH: WHY THE PROPOSED RELIGIOUS EXEMPTION IS UNWARRANTED AND BAD POLICY

THE PROBLEM WITH THE RELIGIOUS EXEMPTION TO THE CONTRACEPTION COVERAGE REQUIREMENT

The interim final rule drafted by the Department of Health and Human Services would permit certain religious employers to opt out of the requirement of providing contraception. While the rule's preamble discusses the need to respect the relationship between a house of worship and its ministerial employees, the actual rule is not limited to ministerial employees. This means that women employed by churches and other houses of worship – even those employed in non-ministerial positions, such as secretaries or groundskeepers – could be left without access to affordable contraception.

THE EXEMPTION IS UNWARRANTED AND IS NOT CONSTITUTIONALLY OR LEGALLY REQUIRED

A broad religious exemption is not warranted because the new federal mandate for cost-free contraceptive coverage directly advances compelling interests in the health of women and children, and it does so in a way that is minimally burdensome to the free exercise of religion. It does not infringe on the beliefs of institutions to provide contraceptive coverage for employees or other policyholders who choose to avail themselves of the benefits of coverage.

- Requiring religious employers to offer coverage of contraception does not force anyone to actually use it; the requirement merely ensures that those who need these essential services will get them.
- Religious employers remain free to speak their beliefs regarding sexuality and contraception from the pulpit or through publications or other means; they will not be compelled to affirmatively endorse the use of contraception.
- Churches should not be permitted to create disincentives to disfavored behavior by jeopardizing the health of their employees. Nor is imposing a cost penalty an effective or appropriate means of promoting sexual responsibility.
- The fact that providing coverage for contraception does not place a substantial burden on religious employers is demonstrated by the fact that numerous Catholic hospitals operating in states with a religious exemption to a contraceptive coverage mandate nevertheless cover these services anyway. In other words, many religious employers do not even take advantage of an exemption when it is available to them.
- In contrast, almost **all** women – 99 percent – including religious adherents, will use contraception at some point during their reproductive lives. The essential nature of these services, combined with the vast number of women who need them, substantially outweighs the minimal burden placed on religious employers to provide coverage for these services.

CONTRACEPTION IS WIDELY USED AND NEEDED

Women should not be deprived of access to preventive health services, including contraception, simply because they happen to work for a house of worship. For example, although the Catholic Church is seeking a broad opt-out of the no-copay-contraception requirement, studies have shown that nearly all – 98% – of Catholic women use birth control during their lifetimes. Special-interest groups, like the U.S. Conference of Catholic Bishops, should not be given a veto over female employees' healthcare options.

The proposed rule should eliminate a religious exemption. If – and only if – the Department of Health and Human Services believes that it must permit a religious exemption, it should be strictly limited to employees in ministerial positions, such as priests, nuns, ministers, imams, or rabbis, and not extend to other employees. Those individuals who perform a “ministerial” function have opted into a life in which they promise to live in a manner consistent with the beliefs of the institution; while others, who nonetheless are employed by religious organizations, have not and should retain an option to use coverage – if they need it – for this needed and important health benefit.