



NEWS

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The Obama administration, to justify its widely criticized mandate for contraception and sterilization coverage in private health plans, has posted a set of false and misleading claims on the White House blog (“Health Reform, Preventive Services, and Religious Institutions,” February 1). In what follows, each White House claim is quoted with a response.

Claim: “Churches are exempt from the new rules: Churches and other houses of worship will be exempt from the requirement to offer insurance that covers contraception.”

Response: This is not entirely true. To be eligible, even churches and houses of worship must show the government that they hire and serve primarily people of their own faith and have the inculcation of religious values as their purpose. Some churches may have service to the broader community as a major focus, for example, by providing direct service to the poor regardless of faith. Such churches would be denied an exemption precisely because their service to the common good is so great. More importantly, the vast array of other religious organizations – schools, hospitals, universities, charitable institutions – will clearly not be exempt.

Claim: “No individual health care provider will be forced to prescribe contraception: The President and this Administration have previously and continue to express strong support for existing conscience protections. For example, no Catholic doctor is forced to write a prescription for contraception.”

Response: It is true that these rules directly apply to employers and insurers, not providers, but this is beside the point: The Administration is forcing individuals and institutions, including religious employers, to sponsor and subsidize what they consider immoral. Less directly, the classification of these drugs and procedures as basic “preventive services” will increase pressures on doctors, nurses and pharmacists to provide them in order to participate in private health plans – and no current federal conscience law prevents that from happening. Finally, because the mandate includes abortifacient drugs, it violates one of the “existing conscience protections” (the Weldon amendment) for which the Administration expresses “strong support.”

Claim: “No individual will be forced to buy or use contraception: This rule only applies to what insurance companies cover. Under this policy, women who want

contraception will have access to it through their insurance without paying a co-pay or deductible. But no one will be forced to buy or use contraception.”

Response: The statement that no one will be forced to buy it is false. Women who want contraception will be able to obtain it without co-pay or deductible precisely because women who do not want contraception will be forced to help pay for it through their premiums. This mandate passes costs from those who want the service, to those who object to it.

Claim: “Drugs that cause abortion are not covered by this policy: Drugs like RU486 are not covered by this policy, and nothing about this policy changes the President’s firm commitment to maintaining strict limitations on Federal funding for abortions. No Federal tax dollars are used for elective abortions.”

Response: False. The policy already requires coverage of Ulipristal (HRP 2000 or “Ella”), a drug that is a close analogue to RU-486 (mifepristone) and has the same effects. [\[i\]](#) RU-486 itself is also being tested for possible use as an “emergency contraceptive” – and if the FDA approves it for that purpose, it will automatically be mandated as well.

Claim: “Over half of Americans already live in the 28 States that require insurance companies cover contraception: Several of these States like North Carolina, New York, and California have identical religious employer exemptions. Some States like Colorado, Georgia and Wisconsin have no exemption at all.”

Response: This misleads by ignoring important facts, and some of it is simply false. All the state mandates, even those without religious exemptions, may be avoided by self-insuring prescription drug coverage, by dropping that particular coverage altogether, or by taking refuge in a federal law that pre-empts any state mandates (ERISA). None of these havens is available under the federal mandate. It is also false to claim that North Carolina has an identical exemption. It is broader: It does not require a religious organization to serve primarily people of its own faith, or to fulfill the federal rule’s narrow tax code criterion. Moreover, the North Carolina law, unlike the federal mandate, completely excludes abortifacient drugs like Ella and RU-486 as well as “emergency contraceptives” like Preven.

Claim: “Contraception is used by most women: According to a study by the Guttmacher Institute, most women, including 98 percent of Catholic women, have used contraception.”

Response: This is irrelevant, and it is presented in a misleading way. If a survey found that 98% of people had lied, cheated on their taxes, or had sex outside of marriage, would the government claim it can force everyone to do so? But this claim also mangles the data to create a false impression. The study actually says this is true of 98% of “sexually experienced” women. The more relevant statistic is that the drugs and devices subject to this mandate (sterilization, hormonal prescription contraceptives and IUDs) are used by

69% of those women who are “sexually active” and “do not want to become pregnant.” Surely that is a minority of the general public, yet every man and woman who needs health insurance will have to pay for this coverage. The drugs that the mandate’s supporters say will be most advanced by the new rule, because they have the highest co-pays and deductibles now, are powerful but risky injectable and implantable hormonal contraceptives, now used by perhaps 5% of women. The mandate is intended to change women’s reproductive behavior, not only reflect it.

Claim: “Contraception coverage reduces costs: While the monthly cost of contraception for women ranges from \$30 to \$50, insurers and experts agree that savings more than offset the cost. The National Business Group on Health estimated that it would cost employers 15 to 17 percent more not to provide contraceptive coverage than to provide such coverage, after accounting for both the direct medical costs of potentially unintended and unhealthy pregnancy and indirect costs such as employee absence and reduced productivity.”

Response: The government is violating our religious freedom to save money? If the claim is true it is hard to say there is a need for a mandate: Secular insurers and employers who don’t object will want to purchase the coverage to save money, and those who object can leave it alone. But this claim also seems to rest on some assumptions: That prescription contraceptives are the only way to avoid “unintended and unhealthy pregnancy,” for example, or that increasing access to contraceptives necessarily produces significant reductions in unintended pregnancies. The latter assumption has been cast into doubt by numerous studies (see <http://old.usccb.org/prolife/issues/contraception/contraception-fact-sheet-3-17-11.pdf>).

Claim: “The Obama Administration is committed to both respecting religious beliefs and increasing access to important preventive services. And as we move forward, our strong partnerships with religious organizations will continue.”

Response: False. There is no “balance” in the final HHS rule—one side has prevailed entirely, as the mandate and exemption remain entirely unchanged from August 2011, despite many thousands of comments filed since then indicating intense opposition. Indeed, the White House Press Secretary declared on January 31, “I don’t believe there are any constitutional rights issues here,” so little was placed on that side of the scale. The Administration’s stance on religious liberty has also been shown in other ways. Recently it argued before the Supreme Court that religious organizations have no greater right under the First amendment to hire or fire their own ministers than secular organizations have over their leaders—a claim that was unanimously rejected by the Supreme Court as “extreme” and “untenable.” The Administration recently denied a human trafficking grant to a Catholic service provider with high objective scores, and gave part of that grant instead to a provider with not just lower, but failing, objective scores, all because the Catholic provider refused in conscience to compromise the same moral and religious beliefs at issue here. Such action violates not only federal conscience laws, but President Obama’s executive order assuring “faith-based” organizations that

they will be able to serve the public in federal programs without compromising their faith.

[1] See A. Tarantal, et al., 54 *Contraception* 107-115 (1996), at 114 (“studies with mifepristone and HRP 2000 have shown both antiprogestins to have roughly comparable activity in terminating pregnancy when administered during the early stages of gestation”); G. Bernagiano & H. von Hertzen, 375 *The Lancet* 527-28 (Feb. 13, 2010), at 527 (“Ulipristal has similar biological effects to mifepristone, the antiprogesterin used in medical abortion”).