

# Policy Focus

## The HHS Contraceptives Mandate

RECIPES FOR RATIONAL GOVERNMENT FROM THE INDEPENDENT WOMEN'S FORUM

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### WHAT YOU NEED TO KNOW

In 2012, the Department of Health and Human Services issued a mandate under the Affordable Care Act that requires all employer-sponsored insurance to cover a comprehensive list of contraceptive drugs and procedures without imposing any cost-sharing on the consumers at the time of service. This sparked an election-year debate that the media claimed pitted women against religious communities that object to the use of contraception.

But the issue is much more complex than that. There are many reasons that nonreligious people should oppose this mandate: It will have adverse consequences on public health, distort health care markets, particularly for contraception, and threatens First Amendment rights.

It's tempting to see this discussion through the lens of the controversial debate about when life begins or the morality of reproductive choices, but that's really not the central issue. Foremost, this debate is about the limits of government's power to compel individuals to violate their beliefs.

Importantly, there is simply no compelling need for this mandate. Sexually active people overwhelmingly report having access to contraception, and programs exist to help those who cannot afford these products on their own. This mandate will also increase costs, distort the market, and could be counterproductive for women's health.

Instead of this one-size-fits-all mandate, the Department of Health and Human Services should give insurance companies, employers, families and individuals the freedom to purchase insurance policies that reflect their preferences and their needs.

## WHY YOU SHOULD CARE

Even for people who don't object to the use of contraception, this mandate presents serious potential problems.

- **Creating Perverse Incentives in Public Health:**

The intended public health benefit – fewer unexpected pregnancies – is unlikely to occur. In fact, this mandate may encourage more sexual activity, increase the average number of partners, and encourage a substitution away from condom use, leading to higher STD rates.

- **Skewing Markets for Birth Control, Insurance, and Jobs:**

This mandate will remove consumers' ability to discriminate among contraceptives based on price, allowing drug companies to significantly raise prices. Meanwhile, consumers and employers will still pay for birth control drugs through higher insurance premiums, leading to decreased economic growth and fewer jobs.

- **Reducing the Freedom to Live by our Own**

**Values:** Most importantly, through this mandate, the government would force some Americans to violate their religious beliefs. This is unacceptable: Americans should be free to live our lives and conduct our business in accordance with our own views and moral codes.

Instead of mandating what must be covered by every Americans' insurance policy, government should allow individuals and families to choose.

## MORE INFORMATION

# Access to Birth Control Widespread Without Mandate

**T**he premise behind the HHS contraceptives mandate is that American women struggle to access or pay for contraception. The evidence suggests otherwise: [More than 99 percent](#) of sexually active people report having access to contraception. To get “the Pill” or other hormonal forms of contraception, a woman needs to obtain a prescription. Women can also buy condoms and emergency contraception over the counter.

Many women in the United States qualify for free birth control, even without health insurance. Low-cost discount drug programs are available at big-box retailers such as Wal-Mart, which offer some generic oral contraceptives for as little as [\\$9 per month](#). The American Pregnancy Association says condoms cost anywhere from [20 cents to \\$2.50 each](#).

Some women prefer more expensive forms of birth control such as brand name pills, vaginal rings, hormonal injections, patches, or intrauterine devices (IUDs). The United States has a vibrant and innovative drug market, and women should be free to choose among its offerings. However, to keep the profit motive strong, to respect patents

on new drugs, and to pay for rigorous testing by the FDA, consumers who choose these options should expect to pay a higher price. We don't expect other drugs to be available at no cost; why should birth control be different?

Some women may want to pay for their contraceptives using their health insurance. For most women this is not a problem: Even without a federal mandate, fully **90 percent of employers** who offer health insurance benefits offer a plan that covers contraceptives.

If the government really wanted to make access to birth control easier, officials would heed the American College of Obstetricians and Gynecologists who says that birth control should be available without a prescription. But clearly, even without this deregulation or an insurance mandate, women in the United States have easy access to affordable contraceptives.

### What the HHS Mandate Requires

As a part of a broader set of mandates on employers and individuals in the Affordable Care Act, the HHS contraceptives mandate requires insurance plans to include *first-dollar coverage* for *all forms* of contraception approved by the FDA. In other words, it outlaws co-pays or deductibles for these treatments.

It also means coverage for emergency contraception, including the morning-after and week-after pills. The brand names of these drugs are "Plan B"

and "Ella," respectively. The science surrounding Plan B has not concluded that the drug terminates a fertilized egg, leaving the question open about whether or not it **functions as an abortifacient**.

There is greater suspicion that Ella terminates fertilized eggs, given its similar chemical composition to RU-486, the chemical abortion pill. Plan B and Ella in particular raise moral objections for people who are strongly pro-life, including those who are pro-life as a result of deeply held religious beliefs.

The mandate applies to all new health plans issued or renewed after August 1, 2013. It provides an exemption for churches, which can opt out of offering contraceptive coverage. But importantly there is no exemption for religiously affiliated schools or hospitals, or for private businesses operated by moral objectors.

Employers of 50 or more workers are required to provide government-approved insurance coverage starting January 1, 2014, or penalties will start to accrue. The penalty is \$2,000 or \$3,000 per worker per year, depending on triggers associated with subsidies in the health law's state-based exchanges. If an employer disobeys the HHS contraceptives mandate, the government can punish the offender with fines of **\$100 per worker per day**, creating serious hardship for those businesses.

### Impact on Public Health and Contraception Markets

Supporters argue the mandate will reduce the number of unplanned pregnancies. But birth

control (which is already widely available and widely used) does not prevent pregnancy 100 percent of the time. IUDs, the most effective contraceptives, do not appeal to as many women due to their longer-term and more invasive nature, even if they are available at no cost. The most commonly *used* form of birth control is “The Pill” which has a “typical use” **failure rate of 9 percent**. Emergency contraception has an even lower efficacy rate, failing **about 20 percent of the time**.

With this in mind, it’s no surprise that half of women today seeking abortions report using contraception during the month they conceived. Therefore, we should be skeptical of the claim that the mandate will reduce the number of unexpected pregnancies.

Increasing coverage for various types of hormonal birth controls may have other public health effects. For example, lowering the cost of contraception may encourage substitution away from condom use, which could increase the rate of sexually transmitted disease. Over-the-counter condoms will continue to pose consumers an immediate cost, while birth control covered by the mandate will be available at no cost to the user.

A preliminary study at [University of Michigan](#) observed that the price of contraceptives may be linked to rates of sexual activity or the average number of partners (as well as condom use). It makes sense that lowering the cost of birth control encourages more people to become sexually active

or more sexually active. Sex itself is the only true cause of pregnancies (intended or unintended), and while each person should be free to make his or her own choices, the government should not be in the business of distorting these incentives.

By eliminating copays, this HHS mandate will further skew the market for contraceptives by shielding consumers from the cost of various drugs. In fact, because of the mandate, **drug companies may take advantage** of an artificial increase in demand and raise the price of their products. Costs will be passed along to insurers, and ultimately, back to insurance customers through higher premiums.

In the long run, this market distortion could result in fewer choices for women and discourage innovation. Currently, a new oral birth control pill for men is undergoing FDA trials. This innovation would allow men to have more responsibility in family planning. But the HHS mandate was issued as a part of “women’s preventative care.” This not only presumes that reproductive health is purely a woman’s responsibility, but significantly lessens demand for new, innovative drugs (particularly for men).

## Impact on Insurance Costs and Employment

Like any other coverage mandate, this policy will result in a higher cost to insurance companies and therefore to employers who provide health insurance.

Proponents of the mandate argue that ultimately insurance costs will decrease due to a drop in unexpected pregnancies. As previously discussed, it's not clear that fewer pregnancies will be the result.

It is clear, however, that demand will increase for covered drugs and services. Anytime people pool costs, each has an incentive to consume more (like splitting a check evenly at a group dinner). Even current birth control users will have an incentive to consume more expensive types and brands. For example, if a new television was included in your insurance coverage, would you take the small, old-fashioned set or a wide, high-definition, LCD flatscreen?

Ultimately these costs will be built into premiums. Because the Affordable Care Act requires employers to offer insurance coverage, this necessarily raises the cost of employment. Raising the cost of employment will [reduce job supply and discourage much-needed economic growth](#), wage increases, and hiring.

## Individual Liberty at Stake

Decisions about when life begins and whether or not to use birth control can be very personal decisions. The government should leave individuals to make choices based on their own consciences.

Without this HHS mandate, women would still be free to buy insurance covering contraception, sterilization, and even abortion. Employers would still be free to provide such insurance. Only with this mandate are choices restricted: Every woman

is forced to buy a plan that covers contraceptive services, even if it conflicts with her values.

This HHS mandate would mean that individuals are only free to have diverse moral perspectives in certain arenas (for example, within the walls of a temple, church, or mosque). Yet in the U.S., individuals are supposed to be free to live their lives in accordance with their views on right and wrong, so long as they do not take away from the rights of others. This isn't just about religion; it's about individual freedom.

### **Hobby Lobby's Unnecessary Fight**

Many firms and non-profit entities morally object to the requirements of this HHS mandate, but do not fit into the narrow exemption for churches and houses of worship. In order to avoid facing serious punishments, more than [190 businesses and organizations](#) have filed more than 60 lawsuits asking for injunctive relief and ultimately an undoing of the mandate.

To date, only 26 cases have been decided on the merits, with 19 rulings in favor of plaintiffs and 7 against. Among the plaintiffs who have not yet secured injunctive relief is the high-profile craft-store giant Hobby Lobby, employing more than 22,000 workers in [550 stores in 45 states](#).

Hobby Lobby took its case to the 10<sup>th</sup> Circuit Court of Appeals in late May, 2013. The Evangelical family that owns the stores objects to the use of emergency contraceptives that function as abortifacients. Their fight in court should be unnecessary, since Americans should be free to have varying opinions on these matters and live their lives accordingly.

Unless the mandate is repealed or struck down, Hobby Lobby and other similarly situated firms will have to choose between disobeying the law, disobeying their own conscience, or closing their doors.

## WHAT YOU CAN DO

You can learn more about the problems with ObamaCare and better ways to reform our health care system.

- **Get Informed:** To learn more visit:
  - [Independent Women's Forum](#)
  - [The Becket Fund](#)
  - [Stand Up for Religious Freedom](#)
- **Talk to Your Friends:** Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.

- **Become a Leader in the Community:** Get a group together each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. A few motivated people can change the world.
- **Remain Engaged:** Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

## ABOUT THE INDEPENDENT WOMEN'S FORUM

The Independent Women's Forum (IWF) is dedicated to building support for free markets, limited government, and individual responsibility.

IWF, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.

We rely on the support of people like you! Please visit us on our website [www.iwf.org](http://www.iwf.org) to get more information and consider making a donation to IWF.

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