



Mandating Contraception

It is bad for policy, bad for liberty, and today the Senate faces a crucial vote.

By **DOUG BANDOW** on 3.1.12 @ 6:06AM

When the Obama administration effectively nationalized American health care, it took over medical decisions best left to individuals. The administration also subordinated religious liberty to politics. Today the Senate will vote on an amendment to protect people of faith.

Obamacare's chief characteristic is substituting a one-size fits all template for today's imperfect but decentralized system. Washington insists that it knows best for 313 million Americans and intends to impose its will on the recalcitrant. The latest manifestation of Uncle Sam's soft tyranny is the administrative diktat that abortifacients, sterilization, and contraceptives are forms of "preventive" care which must be provided "free" through health insurance.

The requirement is bad public policy. At the behest of doctors, hospitals, and other providers, states impose roughly 2,000 mandates nationwide. Policyholders have to pay more for unwanted benefits even if they would prefer a scaled-down catastrophic plan.

Now Obamacare has put Uncle Sam in the mandate business as well, hence the contraceptives requirement. But this rule demonstrates another problem with government-controlled health "insurance." It no longer is insurance.

The purpose of insurance is to guard against the small risk of a major loss. You buy insurance in case your house burns down, not to cover the cost of mowing your lawn. Insuring against recurrent expenditures under your control significantly raises costs.

Subsidizing contraception could save money by reducing unplanned pregnancies, but that can only be determined in the marketplace, not in a Department of Health and Human Services rulemaking process. If so, insurance companies don't have to be ordered to provide the coverage. Patients also might prefer to prepay medical expenses, even if doing so is more expensive. But then, again, insurers wouldn't have to be ordered to offer coverage. In fact, today the vast majority of insurance policies cover contraception.

The administration rule is an ideological rather than a medical imperative.

Contraception, along with abortifacients and sterilization, has become a wedge issue on the feminist Left.

None of the justifications offered for the rule make sense.

Louise Melling, deputy legal director of the American Civil Liberties Union, called the issue a matter of "women's rights." Sen. Patty Murray (D-WA) similarly opined that "We all know how hard the right wing will fight to restrict women's rights."

Yet sexually active men likely are as interested in contraception as women. Why doesn't the administration include coverage for male contraception? Why the blatant discrimination against men?

Of course, men probably prefer that women be the ones using contraceptives and getting sterilized. Indeed, contraception is key for guys hoping "to score," whether in a one-night stand or extended relationship. The availability of contraception and abortion makes it easier for men to enjoy sex without commitment, historically a prime male objective. Ironically, in important ways -- sexually transmitted diseases, for instance -- condoms might be a better health bet for women. The mandate is as much a play for the votes of men as of women.

Contraception is not an essential medical service more important than treatment for breast cancer, leukemia, colon cancer, and Alzheimer's. Or my knee replacement. If contraception should be "free," why not these other far more vital treatments? Why allow deductibles and co-pays to discourage anyone from getting any medical treatment?

Former Maryland Lt. Gov. Kathleen Kennedy Townsend blamed opponents for wanting "to fight about contraception being available for women." Robert Boston of Americans United for Separation of Church and State similarly charged that "the Bishops" want "to personally cut off access" to contraceptives.

In fact, contraceptives are available to all and no one is campaigning to ban the pill, IUD, or condoms. Saying that insurance coverage is necessary for access to contraceptives is like saying insurance coverage is necessary for access to aspirin. Anyone can buy contraceptives today.

White House Press Secretary Jay Carney explained that the administration was committed "to ensuring that women have access to contraception without paying any extra costs." Sen. Claire McCaskill (D-Mo.) declared: "we should try very hard to give women universal access to birth control without going into their pockets." The *New York Times* cited "an essential principle -- free access to birth control for any woman."

But someone has to pay. The only question is who.

Insurance coverage is not "free." Premiums must rise to cover expanded benefits.

Female employees will pay more if their insurance is paying more.

Of course, the mandate also requires the impotent, infertile, gays, sexually inactive, sexually less active, and those opposed to contraception to pay for those who use contraception, especially in abundance. Why should the former be forced to subsidize the latter? Why is this wealth transfer a new national imperative and "right"?

The president declared: "Every woman should be in control of the decisions that affect her health. Period." Quite true. But the way to do that is for women to pay for their own health care and decide what they want their health insurance to cover.

Sen. Murray complained that exempting religious employers would put "employers smack between women and their health care and politics between women and their health care." But she is one of the strongest supporters of turning medical decisions over to Washington, which directly puts "politics between women and their health care."

Putting Uncle Sam in charge of health care is precisely how not to leave women in control of their own medical destinies. Observed Rep. Ann Marie Buerkle (R-NY), "The very essence of the healthcare law is that the government is going to tell you what your healthcare is going to be." Washington is filled with interest groups and their lobbyists, not individual patients and their advocates. There is no reason to believe that Uncle Sam will act in the interests of "women," whatever that is.

In short, the contraception mandate is bad public policy. But it also poses a serious threat to individual liberty and freedom of conscience.

Although a minority Christian position, opposition to contraception is deeply rooted in Catholicism and shared by some fundamentalist Protestants. Many more religious people find abortion abhorrent, though they differ in their view of the "morning-after" pill. To force them to fund such procedures would make them violate some of their most important beliefs.

Alas, for many liberal moderns, it is hard to imagine a legitimate objection to abortion and impossible to respect opposition to contraception or sterilization.

These are the people Barack Obama referred to in 2006: "There are some liberals

who dismiss religion in the public square as inherently irrational or intolerant, insisting on a caricature of religious Americans that paints them as fanatical." There are places where even sincere religious faith must give way. Do you believe that a god commands child sacrifice? Too bad. You can't violate the rights of others in the name of religion.

In most cases, however, it is the government that should back off. Demanding that people violate their most sacred commitments ensures social conflict. Unless the interest is genuinely important, it makes little sense for the government to impose its will. Ordering every American to subsidize contraception does not qualify. In this case the simple state of liberty benefits everyone. You want it, you pay for it. You don't want it, you don't pay for it.

But now the government says no to choice. It doesn't matter what you want. Washington will decide for every American. Only small religious operations serving members of the same faith community will be exempt. Even Jesus' ministry -- he healed people who did not follow him -- would not qualify for an exemption.

The mandate has the greatest impact on the Catholic Church, both because it covers contraception and because of the Church's many related institutions, including adoptive and welfare services, nursing homes, charities, and universities. But the rule affects Protestants too, both through churches which self-insure and para-church activities.

This has led to threats of civil disobedience. Said Richard Land, president of the southern Baptist Convention's Ethics and Religious liberty Commission: "We want the law changed, or else we're going to write our letters from the Nashville jail, just like Dr. King wrote his from the Birmingham jail." Rick Warren of Saddleback Church opined that "I'd go to jail rather than cave in to a government mandate that violates what God commands us to do."

Chuck Colson of Prison Fellowship and Timothy George of Samford University called this rule "the greatest threat to religious freedom in our lifetime. They even deployed German minister Martin Niemöller's famous poem: "First they came for the Socialists, and I did not speak out -- because I was not a Socialist. Then they came for the trade unionists ... Then they came for me -- and there was no one left to speak for me."

While the Obama administration is an unlikely stand-in for the Nazis, the principle behind its regulation has far-reaching application. Faith-based groups would be punished for their good work. They would have no reasonable "out."

One option would be to violate their beliefs, but those are what impel them to serve others. Other alternatives would be to stop serving people of other faiths or to simply close down.

More likely, religious employers would drop coverage, leaving their workers, estimated at between one and two million nationwide, to scramble for policies in the individual marketplace -- where costs are rising sharply because of Obamacare's other new mandates. Of course, individual employees who object to contraception would have no exemption. Moreover, organizations would face a \$2000 per worker penalty for dropping coverage.

Nevertheless, this is the likeliest option for groups serious about their beliefs. Catholic Charities dropped spousal coverage when the District of Columbia mandated coverage for gay partners. Boston's Catholic Charities closed its adoption program after Massachusetts required placement in same-sex homes. President Barack Obama spoke eloquently about his Christian faith and urged Americans to "honor the conscience of those who disagree" on issues like abortion. Yet all his administration at first was willing to offer was a year delay in the effectiveness date of the regulation, to August 2013. Health and Human Services Secretary Kathleen Sebelius claimed to have struck "the appropriate balance between respecting religious freedom and increasing access to important preventive services." In fact, the rule struck no balance at all. Explained Archbishop Timothy M. Dolan, president of the U.S. Conference of Catholic Bishops: "In effect, the president is saying we have a year to figure out how to violate our consciences."

Even some of the administration's religious allies criticized its insensitivity. *Washington Post* columnist E.J. Dionne complained that the president tossed "his progressive Catholic allies under the bus." Separately, the *Post* editorialized that the administration failed to "make an adequate accommodation for those deeply held views."

The president then declared that he had found "a solution that works for everyone." Explained the administration, "Under the new policy to be announced today, women will have free preventive care that includes contraceptive services no matter where she works. The policy also ensures that if a woman works for a religious employer with objections to providing contraceptive services as part of its health plan, the religious employer will not be required to provide, pay for or refer for contraction coverage, but her insurance company will be required to directly offer her contraceptive care free of charge."

The president has prepared the perfect free lunch: everyone will have coverage and no one will have to pay for it. It's a miracle!

If this really is "a solution that works for everyone," then why not expand it? Let companies offer health insurance policies which cover, well, no medical treatments. But force insurance companies nevertheless to cover every malady. Voila: Americans would enjoy comprehensive health care insurance at no cost! Even under the administration's latest plan someone has to pay. Insurance companies might automatically charge religious organizations a higher premium to cover the added contraception cost for their employees. Or insurers might treat the expense as overhead, spreading it over every insured person, even if they already are paying for policies with contraception coverage. Religious people would still be paying for benefits which they found to be offensive.

Even as the administration turns health care reform into a political tool, its allies are treating religious organizations as the offenders. Robert Boston criticized any definition of religious liberty which "allows your boss to impose his religion on you." Louise Melling of the American Civil Liberties Union announced that the First Amendment "does not give religious groups the right to impose their beliefs on others." University professor Judy Bachrach wailed that she was no longer "living in a free country" because the Catholic Church did not want to have to pay for contraceptives.

Defend yourself from ideological imperialists and you are a theocrat. Where is George Orwell when we need him?

Some administration critics are talking of a war on religion. That may be an exaggeration, but Secretary Sebelius also claimed that "we are in a war," only over women's health. Many of the president's supporters exhibit unbridled hostility to religion. Moreover, the president is using the issue to appeal to his base. He criticized his opponents for treating "this as another political wedge issue," but he made it a political issue.

Government hostility to religion will grow ever more dangerous as the welfare state expands. We live in a diverse society in which Americans have increasingly divergent views of the transcendent. Minimizing social conflict requires compromise, humility, tolerance, and good will on the part of everyone. In a liberal society people need to be able to live out their religious beliefs -- even when those beliefs are unpopular. Yet the more the state seizes control of traditionally private responsibilities, the more the state imposes the beliefs of those in control of the state.

At times religious conservatives have attempted to use government to impose their views, but these days the state is far more likely to be a tool of the Left, with a secularist and paternalist orientation. The government cannot be trusted with issues of faith, whatever the ideological preferences of those in control.

Obamacare is bad public policy. It makes no sense for Uncle Sam to decide on insurance coverage for every American -- forcing Americans to pay for benefits they do not want. It is even worse to order Americans to violate their fundamental religious beliefs in order to satisfy the political interest groups du jour.

The administration's rule might not survive a challenge under both the First Amendment and the federal Religious Freedom Restoration Act. But Congress should grant a religious exemption before the case comes to trial.

Freedom of conscience is the foundation for all human liberty, something that reflects the very nature of the human person. It is not a privilege granted by the state. A limited, constitutional government created to protect individual liberty has an obligation to respect religious beliefs, even -- indeed, especially -- unpopular ones.