

# WebMemo



Published by The Heritage Foundation

No. 3332  
August 2, 2011

## HHS's New Health Guidelines Trample on Conscience

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The Department of Health and Human Services' (HHS) new preventive services guidelines are a disaster for freedom of conscience and a fresh illustration of the political hammerlock "reproductive rights" organizations have on the Obama Administration.

Forcing private insurance plans to pay for morally controversial offerings such as contraception, sterilization, and abortifacients raises obvious questions regarding freedom of conscience. Federal law requires respect for the conscience of health care providers on many of these issues. Unfortunately, the new HHS guidelines show disrespect for freedom of conscience.

**Background.** The Obamacare legislation adopted in March 2010 included an amendment proposed by Senator Barbara Mikulski (D-MD) that required private insurance coverage of women's "preventive services" on a mandatory and preferential basis—without deductibles, coinsurance, or patient co-pays. The amendment did not define the particular "preventive services" to be covered, raising immediate concerns that it was intended, or would be interpreted, to cover drugs, devices, and procedures that would infringe on the moral and religious beliefs of institutions and individuals.

The amendment provided an avenue around the already-existing process for identifying effective treatments and preventive services through the U.S. Preventive Services Task Force. Planned Parenthood and other groups lobbied the Institute of Medicine (IOM) for months, urging it to include contraceptives, abortifacients, and sterilization as mandatory benefits with no cost-sharing.

The IOM fully complied with Planned Parenthood's wishes, recommending that "preventive services" encompass not only diabetes and HIV prevention but drugs, devices, and procedures that can prevent conception and terminate pregnancy. Treating organ- and tissue-destroying diseases as equivalent to the natural processes involved in begetting and bearing a child is a gross distortion of reality. In addition to the morally debatable aspects of these services, there are social questions concerning them that continue to divide the public, including the provision of these drugs and devices to minor children and issues of conscience for providers, insurers, and the insured alike. But these concerns did not trouble HHS; the new guidelines make first-dollar coverage of these items mandatory for all health insurance policies to be issued in the United States after August 1, 2012.

**Not Much Protection.** The new HHS guidelines contain a conscience protection, but it is offensively narrow. Only "certain religious employers" qualify for the protection, and the guidelines make clear that a religious employer is only one that:

- Has the inculcation of religious values as its purpose;

This paper, in its entirety, can be found at:  
<http://report.heritage.org/wm3332>

Produced by the Richard and Helen DeVos  
Center for Religion and Civil Society

Published by The Heritage Foundation  
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Washington, DC 20002-4999  
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- Primarily employs persons who share its religious tenets;
- Primarily serves persons who share its religious tenets; and
- Is a non-profit organization under particular provisions of the Internal Revenue Code.

There are at least four serious problems with this “protection” for conscience.

1. First, it protects only an entity that has the “inculcation of religious values as its purpose.” This limitation reinforces the erroneous idea that only entities formed to inculcate religious values deserve protection for conscience. If this requirement is interpreted to apply only to traditional houses of worship, seminaries, and similar institutions, for example, it might exclude a wide range of religious institutions that provide a variety of socially beneficial services that do not include the inculcation of religious values. This reality is so obvious that the only reasonable conclusion is that the Obama Administration has purposefully targeted personal and institutional conscience on morally controversial issues such as sterilization, contraception, and abortifacients.
2. Second, the HHS “protection” applies only to an entity that “primarily serves persons who share its religious tenets.” On its face, this requirement appears to deny protection to certain religious nonprofits—particularly certain social service agencies—that offer their assistance to needy people without regard to religious affiliations or creed. Indeed, for many of these agencies, the mandate to assist all in need and not impose a religious test on recipients is itself a core part of their religious and charitable mission. Providing service without respect to creed is also sometimes a condition of eligibility for public funds for social services.<sup>1</sup> Accordingly, this requirement could force charities and other organizations to make an impossible choice: stop serving people without regard to creed or abandon employee health insurance plans. The issue is so obvious that it is impossible to view
3. Third, the HHS “protection” fails to protect entities that fulfill a religiously inspired social mission but do not staff primarily with coreligionists. The protection might not apply, for example, to church schools, hospitals, and health plans that do not “primarily” employ members of their religion but nevertheless consider their mission to be a natural extension of their faith traditions and communities.
4. Fourth, the new HHS guidelines reinforce the mistaken notion that freedom of conscience either does not exist or is not worthy of protection unless it is religiously motivated or expressed within a strictly religious institution. But the conscience of an individual or group opposed to abortion or any other practice whose medical character is debatable is also worthy of consideration, as is the operation of conscience for the many men and women who bring their moral convictions to bear on their places of work, both for-profit and nonprofit. The most obvious groups affected by this omission in the guidelines are pro-life nonprofit organizations that are not connected to any church or religious entity—including public policy groups that oppose abortion and social service agencies that provide alternatives to it.

**Make a Stand for Conscience.** Certain federal conscience protections have recognized both religious and moral objections to certain controversial procedures, as shown by the text of the 1973 Church Amendment, which protects the conscience rights of individuals and entities that receive certain federal funds. The HHS guidelines should have met this same standard.

For these reasons and more, the HHS guidelines released on August 1 deserve intense scrutiny inside Congress and out. Social conservatives should make a stand for conscience protections for all people and institutions—religious and non-religious alike.

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1. See U.S. Department of Health and Human Services, “Grants & Funding—FAQs,” at <http://answers.hhs.gov/categories/65> (August 2, 2011).