

ISSUE BRIEF

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Obamacare's Fine on Faith: Trampling on Religious Liberty

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The recent Health and Human Services (HHS) mandate for preventive services under President Obama's health care law is an unprecedented assault on religious liberty. The mandate forces many religious employers to either contradict their faith by providing and paying for abortion-inducing drugs, contraception, and sterilization in violation of their deeply held beliefs or face federal penalties. The Obama Administration has effectively put a fine on faith.

Because the health care law forces employers to provide and individuals to obtain health insurance that meets the government's definition of "qualified" health care, the HHS mandate and future federal benefits mandates like it are inescapable. Non-exempted employers—religious or not—are stripped of the choice to avoid the services mandated under

Obamacare without facing penalties. To protect religious liberty and ensure the respect of individual freedom, the mandate must be rescinded and Obamacare must be repealed.

Obamacare's Assault on Religious Freedom. The HHS mandate forces almost all employers to provide health insurance coverage of abortion-inducing drugs, contraception, and sterilization, regardless of the employers' moral or religious objections to such services. The rule includes an extremely narrow religious exemption: The organization must hold a nonprofit tax status, have as its primary focus the "inculcation of religious values" (i.e., teaching or preaching doctrine), employ individuals who share its core religious beliefs, and primarily serve co-religionists or people who share the same beliefs.

This unprecedented narrowing of the definition of "religious employer"¹ effectively applies only to formal houses of worship. Religious organizations that hold moral objections to abortion and contraception—such as some religious hospitals, schools, and other social service organizations—do not qualify for the exemption.

The Fine for Non-Compliance. Under the Public Health Services Act and the Internal Revenue Code, an

employer that offers a health plan that does not conform to federal insurance benefits requirements could face a federal fine. This penalty can be levied on a non-exempted religious employer that offers a plan that is not in compliance with the preventive services package and other requirements under Obamacare—including the HHS mandate. The fine, imposed through a civil penalty or excise tax, could be as high as \$100 a day for each employee receiving a health insurance plan that fails to comply with federal law.²

For example, a non-exempted, nonprofit organization with 100 employees, each of whom receives a health insurance plan that does not comply with federal law, could see a \$3.65 million annual fine.

The Fine for Avoidance. Non-exempted religious employers could also avoid violating their beliefs by dropping health insurance coverage altogether. Like the fine described above, this decision is not without financial penalty. Beginning in 2014, under Obamacare, non-exempted religious employers with 50 or more full-time employees that do not provide health insurance will be forced to pay a roughly \$2,000 annual fine for each employee who is not offered a health plan beyond the first 30 workers.³

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At the same time that organizations could be forced to pay annual fines for dropping employee health plans, most individuals will be required to carry health insurance under Obamacare's individual mandate.⁴ Religious employers might wish to help offset these sudden new health insurance costs for their employees by raising salaries with potential savings from dropping health insurance plans. But under the Obamacare penalties, employers will be forced to divert a portion of those potential savings to the federal government instead. Ultimately, the penalty is likely to hurt employees' overall compensation packages.

Inescapable Mandates. The fines described above could be levied on any employer who, for any reason, does not comply with this or other benefit mandates outlined under Obamacare or drops employee health insurance coverage after January 1, 2014.

Obamacare will force employers to offer health insurance and significantly expands the federal standards for what those employer health plans must offer—including new mandates on preventive services

and essential benefits that must be covered without cost to the insured. Any non-exempted employer, secular or religious, has no choice but to offer coverage that includes the services mandated under Obamacare—including those in the HHS mandate—or face federal fines.⁵

Moreover, the law's individual mandate will require all Americans to obtain health insurance coverage that meets those same federal standards, either from their employer or elsewhere, by January 1, 2014. The benefit mandates defined under Obamacare are inescapable because the law requires all employers and individuals to provide or purchase qualifying health insurance coverage.

Obamacare's Continuing Conflicts of Conscience. Many of the health care law's essential benefits and preventive services packages have yet to be defined. In the coming years, government agencies will be dictating what other services health insurance plans must cover without cost to the insured.⁶ Since some of those mandated services could potentially relate to end-of-life care, prenatal testing, and other controversial health care services,

conflicts of conscience for employers—both secular and religious—are likely to continue. As Obamacare is further implemented, it is possible that employers will be forced to choose between violating their beliefs and paying steep fines to protect their conscience on matters far beyond those covered in this particular mandate.

Repeal Obamacare. By centralizing control of deeply personal health care decisions in the hands of unaccountable bureaucrats and forcing every citizen to obtain government-approved insurance, President Obama's health care law poses an unprecedented and profound threat to the liberty of Americans. In order to protect religious liberty specifically and individual freedom more generally, this mandate must be rescinded and Obamacare must be repealed. Americans need and want better health care reform that respects religious liberty.

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1. U.S. Conference of Catholic Bishops, letter to the U.S. Department of Health and Human Services, August 31, 2011, at <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf> (March 26, 2012).
2. Cynthia Brougher, "Preventive Health Services Regulations: Religious Institutions' Objections to Contraceptive Coverage," Congressional Research Service Report for Congress, February 22, 2012. The Public Health Services Act (PHSA) was amended to include the Patient Protection and Affordable Care Act (PPACA) without changing the PHSA's existing enforcement mechanisms. It is possible, therefore, that the fines for non-compliance with PHSA could be used to penalize non-compliance with the mandates of PPACA. PHSA applies to health insurance issuers and non-federal self-funded governmental plans. Under the Internal Revenue Code, the penalty for non-exempted organizations that offer non-compliant group health plans is levied through an excise tax. Like the civil penalty under PHSA, the excise tax could amount to as much as \$100 per day for each employee receiving a non-compliant health plan.
3. See Brian Blase, "Obamacare and the Employer Mandate: Cutting Jobs and Wages," Heritage Foundation WebMemo No. 3108, January 19, 2011, at <http://www.heritage.org/research/reports/2011/01/obamacare-and-the-employer-mandate-cutting-jobs-and-wages>.
4. See Robert E. Moffit, "Obamacare and the Individual Mandate: Violating Personal Liberty and Federalism," Heritage Foundation WebMemo No. 3103, January 18, 2011, at <http://www.heritage.org/research/reports/2011/01/obamacare-and-the-individual-mandate-violating-personal-liberty-and-federalism>.
5. See Thomas Messner, Edmund Haislmaier, and Ryan T. Anderson, "No Way Out: How Conscience Gets Trapped in Obamacare's Little House of Horrors," The Heritage Foundation, *The Foundry*, February 14, 2012, at <http://blog.heritage.org/2012/02/14/how-conscience-gets-trapped-in-obamacares-little-box-of-horrors/>.
6. See Edmund F. Haislmaier, "Obamacare and Insurance Benefit Mandates: Raising Premiums and Reducing Patient Choice," Heritage Foundation WebMemo No. 3110, January 20, 2011, at <http://www.heritage.org/research/reports/2011/01/obamacare-and-insurance-benefit-mandates-raising-premiums-and-reducing-patient-choice>.