

Trump rule denies birth control coverage to hundreds of thousands of women

By Kate Randall
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A new rule by the Trump administration will revise a mandate under the Affordable Care Act (ACA), denying birth control benefits to hundreds of thousands of women. Under the legislation popularly known as Obamacare, women with health insurance can presently receive contraceptives at no cost, with some notable exceptions.

The new rule greatly expands the number of employers and insurance companies that would qualify for an exemption to the ACA mandate, simply by claiming a moral or religious objection. Drafted as an “interim final rule,” the measure could take effect as soon as it is published in the Federal Register, without a public comment period.

The draft regulation, reported by the *New York Times* and later detailed by *Vox*, seizes on concessions made by the Obama administration in the federal guidelines on the birth control mandate. Under pressure from the Catholic Church and the religious right, Obama had already exempted churches and religiously affiliated employers from providing free access to birth control as part of medical coverage for women employees.

Trump’s new rule would allow for-profit, publicly traded corporations as well as insurance companies to qualify for exemptions simply by claiming a religious or “moral” objection. Unlike under the ACA rule, employers and insurers would not be required to justify their decision, and the government would not be required to step in to provide an alternative. They would, in fact, be able to deny birth control coverage to women as they saw fit.

The Trump administration is clear that the rule’s effect will be to deny access to birth control, writing in the 34,000-word directive: “These interim final rules will result in some enrollees in plans of exempt entities not receiving coverage or payments for contraceptive

services.” The claim that the religious and moral liberties of employers are being protected is a cover for a reactionary rule that will deny a woman’s legally protected reproductive rights.

“This rule would mean women across the country could be denied insurance coverage for birth control on a whim from their employer or university,” Dana Singiser of Planned Parenthood Federation of America told Reuters. “It makes a farce of the Trump administration’s so-called ‘women’s empowerment’ agenda and endangers a woman’s ability to make the most basic and personal of decisions—when and if to have a child.”

According to a study commissioned by the Obama administration, more than 55 million women have birth control coverage without out-of-pocket costs. In 2014, two-thirds of women using birth control pills and nearly three-quarters of women using the contraceptive ring were no longer paying out-of-pocket for these contraceptives.

The National Women’s Law Center reports that in 2013 alone, the ACA mandate had saved women \$1.4 billion on birth control pills. The National Academy of Sciences has cited studies showing that as contraceptive use has gone up, the rate of unintended pregnancies has come down.

The Trump rule counters these statistics with the Victorian argument that “as contraception became available and its use increased, teen sexual activity outside of marriage likewise increased.” In any event, the Trump administration says that contraceptive coverage is not required by the ACA itself, but by federal guidelines issued under the law, and that the ACA “does not require that the guidelines be “evidence-based” or “evidence informed.”

The right to free contraceptive services contained in

the ACA guidelines have been continually eroded since they were issued in 2012. In 2014, the Supreme Court struck down the contraceptive coverage mandate “as applied to closely held corporations,” such as Hobby Lobby, a for-profit chain of craft stores owned by a Christian family.

In a second case in 2016 regarding the right of religious non-profits, the high court directed groups, including the Little Sisters of the Poor, and the government to work out their differences in lower courts. Obama’s term ended before any rulings were made, opening the way for the Trump administration to move forward with its rule.

The Trump administration makes the point that the legal concept of a “closely held” company, such as Hobby Lobby, “is not well-defined or universally-accepted” and is “too imprecise” to be used in the birth control rule. The Trump rule will therefore “exempt any entity possessing religious beliefs or moral convictions against the coverage required by the mandate, regardless of its corporate structure or ownership interests.”

Insurance companies would also be exempt. The administration makes the spurious claim that women would not be adversely affected, and that they could obtain access to contraceptives through a family member’s health plan, a plan purchased on a public insurance exchange or “multiple other federal programs that provide free or subsidized contraceptives.”

Most lawsuits attacking the Obamacare mandate assert that it violates a 1993 law protecting “religious liberty.” The Trump rule takes this further, arguing that the courts have long recognized the importance of respecting moral convictions as well.

It makes reference to the exemption from military service available to some “conscientious objectors,” drawing an absurd parallel between the right of an individual to oppose war on moral grounds to the “right” of a giant corporation or insurance company to deny women free access to contraceptives.

The Trump rule will cause economic hardship for women and undoubtedly result in unwanted pregnancies and increased maternal deaths. It represents a new blow against the democratic principle of separation of church and state, laid down in the First Amendment to the US Constitution. The Obama

administration’s earlier concessions to the religious right have laid the groundwork for this new attack.

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