



## ADVANCING FAITH, FAMILY AND FREEDOM

### TIMELINE OF GOVERNMENT'S HHS MANDATE

**December 3, 2009** Senator Barbara Mikulski's (D-MD) [amendment SA 2791](#) adds to a preventive services section in the Patient Protection and Affordable Care Act (PPACA), (popularly known as “Obamacare”), Section 2713(a)(4) to mandate that all health plans cover “preventive services *for women*” as defined by the Health Resources and Services Administration (HRSA).

**March 23, 2010** President Barack Obama signs [PPACA](#) into law.

**July 19, 2010** The Department of Health and Human Services (HHS) issues regulations on the overall “preventive care” requirement as an [“interim final rule”](#) for general health prevention services such as smoking cessation, HIV screening, and diabetes prevention. The HHS Mandate was not in effect yet.

**August, 2010** HHS hosts a conference call on the women’s “preventive” services requirement in PPACA and announces they have tasked the Institute of Medicine (IOM) to review and make recommendations for services specific to women by August 2011.

**November 16, 2010; January 12, 2011; March 9, 2011;** The IOM holds three meetings (with public and private sessions) on women’s “preventive” services. Presenters include NARAL, Planned Parenthood and Guttmacher Institute (see description [here](#)). No pro-life organizations are invited to present at any workshop, despite them asking for formal presentation time.

**July 19, 2011** IOM issues its [report](#) recommending that the full range of Food and Drug Administration (FDA)-approved contraception and sterilization services be included among the various “preventive care services for women.” At issue is that it forces employers against their moral objections to provide contraceptives, sterilization, and drugs and devices that can kill an embryo. Other services include well-woman visits, prenatal screening for diabetes, and HIV screening.

**August 1, 2011** HHS does two things. First, through HRSA it issues [guidance](#) adopting the IOM recommendation and mandates coverage of these drugs and devices, with no co-pay. This is called the HHS Mandate. Second, HHS issues an [“amendment”](#) to the July 19, 2010 “interim final rule” that exempts churches.

**January 20, 2012** After receiving over 200,000 public comments on the HHS Mandate, HHS issues a [press release](#) stating that religious non-profits not covered by the August 1 HHS Mandate will have a one year “safe harbor” to decide how to comply---but requiring such employers to refer employees for contraceptives, sterilization, and drugs and devices that can kill an embryo.

**February 10, 2012** President Obama announces a so-called “accommodation” and HHS issues the church exemption as a [“final rule”](#) with *no* changes to the religious employer exemption. HHS also issues [HRSA guidance](#) solidifying the HHS Mandate with a mere promise to issue yet

another set of regulations in the future detailing an accounting gimmick for religious employers who are forced to pay for them in their insurance coverage.

**March 21, 2012** HHS issues an [Advanced Notice of Proposed Rulemaking](#) (ANPRM) asking for public comment on how HHS can supposedly “accommodate” religious employers’ objections to covering for their employees contraceptives, sterilization, and drugs and devices that can kill an embryo, by forcing the insurer to pay the actual cost. Religious employers would still be forced to pay and contract for health care plans, which then in turn would provide objectionable services to their employees at the employer’s expense. This is no accommodation.

**June 28, 2012** In *NFIB v. Sebelius*, the Supreme Court [upholds](#) the individual mandate of the PPACA as constitutional under Congress’ power to tax. The HHS Mandate therefore continues in its requirement that all health plans cover “preventive services for women,” as do all the HHS regulations, to discriminate against religious employers.

**August 1, 2012** was marked as the [Start Date for compliance for businesses and non-profits](#). When the plan year began for an employer’s health care plan after this date, they were forced to comply with the HHS Mandate in part because HHS wanted to guarantee college women free contraceptives starting with the 2012 academic year. Religious non-profits, including universities, were given a [one year “safe-harbor”](#) through August 1, 2013 to comply.

**February 6, 2013** HHS issues a [“proposed rule”](#) implementing the ANPRM that does nothing in practice to expand the religious employer exemption and reiterates the accounting gimmick that religious non-profit employers must follow for contraceptives, sterilization, and drugs and devices that can kill an embryo. Religious employers’ health plans remain the legal mechanism by which the insurer will “automatically” provide these drugs, devices and services even if the employer objects to such coverage.

**June 28, 2013** HHS issues a [“final rule”](#) implementing the proposal from February, and it does nothing to expand protections for closely-held for-profit businesses. It also does nothing to expand the exemption for non-profit employers but postpones the one year “safe harbor” from August 1, 2013 to January 1, 2014 for non-profits who object to such coverage. Churches or their auxiliaries are still exempt from the HHS Mandate. While businesses such as Hobby Lobby receive a preliminary injunction against the HHS Mandate, and some universities like Geneva College also receive a preliminary injunction, many other closely held for-profit businesses and religious non-profits face steep fines for not wanting to go against their moral objections.

**November 26, 2013** The Supreme Court grants certiorari to *Burwell v. Hobby Lobby Stores* and *Conestoga Wood Specialties v. Burwell*, agreeing to hear these two for-profit business cases challenging the HHS Mandate’s requirement that healthcare plans must cover drugs which can destroy a human embryo, sterilization services and contraception in violation of their religious beliefs. Oral arguments are heard in March 2014 and the final ruling was delivered in June 2014.

**January 1, 2014** was the [Start Date for religious non-profit employers](#) which have religious objections to comply with the HHS Mandate.

**June 30, 2014** The Supreme Court rules in *Burwell v. Hobby Lobby Stores* and *Conestoga Wood Specialities v. Burwell*, two for-profit cases challenging the HHS Mandate on religious liberty grounds, in a 5-4 decision that the government could not force family businesses to violate their religious beliefs as a condition of earning a living, under threat of crippling fines of up to \$100 per day per employee. This ruling applies to all closely held for-profit corporations that such employers with sincere religious objections need not comply with the HHS Mandate because the

Mandate imposes a substantial burden on their religious beliefs. Even assuming the government has a compelling interest in providing free insurance coverage of the mandated drugs and devices (the Court did not decide this question), the HHS Mandate is not the least restrictive means of furthering this interest.

**August 27, 2014** The Administration issues an [“interim final rule”](#) addressing the so-called non-profit “accommodation.” Per the rule, non-profits that object for moral or religious reasons to the HHS Mandate can notify HHS of their objection in writing and then HHS will then notify the employer’s health insurance company or Third Party Administrator (TPA), who will then provide the health care plan recipients with the drugs and devices required by the HHS Mandate. Non-profits could notify HHS of their objection to the HHS Mandate, or can fill out the self-certification form, as specified by the July 28, 2013 final rule, to their insurance company. In whatever way the notification takes place, the end result is the same: the notification by the objecting party of its objection *triggers* HHS or the TPA to step in and alert the employer’s insurer which in turn will provide the same contraceptives, sterilization, and drugs and devices that can kill an embryo on *behalf* of the employer and *through* the employer’s health insurance company at the employer’s expense. The Administration also issues a similar proposed rule regarding for-profit organizations and solicits comments on how a so-called “accommodation” to the HHS Mandate could apply, as well as how to define a closely held for-profit corporation.

**July 10, 2015** The Administration [issues](#) a [“final rule”](#) for non-profits that object to the HHS Mandate for moral or religious reasons. The proposal made in the interim final rule for both non-profit and for-profit corporations in August 27, 2014 is accepted and finalized.

**November 6, 2015** The Supreme Court [grants certiorari](#) in seven cases involving multiple religious non-profits, universities, and others who have religious and moral objections to providing contraceptives, sterilization, and drugs and devices that can kill an embryo. *Zubik v. Burwell* was appealed from the U.S. Court of Appeals for the 3rd Circuit. Six other cases involving a number of challengers arising from multiple federal appeals courts are consolidated with *Zubik*: *Little Sisters of the Poor v. Burwell* (10th Circuit), *Priests for Life v. Burwell* (D.C. Circuit), *Geneva College v. Burwell* (3rd Circuit), *Southern Nazarene University v. Burwell* (10th Circuit), *East Texas Baptist University v. Burwell* (5th Circuit), and *Roman Catholic Archbishop of Washington v. Burwell* (D.C. Circuit).

**March 23, 2016** The Supreme Court will hear oral arguments in *Zubik v. Burwell*.

**June 2016** The Supreme Court will rule in *Zubik v. Burwell*. With the death of Justice Antonin Scalia, if the Supreme Court is split 4-4 in this case, the decisions of the federal appeals courts regarding these objections to the HHS Mandate will stand. In none of the seven cases consolidated in *Zubik* did the appeals courts uphold the rights of the religious non-profits not to be forced into providing contraceptives, sterilization, and drugs and devices that can kill an embryo. Only the 8th Circuit, in *Sharpe Holdings v. HHS*, ruled in favor of the religious claims. In addition to the circuits listed above, the 7th Circuit, in *Grace Schools v. Burwell*, ruled against the religious claims. The Supreme Court is also currently considering whether to grant certiorari in these two cases.

In none of these cases should the religious organizations, universities, and others be forced, under threat of heavy penalties, to provide drugs and devices that they find objectionable and that can take human life.

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