News



The Main Building of the University of Notre Dame at Notre Dame, Indiana (Wikimedia Commons/Matthew Rice)



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The University of Notre Dame in 2018 will cease providing third-party access to contraception for its employees and students, after the nation's most prominent Catholic campus had resisted for years a federal requirement to provide such coverage under the Affordable Care Act.

Emailed notices informed students, faculty and staff on Oct. 27 of the university's decision to end third-party insurance coverage of women's health products and procedures, which included contraceptives at no cost, that the university objected to based on Catholic teaching opposing the use of artificial means of birth control.

"The University of Notre Dame honors the moral teachings of the Catholic Church," the email to students began.

Employees and students utilizing the accommodation coverage will see it expire at the end of each current health plan year: Jan. 1, 2018, for employees, and Aug. 15, 2018, for students.

The university health plan will continue to allow enrollees to fill prescriptions for contraceptive medication, subject to a copayment, in cases where it is required by a physician for medical treatment unrelated to preventing pregnancy. In addition, employees can use flexible spending accounts to pay for any medications, which would include contraceptives.

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The move from Notre Dame comes after the Trump administration in early October released new interim rules expanding the religious employers exempt from a federal mandate under Affordable Care Act to provide free access to contraceptives through employer health plans.

"We welcome this reversal," said Notre Dame president Fr. John Jenkins in an Oct. 6 statement, the day the new rules were announced. Jenkins added he and the university "applaud [Attorney General Jeff Sessions'] statement that 'except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law.' "

So far, Notre Dame stands as the most visible institution to cut off cost-free contraceptive coverage for its employees and students since the expanded rules were announced.

How the move might impact other Catholic colleges and universities is not yet certain. Jesuit Fr. Thomas Reese, senior analyst for Religion News Service, said he didn't anticipate such a wave to follow suit, given the number of state laws requiring contraceptive coverage. According to the Guttmacher Institute, 28 states require health insurance plans regulated by the state to cover prescription contraceptives.

"That's going to stop a lot of Catholic colleges and hospitals from following Notre Dame's example," Reese told NCR.

Following Notre Dame's decision, three female students of the South Bend, Indiana, campus joined in suing the Trump administration over its expanded rules. The lawsuit was filed Oct. 31 by the National Women's Law Center and Americans United for Separation of Church and State. The Notre Dame students are joined by a woman employed at an unnamed Illinois university, and another working for an Indiana church that objects to providing birth control coverage.

"Blocking access to basic health care that 99 percent of women use at some point in their lives is unlawful, discriminatory and harmful," Fatima Goss Graves, president and CEO of the National Women's Law Center, said in a press release. "Everyone deserves birth control coverage, no matter where they work, how they are insured, or where they go to school."

**Related:** Contraception mandate: women's health or religious liberty issue?

A May Gallup poll found 9-in-10 U.S. adults viewing birth control as morally acceptable. According to a September 2016 Pew Research Center survey, two-thirds of Americans believe employers should be required to provide contraceptive access in employee health plans, regardless of the employer's religious beliefs — a position Catholics supported by a 2:1 ratio.

Among Catholics attending Mass weekly, that gap narrowed, though half still believed employers should provide contraceptive coverage, versus 44 percent recognizing a right to refuse. Just 16 percent of Catholics said they sympathized with the view that employers should be able to deny coverage, less than half the number sympathizing with those believing coverage should be required.

The contraception mandate was first proposed in August 2011 by the Department of Health and Human Services under the Affordable Care Act, and limited exemption to houses of worship that primarily served and hired people who adhered to their faith. That definition of a religious employer immediately drew criticism from people of faith as too narrow, leaving out not only Catholic institutions of higher education, but also religiously affiliated charities and hospitals.

Attempts by the Obama administration to accommodate religious institutions excluded from the rule's exemption — such as filing a form indicating their objection and then having insurers provide direct coverage — did not assuage concerns that ultimately turned to religious liberty lawsuits that made their way to the U.S. Supreme Court.

Among the most visible mandate opponents were the Little Sisters of the Poor, who Notre Dame in 2015 presented with its Evangelium Vitae Medal — a lifetime achievement award for efforts in the pro-life movement, including their legal fight over contraceptive coverage.

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Notre Dame filed its own lawsuit in May 2012 claiming the mandate infringed on its religious freedom. After a federal district court dismissed the case, the university refiled it in December 2013 ahead of the deadline for objecting institutions to comply with the mandate or else face fines.

In 2014, the 7th Circuit Court of Appeals found the mandate didn't violate Notre Dame's religious beliefs — a decision it upheld a year later after the Supreme Court ordered a review following its own ruling in the case *Burwell* v. *Hobby Lobby*.

"This lawsuit is about one of America's most cherished freedoms: the freedom to practice one's religion without government interference. It is not about whether people have a right to abortion-inducing drugs, sterilization, and contraception," the university said in its suit.

Those services, it added, will continue to be freely and widely available in the U.S. "But the right to such services does not authorize the Government to force [Notre Dame] to pay for, facilitate access to, and/or become entangled in the provision of products, services, practices, and speech that are contrary to its sincerely held

religious beliefs."

To abide by the mandate, Notre Dame said, would require it "to commit scandal" as understood in Catholic theology by leading others to engage in wrongdoing.

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