



State Efforts to Reject Contraceptive Coverage Laws on Religious Grounds

Jessica Arons and Elizabeth Rich July 30, 2012

Introduction

On August 1, 2012, a provision of President Barack Obama's health care law, the Affordable Care Act, will go into effect—one that guarantees coverage in new health plans of a range of preventive services for women, including contraception, with no co-pays or other cost-sharing. Because some religions object to contraception, the Obama administration created an exemption for houses of worship that do not want to provide contraceptive coverage to their employees. The administration also created an accommodation for religiously affiliated hospitals, universities, and charities that gives them a one-year waiver until August 1, 2013, and then requires the insurer to provide contraceptive coverage directly to the employees.

Despite all of these steps to ensure the religious beliefs of those opposed to contraception are protected under the law, some politicians claim that the provision violates religious liberty and have acted to block it. In the nation's capital the U.S. Senate in March rejected an amendment, introduced by Sen. Roy Blunt (R-MO), which would have allowed employers to deny to their employees coverage for contraception or any other health service to which they had a religious or moral objection. In the U.S. House of Representatives, an appropriations measure is pending that could defund efforts to enforce the contraceptive coverage regulation,¹ but Speaker of the House John Boehner (R-OH) has signaled that no independent legislation akin to the Blunt amendment would be taken up by the House of Representatives.²

Conservative efforts to undermine the Obamacare provision to guarantee no-cost contraception also have been happening at the state level. Nine states have considered legislation or ballot measures that would either reject the federal regulation or undermine contraceptive coverage in state law.³ This fact sheet provides an update on those state-level efforts. We detail the measures in these nine states below, but briefly here is a synopsis of recent developments:

- 4 states (Arizona, Georgia, Missouri, and New Hampshire) considered legislation amending state statutes that required insurance coverage for contraception, expanding employers' refusal rights.
- 3 states (Colorado, Idaho, and Michigan) considered symbolic measures that explicitly rejected the federal contraceptive coverage guarantee.
- Voters in one state (North Dakota) considered a ballot initiative that would have allowed people to break the law in the name of religious liberty, while an effort in another state (Colorado) to propose a similar ballot measure was withdrawn before it could face a vote.
- One state without its own contraceptive coverage law (Oklahoma) considered legislation that would have allowed employers and employees to opt out of coverage that includes contraception or abortion services.

Below we look in detail at what's happened in these nine states.

Arizona

The state legislature passed and Gov. Janice K. Brewer (R) signed into law in May a bill that permits a “religiously affiliated employer” to offer health plans that do not cover contraceptives based on the employer’s or beneficiary’s religious objections, changing existing Arizona statutes. In the bill, a religiously affiliated employer is defined as an organization whose incorporation documents make it clear that religious beliefs are central to its operating principles.

Under the new law an employee can “receive reimbursement for contraceptives prescribed for non-contraceptive medical purposes.”⁴ But the law removes protections for employees who independently obtain contraception prescriptions or insurance coverage from another source, leaving open the opportunity for religious employers to discriminate against employees who hold different views.⁵ The Arizona law is in direct conflict with the federal contraceptive coverage guarantee.

Colorado

Focus on the Family, a right-wing Christian advocacy group, had proposed a ballot measure banning government interference with an individual or organization’s religious freedom. The organization, however, withdrew the measure in May. The group had promoted a similar measure in 2010, which it also withdrew.⁶

The state Senate also rejected a symbolic measure in May urging Congress to pass the Blunt amendment.⁷

Georgia

The state Senate passed legislation in March exempting a religious employer from Georgia's contraceptive coverage law, which currently does not permit any employer to refrain from covering contraception.⁸ The bill was not taken up in the House, and the legislative session has adjourned for the year.

Idaho

Gov. C.L. "Butch" Otter (R) is considering a nonbinding resolution passed earlier this year by the state House and Senate urging Congress and President Obama to invalidate the federal contraceptive coverage guarantee.⁹

The Idaho House also introduced a bill to exempt insurance plans from contraceptive coverage under state law, but the bill never got out of committee.¹⁰

Michigan

In February, the state House adopted a symbolic resolution urging President Obama to reverse the federal regulation on contraceptive coverage and asking Congress to pass legislation to protect the right of conscience.¹¹ The state Senate has not introduced a companion bill.

Missouri

The state House and Senate passed legislation in May and March, respectively, expanding existing law allowing employees, insurers, or employers to be exempt from Missouri's contraceptive coverage law due to a religious objection.¹² On July 12 Gov. Jay Nixon (D) vetoed the legislation.¹³ But proponents of the measure may attempt to override his veto when the General Assembly reconvenes in September.

New Hampshire

While current statutes in New Hampshire do not permit any employer to opt out of covering contraception, a bill in the Senate attempted to amend the law by including language allowing religious employers to refuse to cover contraception if their objection is based on religious beliefs. These provisions were removed from the bill by the Senate in April.¹⁴

In May the House added a provision to an unrelated Senate bill exempting employers formed with religious intent and businesses partially or completely owned by a religious society from providing contraceptive coverage if they have religious objections to birth control.¹⁵ The provision was removed in conference committee in late May.¹⁶

North Dakota

Voters rejected a ballot initiative in June with nearly 65 percent of the vote that would have amended the state constitution to say that government “may not burden a person’s or religious organization’s religious liberty.”¹⁷ This was an expansive measure that would have allowed anyone to use religion as an excuse to discriminate or otherwise break a wide range of laws.

Oklahoma

The state does not have a contraceptive coverage law,¹⁸ but legislation before a conference committee included provisions allowing an employer or insurance plan enrollee to opt out of contraceptive or abortion coverage due to religious objections. The provisions were removed by the conference committee in May.¹⁹

Conclusion

Because most state legislative sessions have ended for the year, it is unlikely that further activity will arise at the state level in 2012. Yet current litigation in federal courts around the country may keep this issue on the front burner. Depending on the political makeup of the state legislatures next year, we may yet see more bills introduced to curb women’s access to affordable contraception in 2013.

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Endnotes

- 1 FY 2013 Labor, Health and Human Services, and Education Bill (Subcommittee Draft), 112th Cong., 2 sess., available at <http://appropriations.house.gov/uploadedfiles/bills-112hr-sc-ap-fy13-laborhhsed.pdf>.
- 2 Igor Volsky, "Republicans Give Up Effort To Block Obamacare's Birth Control Requirement," ThinkProgress, July 26, 2012, available at <http://thinkprogress.org/health/2012/07/26/591041/republicans-give-up-effort-to-block-obamacares-birth-control-requirement/>.
- 3 An additional 4 states (Florida, New Jersey, Pennsylvania, and West Virginia) introduced similar measures but did not act on them.
- 4 Guttmacher Institute, "Monthly State Update: Major Developments in 2012: Contraceptive Coverage" (2012), available at <http://www.guttmacher.org/statecenter/updates/index.html#coverage>.
- 5 HB2625, 50th legislature of Arizona, 2nd regular session, available at http://www.azleg.gov/legtext/50leg/2r/summary/h hb2625_03-01-12_houseengrossed.doc.htm (last accessed July 2012).
- 6 Electa Draper, "Focus will withdraw ballot measure on religious liberty this election," *Denver Post*, May 4, 2012, available at http://www.denverpost.com/breakingnews/ci_20551708/focus-will-withdraw-ballot-measure-religious-liberty-this.
- 7 National Partnership for Women and Families, "Colo. Senate Rejects Symbolic Measure Expressing Support for Blunt Amendment," Press release, May 2, 2012, available at http://www.nationalpartnership.org/site/News2?page=NewsArticle&id=33445&security=3161&news_iv_ctrl=3281.
- 8 Guttmacher Institute, "Monthly State Update: Major Developments in 2012: Contraceptive Coverage."
- 9 National Partnership for Women and Families, "Idaho House Approves Resolution Opposing Federal Contraceptive Coverage Rules," Press Release, March 27, 2012, available at http://www.nationalpartnership.org/site/News2?page=NewsArticle&id=32788&security=3161&news_iv_ctrl=3167.
- 10 "House Bill 530," available at <http://legislature.idaho.gov/legislation/2012/H0530.htm> (last accessed July 2012).
- 11 "House Resolution 0185," available at [http://www.legislature.mi.gov/\(S\(f5k3q1451doeym45c4mwnhyk\)\)/mileg.aspx?page=GetObject&objectname=2012-HR-0185](http://www.legislature.mi.gov/(S(f5k3q1451doeym45c4mwnhyk))/mileg.aspx?page=GetObject&objectname=2012-HR-0185) (last accessed July 2012).
- 12 Guttmacher Institute, "Monthly State Update: Major Developments in 2012: Contraceptive Coverage."
- 13 "Mo. Governor vetoes bill on contraception coverage," *Politico*, July 12, 2012, available at <http://www.politico.com/news/stories/0712/78447.html>.
- 14 Guttmacher Institute, "Monthly State Update: Major Developments in 2012: Contraceptive Coverage."
- 15 "N.H. House sends new birth control bill to Senate," Associated Press, May 15, 2012, available at <http://www.seacoastonline.com/apps/pbcs.dll/article?AID=/20120515/NEWS/120519838/-1/NEWSMAP>.
- 16 Garry Rayno, "Contraception exemption not part of state mandate," *Union Leader*, May 31, 2012, available at <http://www.unionleader.com/article/20120531/NEWS06/706019973>.
- 17 Nick Smith, "North Dakota voters reject Measure 3," *Bismarck Tribune*, June 12, 2012, available at http://bismarcktribune.com/news/state-and-regional/north-dakota-voters-reject-measure/article_67d5392c-b4f7-11e1-a18c-0019bb2963f4.html.
- 18 Guttmacher Institute, "Laws Affecting Reproductive Health and Rights: Trends in the First Quarter of 2012" (2012), available at <http://www.guttmacher.org/statecenter/updates/2012/statetrends12012.html>.
- 19 Guttmacher Institute, "Monthly State Update: Major Developments in 2012: Contraceptive Coverage."