

Notre Dame's Student Health Plan Will Cover Contraceptives, Abortifacients

by Joan Frawley Desmond

SOUTH BEND, Ind. — The University of Notre Dame has approved a student health-insurance plan that will result in the provision to students of contraceptives, abortion-inducing drugs and other preventive services covered under the U.S. Department of Health and Human Services' mandate. The university's decision to provide the group health plan for students comes as Notre Dame pursues its legal challenge to the HHS mandate. Critics thus expressed concern that the move could undermine the university's legal case, especially when other options were available for circumventing compliance requirements for the mandate.

"The university need not provide student health insurance at all," said Gerard Bradley, a constitutional scholar at Notre Dame's law school, who outlined the options available to university administrators. Bradley noted that only group health plans must comply with the mandate. Consequently, the university also had another option: It could have opted to self-insure the plan for students and avoid coverage of services that violate Catholic teaching. "Notre Dame could self-insure the students — as they do the faculty and staff — and if they self-insure, they would be free to exclude the contraceptive coverage," said Bradley.

The Notre Dame law professor was equally concerned about the legal implications of the university's voluntary decision to provide services it had strongly opposed in legal papers filed with a U.S. district court. "In its pending lawsuit about the employee and staff health plan, Notre Dame has said that its Catholic faith forbids it to arrange or facilitate coverage for contraception and abortion," Bradley said. "Yet when it comes to student health coverage, the university has chosen to facilitate and arrange coverage for contraception and abortion. The court hearing Notre Dame's lawsuit will surely notice this inconsistency."

Notre Dame: No Comment

Thus far, Notre Dame has not publicly commented on the latest controversy linked to its high-profile legal challenge to the mandate. "We have nothing to add to our previous comments while this matter is in litigation," Dennis Brown, a Notre Dame spokesman, stated in an email message to the Register. The Sycamore Trust, an alumni group that has worked to strengthen the Catholic identity of the nation's leading Catholic institution of higher education, broke the news about the student health plan. "Notre Dame is complying with the contraceptive mandate in renewing its student health-insurance program for 2014-15. Aetna, the insurer, will now provide students with free abortifacients and contraceptives," Sycamore Trust's newsletter reported. "Moreover, the university will itself enroll all otherwise uninsured graduate and foreign students in the plan."

William Dempsey, a Notre Dame alumnus and retired lawyer who leads the alumni group, told the Register that he has been concerned about the university's confusing response to the free-exercise issues posed by the federal law and has waited to see how it would handle a student health plan. In 2012, Notre Dame gained national attention when it was among the first religious nonprofits to challenge the mandate. But the original lawsuit was dismissed as premature, and then the university delayed filing papers to seek emergency relief until a month before a January 2014 deadline. In its Dec. 3, 2013, complaint filed with the district court, Notre Dame outlined its moral objections to the requirement that it comply with the mandate. "[T]he mandate would require Notre Dame to commit scandal, which ... is particularly grave when associated with those 'who by nature or office are obliged to teach and educate others,' *Catechism of the Catholic Church*, 2285," read one portion of the complaint.

Employee Contraceptive Coverage

However, both a U.S. district court and the 7th Circuit Court of Appeals in Chicago refused to grant injunctive relief. On Jan. 2, the university signaled that it would comply with the federal law. Faculty and staff were informed that a third-party administrator would notify them about access to "free" contraception and other mandated provisions. "Having been denied a stay, Notre Dame is advising employees that, pursuant to the Affordable Care Act, our third-party administrator is required to notify plan participants of coverage provided under its contraceptives payment program," said Paul Browne, who was then Notre Dame's vice president for public affairs and communications, in a Jan. 2 statement that was reported by WNDU radio. "As part of an ongoing legal action, however, the program may

be terminated once the university's lawsuit on religious-liberty grounds against the HHS mandate has worked its way through the courts."

But legal experts and alumni who backed Notre Dame's lawsuit were disappointed with the outcome and questioned whether the university had done enough to secure a reprieve. Dempsey contended that Notre Dame's 11th-hour petition prompted the judge to question the university's sincerity. That skepticism, said Dempsey, will be reinforced in the wake of the latest news regarding the student health plan. "Notre Dame has declared in court that to do what it is doing now would be scandalous. And it is doing this voluntarily," Dempsey emphasized, echoing concerns raised in the alumni newsletter.

Holy Cross Father Bill Miscamble, a professor of history at Notre Dame, echoed Dempsey's concerns about the optics and the substance of the university's decision to approve the group health plan for students. "The university's decision ... seems designed to clarify that it doesn't care about Church teaching or the position of the bishops on the mandate," Father Miscamble told the Register. "It completely reverses its previously stated position — made in a court of law — that to provide contraceptives and abortifacients to students and employees would violate its own sincerely held religious beliefs. One wonders what exactly has happened to those beliefs." Further, the history professor has not seen any formal statement explaining the decision to approve the group health plan for students, and he questioned the lack of transparency regarding a crucial moral and legal matter that goes to the heart of the Notre Dame's mission as a Catholic university.

Call for Accountability

Critics of the university's puzzling health-care decision acknowledge that elite institutions like Notre Dame are under mounting pressure to accommodate secular beliefs and practices. For example, a July 2014 MSNBC news story featured two Notre Dame graduate students who attacked the student health plan for failing to cover birth control, including costs related to the insertion of an intrauterine device. MSNBC reported that "the fight over birth control has disillusioned them, and they've begun warning prospective students about the lack of contraceptive coverage." But Father Miscamble emphasized the need for Notre Dame to maintain its high academic standards while defending its founding principles. And he concluded that university officials responsible for the decision should be held accountable. "This unnecessary and disgraceful decision on student health insurance damages Notre Dame's standing as a Catholic university," he said. "Those responsible for it should apologize and then step down from their positions in order for credibility to be regained."

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