



# Biden Withdraws Proposed Contraceptive Rule Rescinding Employers' Conscience Protections

The Biden administration has quietly scrapped a proposed rule that would have forced employers to include contraceptive coverage in their employee health plans even if they had moral objections to doing so.

The Departments of Health and Human Services (HHS), Labor, and the Treasury published a [notice](#) in the *Federal Register* Monday stating that they “have determined it appropriate to withdraw the proposed rules at this time to focus their time and resources on matters other than finalizing these rules.”

They also said they wanted to consider the proposal further “in light of the volume and breadth of scope of the comments received.” According to the notice, the departments collectively received 44,825 comments “from a range of interested parties, including employers, health insurance issuers, State Exchanges, State regulators, unions, and individuals.”



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## Regulation's Alterations

Under the Affordable Care Act (ACA), aka ObamaCare, employer-sponsored health plans are required to cover birth control at no additional cost to their employees.

Facing opposition from religious employers who objected to contraception, the Obama administration sought to provide them with some relief from the mandate. But given that administration's hostility toward religion, especially Christianity, it made the exceptions as narrow as possible, only allowing nonprofits to escape.

In 2014, the Supreme Court [ruled](#) in *Burwell v. Hobby Lobby* that “closely held for profit corporations” were also exempt from the mandate.

Four years later, then-President Donald Trump's administration [expanded](#) the exemption to include any employer with objections to the mandate, whether those objections were religious or not. “While those regulations included a mechanism for people to receive contraceptive coverage,” wrote [Politico](#), “the objecting employer, college or university had to opt into the accommodation.”

The Supreme Court [upheld the Trump administration's regulations](#) in 2020.

Then, in January 2023, the Biden administration proposed its now-rescinded rules that would have



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rolled back the exemption for employers with non-religious objections. According to *Politico*:

The rules would have also created a workaround for employees of religious organizations that refuse to provide birth control coverage to still access it for free. It proposed that people who can't access contraception through their employer could obtain it — at no charge — directly from a health care provider.

The administration estimated that the rules would affect over 100 employers and nearly 130,000 employees.

In a [press release](#) announcing the proposed regulations, HHS Secretary Xavier Becerra said:

Now more than ever, access to and coverage of birth control is critical as the Biden-Harris Administration works to help ensure women everywhere can get the contraception they need, when they need it, and—thanks to the ACA—with no out-of-pocket cost. Today's proposed rule ... says to women across the country, we have your back.

### **Regulation Cancellation**

The Biden administration's decision to rescind its proposed rule means the Trump administration's rules remain in effect. Employers may opt out of providing contraceptive coverage for any moral or religious reason.

This is, of course, as it should be. The Supreme Court's [tortuous 2012 decision](#) notwithstanding, the federal government is not empowered by the Constitution to mandate any private health-insurance coverage — and it is certainly not authorized to override individuals' religious or moral convictions.

In fact, employers should be at liberty to offer comprehensive contraceptive coverage, no coverage at all, or anything in-between — for any reason, moral or otherwise. Using force (i.e., violence or the threat thereof) to obtain one's desired ends, as ObamaCare does, has no place in a supposedly free society.

In truth, even if the Biden administration had not withdrawn the rule, it would almost certainly have been canned by the incoming Trump administration. However, by withdrawing it, President Joe Biden has prevented Trump from rewriting it and then quickly getting it on the books without having to go through the full approval process. Since that is why Biden is [scrapping various other proposed rules](#), it would not be surprising if the contraceptive mandate were pulled for the same reason.

### **Regulation Celebration**

The Becket Fund for Religious Liberty celebrated the death of Biden's contraceptive regulations. Becket has represented the Little Sisters of the Poor, an order of nuns that cares for the indigent elderly, in its lawsuits against the ACA's contraceptive mandate.

"Christmas came a little early this year," [Becket exulted on X](#) Tuesday. "This afternoon ... one threat to the Sisters suddenly disappeared."

The organization [continued](#):

In 2011, the federal government told this group of nuns to park their convictions at the entrance of the public square or be on the hook for millions of dollars in fines. For the



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Sisters, that wasn't much of a choice, so they fought back in court. With the help of Becket, they defeated the federal government at [the Supreme Court], not once, but twice and are still in court defending their ministry against a group of states led by California and Pennsylvania.

Those states' leaders, having no use for either the Constitution or religion, are actually [suing](#) to take away the religious exemption the Trump administration's rule granted the Sisters despite the Supreme Court's approval of it.

Those lawsuits were put on hold while the Biden administration's proposed rule was in progress. Now that the rule has been rescinded, they can proceed. Becket [hopes](#) that this will lead to "a final victory for nuns whose sole mission is to care for the elderly dying until God calls them home."

And, it [quipped](#), "One final thought: suing nuns is never a good idea."



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