

ACNM Update on Recent Supreme Court Decision Impacting Coverage of Contraception

ACNM Positions

ACNM's [Position Statement](#) on Reproductive Health Choices affirms that "Every woman has the right to make reproductive health choices that meet her individual needs," and "supports each person's right to self-determination." At the same time, this Position Statement acknowledges "the wide range of cultural, religious and ethnic diversity of CNMs/CMs and their clients allowing for a variety of personal and professional choices related to reproductive health care."

In a separate [Position Statement](#) on Health Care for All Women and Families, ACNM holds that "health plans must provide comprehensive health care benefits for all women and families."

ACNM Participation in *Burwell v. Hobby Lobby*

Based on these Position Statements, ACNM joined several other organizations, including the Physicians for Reproductive Health, the American College of Obstetricians and Gynecologists, and the National Association of Nurse Practitioners in Women's Health in filing an [amicus brief](#), dated October 21, 2013, with the Supreme Court in the *Burwell v. Hobby Lobby* case. The brief discussed the scientific evidence surrounding the medications and contraceptive devices in this case.

Supreme Court Decision

In its [decision](#), the Supreme Court recently held that for-profit companies do not have to offer coverage through their employee health plan for forms of contraception to which they object on religious grounds.

Legislative Response to Court Decision

In response to the Supreme Court decision, Senators Patty Murray (D-WA) and Mark Udall (D-CO) introduced S. 2578, the Protect Women's Health from Corporate Interference Act. Companion legislation, H.R. 5051, was introduced in the House by Rep. Louise Slaughter (D-NY). S. 2578 currently has 46 cosponsors, 45 of whom are Democrats and one of whom is an Independent. The bill was debated by the Senate, but the votes were not present to cut off debate and vote on passage of the bill. In the House, H.R. 5051 currently has 156 cosponsors, all of whom are Democrats. Given Republican control of the House and objection to this bill, it is unlikely to be brought to a vote.

Potential for an Administrative Resolution

While Congress may not pass this legislation, there is an Obama Administration resolution available. In a [regulation](#) issued in 2013, the Administration addressed the

question of coverage for contraception under plans offered by religious employers, such as churches or religious orders. Under this regulation, specified types of employers may refuse to include contraception in the benefit package offered to their employees. To ensure that women affected by this exception have access to all FDA-approved contraception, the regulation requires the insurer to separately provide for coverage of these items and services, without charging the employer and without cost sharing or premiums to the employees.

The Administration will likely expand the reach of this regulation to include for-profit companies that have been exempted by the Court from the mandate to cover contraception. In its opinion, the Court itself pointed to this regulatory solution, stating, “HHS itself has demonstrated that it has at its disposal an approach that is less restrictive than requiring employers to fund contraceptive methods that violate their religious beliefs.” During a press conference held the day the decision was issued, White House spokesman Joshua Earnest said, “We’ll consider whether or not there’s an opportunity for the president to take some other action that could mitigate this problem as well.”

Should the Administration choose to address this issue through regulation, it will begin that process with a proposed regulation that will provide for public comment. ACNM staff members monitor the *Federal Register* on a daily basis and will identify any such proposal when it occurs. We will update our members on both the content of the regulation and the opportunity for them to submit comments, should they desire. We also anticipate that ACNM will submit comments on its own behalf.

We believe regulations modeled on those that have already been issued can successfully provide a mechanism through which women can access the full range of FDA-approved contraceptive items and services, while simultaneously preserving the constitutional right to the free exercise of religion.

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