

ACA Contraceptive Requirement Exemptions Finalized

The Trump administration has issued final rules protecting and expanding religious as well as moral conviction exemptions to the Affordable Care Act (“ACA”) requirement for non-grandfathered group health plans to provide no-cost contraceptive coverage. The rules become effective January 14, 2019.

Background

Under the ACA, non-grandfathered group health plans and insurers are required to provide certain preventive services with no cost sharing to the member. Earlier ACA rules identified certain women’s health services and screenings as preventive, which included coverage for contraceptive methods, sterilization, education and counseling. Contraceptive coverage exemptions were initially granted to religious employers (i.e. churches and houses of worship) although an accommodation process was later established to allow other types of non-profit religious organizations to arrange for contraceptive coverage for employees through an insurer or third-party administrator who would be responsible to cover the costs.

Numerous legal challenges and court cases to the mandate have been raised. For example, in *Burwell v. Hobby Lobby*, the Supreme Court ruled that an exemption from the contraceptive requirement for certain closely held companies with religious objections to the provision is protected under federal religious freedom law.

The Trump administration in October 2017 issued interim final rules expanding the allowable contraceptive coverage exemptions to a wider array of businesses and introduced exemptions for those who morally object to the inclusion of contraceptive coverage in their group health plan. In addition, the interim final rules also included provisions for *individual plan participants* with religious or moral objections to contraceptive coverage to gain access to group health plan coverage excluding contraception, only if the employer and insurer are willing to make the option available.

The Final Rules – Religious and Moral Exemptions

On November 7, 2018, after reviewing over 100,000 public comments, the Departments of Health & Human Services, Labor and Treasury (the “Departments”) released two separate (but similar) final rules on objections to contraceptive coverage. The following are highlights from the final rules for both religious and moral exemptions:

- Allows certain organizations to claim religious or moral conviction exemptions from the provision requiring group health plans to cover contraceptive services with no member cost sharing. Insurers may rely on a good faith representation by an objecting organization that they do in fact, qualify for a religious or moral exemption.
- Affirms that objecting organizations and insurers will not be subject to noncompliance penalties under the ACA.
- Maintains an optional (not mandatory) accommodation standard for those organizations claiming exemption who wish to provide a mechanism for employees to gain access to no-cost contraceptive coverage.
- Creates the ability for individual employees with religious or moral objections to access group health coverage from the employer without contraceptive coverage however; this can only be made possible if the employer and insurer (where applicable) are willing to offer an alternative benefit plan option without covering contraceptives. If an employee objects to having the plan cover only certain contraceptives (i.e. those considered abortifacients), the employer has the option to omit some or all contraceptive categories and is not bound to the specific objections raised by the employee. An otherwise non-exempt employer must still offer comprehensive contraceptive coverage to all other employees or be subject to noncompliance penalties.
- Reminds employers of ERISA obligations including updating plan documents and SPDs for the coverage exclusion and timely notifying plan participants of any reduction in covered services.
- Affirms that the final federal rules *do not preempt state insurance laws* requiring contraceptive coverage.

Organizations Eligible for Exemption

The table describes the organizations able to claim a religious or moral objection to provide contraceptive coverage under their group health plan.

Exemptions for Organizations Claiming Religious Objections	Exemptions for Organizations Claiming Moral Objections
Churches, integrated auxiliaries, religious orders	n/a
Non-profit organizations	Non-profit organizations
For-profit entities that are not publicly traded	For-profit entities that are not publicly traded
For profit entities that are publicly traded	n/a
Non-governmental employers	n/a
Non-governmental institutions of higher education arranging student health plans	Non-governmental institutions of higher education arranging student health plans
Non-employer entities that sponsor health plans such as unions and association health plans	Non-employer entities that sponsor health plans such as unions and association health plans
Issuers to the extent they provide coverage to a plan sponsor or individual that is also exempt	Issuers to the extent they provide coverage to a plan sponsor or individual that is also exempt

Final Thoughts

The ACA statute does not explicitly require the inclusion of contraceptive coverage as a no-cost ACA preventive service. Congress granted the ability to determine applicable women’s preventive care services to the Health Resources and Services Administration (an HHS agency) which ultimately established the contraception standard for health plans. This ACA provision has been controversial since it was first introduced in 2011. Numerous challenges and court cases have ensued, not only from those objecting on religious or moral grounds to the requirement, but also from proponents of the coverage as a necessary preventive service to help ensure women’s health. With the issuance of these final rules expanding religious and moral exemptions to the contraceptive mandate, we fully expect the rules to continue to be challenged in the courts. Plan sponsors who wish to consider the religious or moral objection exemption should pay close attention to the legal community for ongoing guidance and status of the final rules.

ADDITIONAL INFORMATION

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