

# REFORM *Update*

Issue Forty

March 2012

March 28, 2012

Health care reform required non-grandfathered plans to provide 100 percent coverage for specific preventive care services. The initial effective date for this expanded coverage was the first day of the first plan year beginning on or after September 23, 2010. The effective date could be delayed for grandfathered plans.

Last summer, the Department of Health and Human Services (DHHS) expanded the list of preventive services health plans must cover without cost-sharing. The expanded list focused on well-woman services. The expanded covered preventive services will include:

- Well-woman visits
- Screenings for gestational diabetes
- Human papillomavirus (HPV) DNA testing for woman aged 30 or older
- Sexually-transmitted infection counseling and human immunodeficiency virus (HIV) screening and counseling
- FDA-approved contraceptive methods and contraceptive counseling
- Breastfeeding support, supplies and counseling
- Domestic violence screening and counseling

This expanded coverage applies to health plans as of the first day of the first plan year beginning on or after August 1, 2012. The effective date can be delayed for grandfathered plans. For more information refer to our *Reform Update* at [http://www.mcwent.com/Reform\\_Update/2011/Reform\\_Update\\_30.pdf](http://www.mcwent.com/Reform_Update/2011/Reform_Update_30.pdf).

This initial guidance included a very narrow exception to the requirement to cover FDA-approved contraceptive methods and counseling. The exception applied to religious employers, defined as an organization meeting the following criteria:

- The purpose of the organization is to inculcate religious values.
- The organization primarily employs people who share the religious tenets of the organization.
- The organization primarily serves people who share the religious tenets of the organization.
- The organization is a non-profit organization as described in Section 6033(a)(1) and Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

This exception generally applies to churches and church associations. It does not apply to organizations with religious affiliations.

The government requested and received a number of comments. The comments generally centered on the requirement to cover contraceptives. Some expressed support, but others expressed very strong concerns, particularly religious organizations. They indicated that mandated coverage for contraceptives would violate their core religious beliefs.

Religious organizations have loudly and publicly protested the requirement to cover contraceptives. They believe the exception for religious organizations is too narrowly defined and needs to be expanded. The intense media attention has prompted additional guidance on the issue. However, the additional guidance is somewhat confusing, so it is very important to review the following key points:

- The exception for religious organizations remains in all subsequent guidance. It is very clear that non-profit churches and associations of churches will not be required to cover FDA-approved contraceptive methods.
- The new guidance defers to the Health Resources and Services Administration (HRSA) to revise its recommendations. The HRSA was charged with developing the initial recommendations for well-woman services. The DHHS has requested the HRSA take into account religious beliefs and reconsider its recommendations.

While HRSA considers revising its recommendations, DHHS has established a one-year transition period for certain organizations, thus delaying the effective date for this requirement for one year. To qualify for the transition period, an eligible organization:

- Must be a non-profit employer who, based on religious beliefs, does not currently cover contraceptives in the health plan.
- Must certify that it qualifies for the delay. This restriction implies that there will be a certification process. Although this requirement is included in the information from DHHS, it is not included in the actual guidance issued. Thus, additional guidance should clarify this discrepancy.
- Must notify employees that it does not cover contraceptives and direct employees to places where contraceptives services are available, such as community health centers, public clinics and hospitals with income-based support.

During the transition period, DHHS and HRSA will work on revising the approach to the contraceptive coverage requirement. The federal approach is likely to be modeled on Hawaii's state mandate, which requires insured plans to cover birth control. Religious employers in Hawaii are not required to cover it under their plans, but their employees can seek coverage directly from the insurance carrier.

The White House has proposed the following potential approach:

- Religious organizations will not have to cover contraceptives or refer their employees to organizations that cover contraceptives.
- Religious employers will not have to subsidize the cost of contraceptive coverage.
- The employer's insurance company will cover contraceptives directly. Religious employers will play no role in this coverage, so as not to violate their religious beliefs.
- Insurance companies will cover contraceptives at no extra charge.

The government recognizes that this proposal may not apply in all situations:

- Non-profit religious employers may self-fund their medical plans. How will the HRSA recommendations accommodate their religious beliefs? Will they be allowed to exclude contraceptive coverage?
- Voluntary sterilization is considered an FDA-approved contraceptive method. The discussion to-date seems to center solely on oral contraceptives. How will other FDA-contraceptive methods be handled?

The White House notes that insured plans save money when they cover contraceptives. While some studies seem to support that conclusion, contraceptive coverage itself is an expense. How will carriers pay for this expense without collecting premiums from religious employers? Where will the money come from?

The government wants to strike a fair balance. It acknowledges that using contraceptives violates the tenets of various religions. But it also recognizes that the employees of religious organizations may not share those beliefs.

Currently 28 states require that fully insured plans cover contraceptive services. The federal government will also look to these states to review their approaches to religious organizations.

The media will continue to argue this issue, especially during an election year. Employers need to keep an eye on their obligations regarding this requirement. These obligations will vary, depending on employer status.

### ***Non-Religious Employers***

Determine your effective date:

- Non-grandfathered plans have an effective date of the first day of the first plan year beginning on or after August 1, 2012.
- For grandfathered plans, the effective date is the later of:
  - ▶ The date grandfathered status is lost.
  - ▶ The first day of the first plan year beginning on or after August 1, 2012.

Contact your insurer or vendor for recommendations on meeting the coverage requirements. Amend your plan to reflect the expanded coverage for well-woman services.

### ***Religious Non-Profit Employers***

If your organization meets the criteria detailed below, your plan will not need to cover contraceptives:

- The purpose of your organization is to inculcate religious values.
- Your organization primarily employs people who share the religious tenets of your organization.
- Your organization primarily serves people who share the religious tenets of your organization.
- Your organization is a non-profit organization as described in Section 6033(a)(1) and Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

The exception applies only to contraceptives; you will still need to cover the other expanded well-woman services. Make sure your insurance carrier understands that your organization is eligible for the contraceptive exemption.

### ***Religious Affiliated Non-Profit Employers***

If your organization is a non-profit employer who, based on religious beliefs, does not currently cover contraceptives, you have options:

- Your organization could choose to cover contraceptives. If this is your approach, your effective date will be the same as a non-religious employer.
- Your organization can apply for a delay. Look for the details on applying for the one-year delayed effective date. If the delay is approved, you need to notify your employees that your plan will not cover contraceptives and direct them to other resources that may provide help with birth control. It is likely that the government will provide model wording for this notice.

The controversy will continue, and the situation may change. For example, the Republicans plan to propose a bill allowing for a religious exemption for contraceptive coverage. But for now, as an employer, you will need to comply with the latest guidance.

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