

# REFORM *Update*

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The Center for Consumer Information and Insurance Oversight (CCIIO) and the Centers for Medicare and Medicaid Services (CMS) recently released additional guidance on the delayed effective date for certain non-profit religious organizations to cover contraceptive services.

As of the first day of the first plan year beginning on or after August 1, 2012, *non-grandfathered* health plans are required to expand coverage for specified well-woman services. These services include contraceptive services, to be covered with no member cost-sharing. This expansion was discussed in detail in our *Reform Update* at [http://www.mcgrawwentworth.com/Reform\\_Update/2011/Reform\\_Update\\_30.pdf](http://www.mcgrawwentworth.com/Reform_Update/2011/Reform_Update_30.pdf).

Initially, “religious employers” were explicitly excluded from the mandate to provide coverage for contraceptive services. A religious employer was narrowly defined, and must satisfy all of the following criteria:

- The inculcation of religious values is the purpose of the organization.
- The organization primarily employs persons who share the religious tenets of the organization.
- The organization primarily serves persons 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.

Religiously affiliated organizations reacted strongly to the limited exception for religious employers. This issue received intense media attention at the beginning of the year. In response to the concerns voiced by religiously affiliated organizations, the government established a temporary enforcement safe harbor. The enforcement safe harbor applies only to organizations that meet certain requirements. These organizations are granted a one-year delay of the effective date for required contraceptive services coverage. Guidance for this safe harbor was discussed in our *Reform Update* at [http://www.mcgrawwentworth.com/Reform\\_Update/2012/Reform\\_Update\\_40.pdf](http://www.mcgrawwentworth.com/Reform_Update/2012/Reform_Update_40.pdf).

The exclusion for religious employers remains. The safe harbor will apply to all religiously affiliated organizations and their health plans that meet the following requirements:

1. The organization is organized and operates as a non-profit entity.
2. From February 10, 2012 onward, the group health plan established or maintained by the organization has not provided contraceptive coverage at any point, consistent with any applicable state law, because of the religious beliefs of the organization.

3. The group health plan established or maintained by the organization (or the insurer or third party administrator) must provide notification to members that states that the plan will not be providing contraceptive coverage as of the first plan year beginning on or after August 1, 2012.
4. The organization must “self-certify” that it satisfies the three conditions listed above.

This latest guidance offers additional details on how organizations can apply for the safe harbor’s delayed effective date for contraceptive coverage. The notification requirement was addressed and sample language provided. It is quite brief:

**NOTICE TO PLAN PARTICIPANTS**

*The organization that sponsors your group health plan has certified that it qualifies for a temporary enforcement safe harbor with respect to the federal requirement to cover contraceptive services without cost-sharing. During this one-year period, coverage under your group health plan will not include coverage of [some] contraceptive services.*

Organizations can only modify the last sentence of the notice. Some plans exclude coverage for all contraceptives services. If this is the case, the [some] can be deleted. Other plans may offer limited coverage for specified contraceptive services. If this is the case, the plan can specify that the health plan will not cover some contraceptive services.

This notice must be included in any application materials distributed in connection with enrollment or re-enrollment in the plan. It applies to coverage that will be effective beginning on or after the first day of the first plan year occurring on or after August 1, 2012. This is slightly confusing. It simply ties the notification timing to when the requirement to cover contraceptive services would have applied to the plan without the delayed effective date. The notification will clearly let participants know that the plan will not cover contraceptive services for the first year.

The group health plan is required to provide the notice. The health plan can ask another entity, such as the health insurance carrier or third party administrator, to distribute it.

The latest guidance also addresses the certification requirement. A plan needs to complete the certification on the next page. It simply verifies that the organization meets the requirements to be eligible for the temporary enforcement safe harbor. The certification must be completed by the first day for which the safe harbor applies. It does not need to be submitted to anyone, but must be available for examination upon request.

The guidance also includes contact information if you have any questions. Questions may be directed to CMS at 410-786-1565 or at [phig@cms.hhs.gov](mailto:phig@cms.hhs.gov).



DEPARTMENT OF HEALTH & HUMAN SERVICES

Washington, DC 20201

**CERTIFICATION**

This form is to be used to certify that the group health plan established or maintained by the organization listed below qualifies for the temporary enforcement safe harbor, as described in HHS bulletin entitled “Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code,” pertaining to coverage of FDA-approved contraceptive services for women without cost sharing.

Please fill out this form completely.

	Name of the organization sponsoring the plan
	Name of the individual who is authorized to make, and makes, this certification on behalf of the organization
	Mailing and email addresses and phone number for the individual listed above

*(Check the applicable box)*

- I certify that the organization is organized and operated as a non-profit entity; and that, at any point from February 10, 2012 onward, the plan has consistently not provided all or the same subset of the contraceptive coverage otherwise required, consistent with any applicable State law, because of the religious beliefs of the organization.
- I certify that the organization (or its plan or its issuer) took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action, and that, but for that coverage, I could make the certification above.

*I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.*

\_\_\_\_\_  
Signature of the individual listed above

\_\_\_\_\_  
Date

Failure to provide the requisite notice to plan participants renders a group health plan ineligible for the temporary enforcement safe harbor.

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