

REFORM *Update*

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A number of Federal Agencies and Departments recently released guidance on the expanded preventive care coverage for well-woman services. The guidance discusses coverage of FDA-approved contraceptive methods and how that coverage requirement applies to religious-affiliated organizations.

Background

One of the first requirements of health care reform was to provide 100% coverage for specific preventive care services. The original effective date for this preventive 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.

In 2011, the Department of Health and Human Services (DHHS) amended the specific preventive care services to include certain well-woman services. The amendment expanded services that had to be covered without member cost-sharing. The expanded services included:

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

This expansion applied 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.

FDA-approved contraceptive methods include all contraceptive methods, sterilization procedures and patient education and counseling. These services are collectively referred to as “contraceptive services.” These required covered services are specifically for women. This means a health plan would not have to cover male sterilization without cost-sharing.

The expansion initially allowed only certain churches to exclude coverage for FDA-approved contraception services. Religious-affiliated organizations protested this requirement, feeling the exception was too narrow. These organizations are opposed to providing contraceptive coverage because it conflicts with their religious beliefs. Even some private, non-religious organizations are opposed because it conflicts with their owners' beliefs. A number of organizations filed lawsuits protesting this requirement. Eventually, the Supreme Court will hear the case.

Because of these concerns, the Obama administration delayed the effective date for one year for specific non-profit religious-affiliated organizations. The delay gave the administration time to work out an alternative. This alternative would not require religious-affiliated organizations to cover approved contraceptive methods, but would still allow plan participants to receive contraceptive services at no cost.

This latest guidance proposes amendments to the requirement to cover FDA-approved contraceptives. The details are not yet final. The administration has asked stakeholders for feedback.

Exempt Religious Organizations

Initially, specific religious organizations were not required to cover contraceptives. The exception applied only to religious employers, defined as an organization meeting the following criteria:

- The purpose of the organization is to instill religious values
- The organization primarily employs people who share its religious tenets
- The organization primarily serves people who share its religious tenets
- It 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

An exception still applies to specific religious organizations, but a religious organization is now more broadly defined as “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 initial three criteria have been removed, because it would be difficult to assess whether the organization was meeting them. In fact, it could even be perceived as religious discrimination.

This exemption will generally apply to churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of any religious order. The exemption applies only to FDA-approved contraceptive methods and counseling, and not to other preventive services.

Accommodations for Religious-Affiliated Organizations

The government has proposed the following accommodations for eligible religious-affiliated organizations:

1. Eligible organizations will not be required to communicate, fund or provide benefits for FDA-approved contraceptives.
2. Employees of these eligible organizations will receive contraceptive coverage at no cost through individual insurance policies.

An eligible organization is one that:

1. Opposes coverage for some or all of the mandated contraceptive services ***on account of religious objections***
2. Is organized and operates as a non-profit entity
3. Presents itself as a religious organization
4. Self-certifies that it meets these criteria and specifies the contraceptive services to which it objects.

The eligible organization will need to state, on a self-certification form, the specific contraceptive services that it will not cover. The form does not have to be submitted to the government. The organization, however, will be required to have that form available upon request. The Departments will issue a new self-certification form.

An eligible organization will not have to contract, arrange, pay or refer for any contraceptive coverage to which it objects on religious grounds.

If the group health plan is insured, the eligible religious-affiliated organization gives the insurance carrier the self-certification form. The carrier will then offer contraceptive-only individual policies to plan participants. Employees will receive contraceptive coverage through these separate, limited-benefit policies that will cover only FDA-approved contraceptive services. These policies will not require cost sharing, nor will they charge a premium. The insurance carrier is independent of the eligible organization and is solely responsible for covering contraceptive services. Insurers will automatically enroll plan participants and their beneficiaries in these plans. Coverage becomes effective on the first day of the first plan year on or after August 1, 2013.

Actuaries, economists and insurance carriers estimate that this coverage will be cost-neutral. The carrier will be insuring the same women under both the group health plan and the individual contraceptive-only policies. Because this coverage may improve women's overall health and decrease unwanted pregnancies, the carrier may even have lower costs.

The new guidance proposes several possible options for self-funded group health plans. In one approach, the eligible religious-affiliated organizations would provide the self-certification to their third party administrators (TPAs). The TPAs would then work with insurance carriers to offer participants individual contraceptive-only policies. The TPAs would have a financial incentive to arrange this coverage because insurance carriers will reimburse TPAs for the administrative costs incurred. The costs for the insurance carriers will be covered by an offset to user fees that carriers will have to pay to participate in the state's Exchange. The Department of Health and Human Services will inform TPAs of the various insurers who offer separate contraceptive-only policies.

In another approach the eligible organization would not have to cover contraceptive services if the TPA automatically arranges with an insurance carrier to assume responsibility to provide individual contraceptive only policies. The same funding arrangements would apply as in the previous option.

In the final option, if an eligible organization provides its TPA with the self-certification form, then the TPA would be directly responsible for arranging contraceptive-only coverage for plan participants. Specifically, this effectively designates the TPA as the plan administrator for contraceptive services. The TPA would obtain this coverage through individual insurance policies.

The Departments have requested feedback from stakeholders on the three suggested options. They also asked if there should be an option that does not involve the TPA. TPAs could refuse to provide administrative services to eligible religious-affiliated organizations if they do not want to be responsible for managing the individual contraceptive-only coverage.

Insurers providing individual policies for contraceptive-only coverage would be required to notify plan participants and beneficiaries that the coverage is available. Feedback is requested on the proposed notice requirements, specifically on the wording, timing and delivery requirements. The proposed wording is as follows:

“The organization that establishes and maintains, or arranges, your health coverage has certified that your [group health plan/student health insurance coverage] qualifies for an accommodation with respect to the federal requirement to cover all Food and Drug Administration-approved contraceptive services for women, as prescribed by a health care provider, without cost-sharing. This means that your health coverage will not cover the following contraceptive services: [contraceptive services specified in self-certification]. Instead, these contraceptive services will be covered through a separate individual health insurance policy, which is not administered or funded by, or connected in any way to, your health coverage. You and any covered dependents will be enrolled in this separate individual health insurance policy at no additional cost to you. If you have any questions about this notice, contact [contact information for health insurance issuer].”

The Departments have also requested comments on how the insurance carriers should provide the contraceptive services coverage. The self-certification form specifically identifies the contraceptive services that the eligible religious-affiliated organization will not cover. It would be a burden, however, for insurers to provide coverage only for those specific contraceptive services. Therefore, the new regulations propose that the individual policies should cover the entire range of contraceptive services. The policies would include coordination of benefit provisions. The individual insured policies would pay secondary for services the group health plan already covers. The group health plan would cover the services at 100%. The individual carrier would have no liability if the group health plan covers the service.

The proposed rules also discuss situations where several religious-affiliated employers offer coverage through a single group health plan. How should this situation be handled if some of the employers are eligible organizations but others are not? The Departments propose to make the religious accommodation exemption on an employer-by-employer basis. Each employer would independently have to meet the definition of an eligible organization in order to take advantage of the accommodation.

The individual policies providing contraceptive services will be considered “excepted benefits,” which means these policies will be excluded from many of the health care reform requirements. However, the following core provisions would still apply:

- Guaranteed renewable coverage
- No lifetime or annual dollar limits
- No rescissions of coverage
- Internal appeals and external review rights

This federal law merely establishes a floor for providing contraceptive services coverage to employees of religious-affiliated organizations. State laws prevail if they provide for more generous coverage.

Student Health Plans

The proposed rules discuss student health plans separately. It is common for universities to offer or even require students to have health coverage. If an eligible organization is a religious-affiliated institution of higher learning, the same accommodations available to its employee group health plan will also apply to its student health plan. The process will be similar to the process for eligible organizations with an insured plan.

Concluding Thoughts

The latest guidance attempts to accommodate eligible religious-affiliated organizations that oppose covering contraceptive services. These organizations were granted a one-year delay so that the government could provide alternatives that will:

1. Eliminate the requirement for eligible organizations to cover FDA-approved contraceptives services or to communicate, fund or provide benefits for contraceptives.
2. Provide contraceptive coverage for employees of these eligible organizations through individual insurance policies with no cost-sharing.

The Departments are asking for stakeholder feedback on several possible approaches for qualifying self-funded plans. Clearly, eligible organizations will need final guidance so that they will know what steps to take.

The contraceptive services requirement will apply to eligible religious-affiliated organizations as of the first day of the first plan year beginning on or after August 1, 2013. These organizations will need to either cover contraceptive services or implement the accommodation. Remember, an exemption for providing this coverage applies to churches.

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