

# REFORM *Update*

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## **Contraceptive Coverage and Closely-Held and Religious-Affiliated Organization Updates**

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The preventive service requirements under the Affordable Care Act (ACA) have created much controversy. The ACA requires non-grandfathered group health plans to cover specified preventive care services, including well-woman services, with no member cost-sharing when received in-network. FDA-approved contraceptive methods are one of several well-woman services that must be covered.

The contraceptive coverage regulations initially included a very narrow exception specifically for church plans. This resulted in an outcry from religious-affiliated organizations, which did not qualify for the exception. As a result, the Obama administration created an accommodation for religious-affiliated organizations that are opposed to providing contraceptive coverage. These accommodations were addressed in our *Reform Update* at [http://www.mcgrawwentworth.com/Reform\\_Update/2013/Reform\\_Update\\_71.pdf](http://www.mcgrawwentworth.com/Reform_Update/2013/Reform_Update_71.pdf).

The controversy continued as a number of organizations still objected to the requirement to cover certain contraceptives, because doing so violated the owner's religious beliefs. The U.S. Supreme Court addressed this issue in the Hobby Lobby decision, summarized in our *Reform Update* at [http://www.mcgrawwentworth.com/Reform\\_Update/2014/Reform\\_Update\\_90.pdf](http://www.mcgrawwentworth.com/Reform_Update/2014/Reform_Update_90.pdf).

In addition, Wheaton College challenged the accommodation's process for religious-affiliated organizations to certify that they are opposed to covering specific contraceptives.

The Departments of Health and Human Services (HHS), Labor (DOL) and the Treasury recently released two different regulations to address both the Hobby Lobby decision and the Wheaton College challenge:

1. Proposed regulations provide initial guidance about how certain closely held for-profit organizations can exclude some or all contraceptive coverage.
2. Additional interim final regulations allow eligible organizations to communicate their decision to opt out of contraceptive coverage directly to HHS rather than to their insurer or third-party administrator (TPA).

### **Closely Held For-Profit Companies**

The proposed regulations would allow certain closely held for-profit organizations to opt out of providing contraceptive coverage that violates their religious beliefs, in accordance with the Supreme Court's Hobby Lobby decision. The proposed rules include an accommodation for these employers. Insurers or third-party administrators (TPAs) would provide contraceptive coverage at no cost. This is the same way that insurers and TPAs currently provide contraceptive coverage for religious non-profit organizations that are opting out of the mandate.

One of the uncertainties of the Hobby Lobby ruling was how to determine whether a company is considered “closely held.” The proposed rules seek comments on how to define an eligible closely held for-profit organization. Two alternative definitions are included in the proposed rules:

- Not publicly traded, and ownership is limited to a certain number of owners; or
- Not publicly traded, and a minimum percentage of ownership is concentrated among a certain number of owners

The proposed rules also seek comments on the process for documenting and communicating the decision to opt out. Once comments are received and reviewed, we will likely see final regulations addressing the opt-out process for the contraceptive mandate.

### **Accommodation Requirement to Communicate Opt-Out**

Wheaton College and other religious non-profit organizations have objected to signing the current self-certification form required to opt out of providing contraceptive coverage. The interim final regulations allow eligible organizations to notify HHS in writing of their objection to contraceptive coverage, rather than sending the form to the plan vendor. (Eligible organizations may still choose to use the self-certification form, however.)

After being advised of the organization’s religious objections to providing contraceptive coverage, HHS (or the DOL for self-funded plans) will notify the insurer or the TPA. The requirement that insurers and TPAs provide contraceptive coverage at no cost to the employer or plan participants remains the same.

These interim regulations included a model notice that can be submitted to HHS. The model notice can be found at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Model-Notice-8-22-14.pdf>.

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