

CBIZ Health Reform Bulletin



Subject: **Women's Preventive Services Update Impacting Religious Organizations**
Date: February 6, 2013

The ACA governing agencies are proposing a way to provide the full panoply of women's health services without unduly burdening religiously affiliated organizations who object to providing contraceptive coverage, as imposed by the preventive services mandate. On February 6, 2013, the Agencies released [proposed regulations](#) and a [Fact Sheet](#) addressing these issues.

As background, the ACA requires non-grandfathered plans to cover women's preventive health services without any cost-sharing (see [Preventive Care Coverage Expanded to include Women's Health Services](#), 8/3/2011). For plan years beginning on or after August 1, 2012 (January 1, 2013 for calendar year plans), plans are required to include coverage for these women's health services, including contraceptive services.

Group health plans sponsored by certain religious employers are exempt from the requirement to cover contraceptive services. This exemption applies very narrowly to churches, temples and similar houses of worship. The regulations propose a clarification to the definition, as described below. The clarification is intended to provide protection to houses of worship that engage in such activities such as food pantries or other outreach programs.

The definition of a religious employer also left organizations with religious affiliations, such as hospitals, colleges and universities, private primary and secondary schools, and social service organizations who cannot meet the exception exposed to providing the women's preventive services mandate. Temporary relief from this requirement was issued last year (see [Preventive Health Services for Women: Regulations Final – Limited Exception for Certain Church Plans](#), 2/13/12). The Agencies are now issuing a proposal to offer a more long term solution.

Religious Employer Re-defined. The proposed regulations re-define religious employer to primarily include churches, other houses of worship, and their affiliated organizations, as defined in IRC Section 6033(a)(3)(A)(i) and (iii).

Accommodation for Religious Organizations

The proposed regulations provide a waiver from the requirement to provide contraceptive services for religious organizations that don't qualify for the full exemption. To obtain the waiver, the religious organization must:

1. Oppose providing coverage for some or all of any contraceptive services required by the women's services mandate on account of religious objections;
2. Be organized and operate as a nonprofit entity;
3. Hold itself out as a religious organization; and
4. Maintain a self-certification form (see below), for each plan year to which the accommodation is to apply.

Organizations that meet this criteria would not be required to endorse, pay for, or otherwise facilitate coverage of the objectionable benefit; but such benefits would continue to be made available to women through a separate individual policy.

Self-Certification Form

HHS provides the form and instructions for obtaining the self-certification ([CMS-10459 - Coverage of Certain Preventive Services Under the Affordable Care Act](#)). The self-certification must be executed by an authorized individual of the organization, and specify the types of contraceptive services that the organization does not wish to administer or fund.

Insurer Obligations

An insurer receiving a copy of the self-certification form would be required to provide coverage for any contraceptive services identified in the form through a separate policy for each plan participant and beneficiary. The insurer is then obligated to include a separate written notice to participants of the availability of the contraceptive coverage in its application and enrollment materials. Below is the model language that can be used in the notice:

“The organization that establishes and maintains, or arranges, your health coverage has certified that your group health plan 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].”

If plan is self-funded, the regulations propose that the third party administrator (TPA) would facilitate this process. The insurer providing the coverage would receive an additional adjustment in the user fees charged by the federal exchange in an amount that would offset the TPA's charge for performing the service. The insurer would then pass the amount on to the TPA as a condition for receiving a user fee adjustment.

Student health insurance coverage sponsored by higher education institutions

Student health insurance coverage arranged by a group health plan sponsored by an exempt religious organization's higher education institution would be handled in the same manner as above; except the model notice would change the reference “plan participants and beneficiaries” to “student enrollees and their covered dependents”.

Comment period. The Agencies are seeking comments on these proposals through April 8, 2013.

Until these rules are finalized, organizations with a religious affiliation can continue to follow the relief described in this Health Reform Bulletin, [Preventive Health Services for Women: Regulations Final – Limited Exception for Certain Church Plans](#).

Conclusion

While this proposal may provide relief to religiously affiliated organizations, it does not provide any relief to private sector entities with moral or religious objections to providing contraceptive services. Numerous lawsuits have been filed on this topic and are winding their way through the court system. It is certainly possible that this issue will reach the Supreme Court at some point.

About the Author: Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Leawood, Kansas office.

The information contained herein is not intended to be legal, accounting, or other professional advice, nor are these comments directed to specific situations. The information contained herein is provided as general guidance and may be affected by changes in law or regulation. The information contained herein is not intended to replace or substitute for accounting or other professional advice. Attorneys or tax advisors must be consulted for assistance in specific situations. This information is provided as-is, with no warranties of any kind. CBIZ shall not be liable for any damages whatsoever in connection with its use and assumes no obligation to inform the reader of any changes in laws or other factors that could affect the information contained herein. As required by U.S. Treasury rules, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained herein is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.