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October 18, 2017

Rules Relax Contraceptive Coverage Mandate

The Departments of Health and Human Services, Treasury, and Labor announced two companion [interim final rules](#) effective October 6, 2017 related to the Affordable Care Act (ACA) requirement that non-grandfathered group health plans provide coverage without cost-sharing for preventive services (including contraceptive services). The original contraceptive mandate provides exemptions for religious employers and accommodations for certain other non-profit religious organizations and closely held for-profit entities with sincerely held religious beliefs against certain contraceptives. The new rules provide conscience protections for other employers who have a religious or moral objection to paying for health insurance that covers contraceptive/abortifacient services. Under the existing regulatory requirements created by the previous administration, non-exempt employers are required to offer health insurance that covers all FDA-approved contraception, which includes medications and devices that may act as abortifacients as well as sterilization procedures.

In May, President Trump issued an "[Executive Order Promoting Free Speech and Religious Liberty](#)" directing the agencies to consider amending existing ACA preventive-care mandate regulations in order to address conscience-based objections. In response, the new rules now provide that certain entities that have sincerely held religious beliefs against providing contraceptive services are no longer required to do so. And the same protections are also applied to organizations and small businesses that have objections on the basis of moral conviction which is not based in any particular religious belief.

Key facts about the final rules:

- For non-grandfathered plans, the rules leave in place preventive service coverage guidelines where no religious or moral objection to contraceptive coverage exists.
- As to grandfathered plans, the ACA itself already exempts them from the preventive service/contraceptive coverage mandate. See our [Update](#) for more on the original ACA mandate on contraceptive coverage.
- The rules now also exempt non-grandfathered entities that object to establishing, maintaining, providing, offering, or arranging (as applicable) coverage, payments, or a plan that provides coverage or payments for some or all contraceptive services based on their sincerely held religious beliefs or moral convictions. For this purpose, the term "contraceptive services" includes contraceptive or sterilization items, procedures, or services, or related patient education or counseling.
- The exemptions are available to the extent of the covered employer's objections. For

example, if the employer has religious objections to morning-after pills but not to other forms of contraception, then the exemption would only apply to morning after pills.

- All nongovernmental non-profit and for-profit employers (whether or not they are closely held or publicly traded) with sincerely held religious objections to contraceptive coverage now can elect to be exempt from the requirement, or can use an optional accommodation process under which the issuer or third-party administrator provides contraceptive coverage.
- Exemptions based on moral objections to contraception will only be available to nonprofit employers and for-profit employers with no publicly traded ownership interest.
- The exemptions are also available to institutions of higher learning for their student health plans.
- Exempt entities will not be required to comply with a self-certification process and do not need to provide any specific notice. However, where an exemption applies and all or a subset of contraceptive services are omitted from a plan's coverage, otherwise applicable disclosures must reflect the omission of coverage. So employers subject to ERISA may rely instead on summary plan descriptions and summaries of material reductions to explain what services are or are not covered.
- The rules leave in place government programs that provide free or subsidized contraceptive coverage to low income women, such as through community health centers, and the rules do not ban any drugs or devices.

For most employers, this change won't be a cause for action as most employer plans cover contraceptives. While the exemptions can be claimed immediately, or for 2018 coverage renewals, employers sponsoring non-grandfathered plans with religious or moral objections to contraceptive coverage may wish to await further developments. A number of groups and the attorneys general of some states have already announced plans to challenge the new rules in court. Should you have questions about this or any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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