

Contraceptive Coverage “Accommodation” of Religiously-Affiliated Employers: Frequently Asked Questions

One section of the new health care law requires all new health plans to cover certain preventive services without co-payments or other cost sharing requirements, including a range of preventive services specific to women. This is especially important because women are more likely than men to avoid needed health care because of cost. Among the wide range of preventive services for women that will now require no cost sharing are Food and Drug Administration (FDA)-approved contraceptives. On January 20, 2012, the Administration announced an exemption from the requirement to cover contraceptives for religious employers that object to the use of contraceptives. This exemption caused an outcry from opponents to contraception who claimed it was too narrow and should be expanded to encompass a broader range of employers. On Feb. 10, 2012, the Administration announced an accommodation that would enable religiously-affiliated organizations not to provide contraceptive coverage in their employee health benefits, but would ensure that all women are guaranteed access to this critical service.

The religious employer exemption announced on Jan. 20 primarily applies to churches. Does the accommodation announced on Feb. 10 change the religious employer exemption?

No. The religious employer exemption remains the same – only an employer with the purpose of inculcating religious values, that primarily employs and serves persons who share its religious tenets, and that meets certain provisions of the tax code¹ would be exempt and therefore not have to provide contraceptive coverage without cost sharing.

So what does the accommodation do?

The Administration is accommodating religiously-affiliated employers who do not meet the exemption by allowing these employers to provide insurance without contraceptive coverage while still ensuring that women who work for those employers will receive seamless coverage including contraceptive coverage. It will require insurance plans to offer insurance without contraception coverage to the religiously-affiliated employer and at the same time to offer contraceptive coverage directly, with no cost sharing, to the employees and dependents who desire it.² The Administration will provide a one-year safe harbor from enforcement for these religiously-affiliated employers during which it will issue rulemaking on the accommodation.³

¹ Specifically, the Final Rules define an employer that can invoke the exemption as one that:

- (1) Has the inculcation of religious values as its purpose;
- (2) primarily employs persons who share its religious tenets;
- (3) primarily serves persons who share its religious tenets; and
- (4) is a non-profit organization under section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) refer to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order.

Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 45 C.F.R. § 147.130 (2012).

² Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 8,725, 8727 (Feb. 15, 2012) (to be codified at 45 C.F.R. pt. 147).

³ *Id.*

Will there be a rider for contraceptive coverage or a supplemental plan for contraceptive coverage for employees of religiously-affiliated organizations?

No. A rider or a supplemental plan for contraceptive coverage would mean that the employee would have to select and enroll in insurance coverage above and beyond what their employer provides. This will not be necessary under the accommodation.

Can an insurance company refuse to provide contraceptive coverage based on its own religious objection?

No, an insurance company cannot refuse to provide contraceptive coverage.

What about non-religiously-affiliated businesses that provide health insurance to their employees? Can they make use of the accommodation?

No. Only religiously-affiliated employers are being accommodated due to their religious objection.

How will the Administration implement the accommodation?

The Administration did not explain how insurance companies will reach or market coverage to women who are dependents of employees, or how the accommodation will be implemented with religiously-affiliated organizations that self-insure for employee health coverage. The Administration stated that it remains committed to women getting contraceptive coverage, even in self-insured plans. We will be closely monitoring implementation to ensure that no woman who is guaranteed contraceptive coverage under the new health care law is denied that coverage.

When do the rule, the religious employer exemption, and the accommodation go into effect?

The preventive health services rule goes into effect on Aug. 1, 2012, but since most plan changes take effect at the beginning of a new plan year, the requirements will be in effect for most plans on Jan. 1, 2013. Because it is part of the preventive health services rule, the religious employer exemption goes into effect Aug. 1, 2012. As part of the accommodation for religiously-affiliated employers, during the safe-harbor year (August 2012-July 2013), the Administration will propose and finalize a new regulation to implement the accommodation starting Aug. 1, 2013.⁴

**For more information on contraceptive coverage please visit
www.nwlc.org/contraceptivecoverage.**

⁴ *Id.*