

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

One section of the new health care law requires all new and non-grandfathered 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. For more information on the preventive services requirement, please see [Access to Preventive Health Care for Women in the New Health Care Law: Frequently Asked Questions](#). For more information on the contraceptive coverage requirement generally, please see [Contraceptive Coverage in the New Health Care Law: Frequently Asked Questions](#).

A narrow class of religious employers – churches and other houses of worship – are exempt from the contraceptive coverage requirement. In addition, the Administration has proposed an accommodation that would enable religiously-affiliated organizations beyond churches – such as universities and hospitals - to avoid directly providing contraceptive coverage, but would ensure that all women are guaranteed coverage of this critical service without cost sharing.

The religious employer exemption primarily applies to churches. Does the accommodation 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. It is estimated that there are over 330,000 houses of worship in the United States that could take advantage of this exemption.²

So what does the accommodation do?

The Administration is accommodating religiously-affiliated employers who do not meet the exemption but have a religious objection to covering contraceptive services, while still ensuring that participants and beneficiaries covered under such employers’ plans receive contraceptive coverage without cost sharing. On March 16, 2012, the Administration released an Advanced

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 C. Kirk Hadaway & Penny Long Marler, How Many Americans Attend Worship Each Week? An Alternative Approach to Measurement, 44 J. for the Scientific Study of Religion 307, (2005).

Notice of Proposed Rulemaking (ANPRM), laying out its proposal for the accommodation and asking for comments. The ANPRM proposes that issuers of health insurance offer group health insurance coverage without contraceptive coverage to organizations eligible for the accommodation while simultaneously providing contraceptive coverage directly to the participants and beneficiaries with no cost sharing.³

How will this work for self-insured plans?

When an organization self-insures a health plan, this means that the organization itself takes on the risk of the insurance rather than shifting this risk to a health insurance provider. Because the organization is directly bearing the risk of coverage, it is directly involved in the coverage it provides. In the context of contraception, an organization that self-insures would therefore be involved in contraception coverage. HHS offered concrete suggestions on how employers of self-insured religiously-affiliated organizations might meet their obligations and asked for comment and further suggestions.⁴

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. Although the details of how the accommodation will work are still being determined, it is clear that it will not be a rider.⁵

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

No. Currently, an insurance company cannot refuse to provide contraceptive coverage because only *employers* are allowed an exemption or accommodation. However, the Administration is currently accepting comments on whether insurance plans should be exempted or accommodated.

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

No. Currently, only non-profit religiously-affiliated employers are being accommodated due to their religious objection. However, the Administration is currently accepting comments on whether for-profit religious employers with objections to contraceptive coverage should be accommodated.

How will the Administration implement the accommodation?

The ANPRM released on March 16, 2012 is the Administration's first step in implementing the accommodation. There is a 90 day comment period on the issues raised in the ANPRM. After reviewing comments, the Administration will release a notice of proposed rulemaking that requests further comment on its plan to implement the accommodation. Once it has reviewed

³ Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501 (proposed March 21, 2012) (to be codified at 45 C.F.R. pt. 147).

⁴ *Id.*

⁵ The ANPRM states that an independent entity would "provide this coverage automatically to participants and beneficiaries covered under the organization's plan (for example, without an application or enrollment process)." *Id.*

and considered the comments on the notice of proposed rulemaking, the Administration will release a final rule implementing the accommodation. 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, including the religious employer exemption, will be in effect for most plans on Jan. 1, 2013. The Administration will provide a one-year safe harbor from enforcement for the religiously-affiliated employers receiving an accommodation.⁶ This means that for women working for those employers, they will begin to receive contraceptive coverage with no cost sharing beginning Aug. 1, 2013.⁷

I like this part of the new health care law, but I have heard that some people are trying to change it or get rid of it. What can I do to keep this important new benefit?

You can send your comments on the accommodation directly to the Department of Health and Human Services. The National Women's Law Center will soon have model comments available to assist you. You can also tell your Member of Congress that you support the new health care law and this new benefit. Next, you should tell your Member of Congress that you support contraceptive coverage for all women, no matter who their employer is. Finally, you should find out where candidates stand on these issues and make sure to vote.

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

⁶ Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plan and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code, *available at* <http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf>.

⁷ 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).