



VCU Medical Center

Office of Health Innovation

Final Rule: Coverage of Certain Preventive Services Under the Affordable Care Act

Description: As authorized by the current regulations, and consistent with the HRSA guidelines, group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the otherwise applicable requirement to cover certain contraceptive services. These final regulations simplify and clarify the religious employer exemption. These final regulations also establish accommodations with respect to the contraceptive coverage requirement for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations that are institutions of higher education. These regulations also finalize related amendments to regulations concerning Affordable Insurance Exchanges.

Major Provisions

Religious Employer Exemption and Accommodations

The final rule provides women with coverage for preventive care that includes contraceptive services with no co-pays, while also respecting the concerns of some religious organizations.

HRSA has the authority to issue guidelines in a manner that exempts group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) from any requirement to cover contraceptive services consistent with the HRSA Guidelines that would otherwise apply.

According to existing regulations, a religious employer is defined for this purpose 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 nonprofit organization described in section 6033(a)(1) and 6033(a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order.

The final rule makes two principal changes to the preventive services coverage rules to provide women contraceptive coverage without cost sharing:

1. The final rule amends the criteria for the religious employer exemption to ensure that an otherwise exempt employer plan is not disqualified because the employer's purposes

extend beyond the inculcation of religious values (No. 1, above) or because the employer serves or hires people of different religious faiths (No. 2, above).

2. The proposed rules would establish accommodations for health coverage established or maintained by eligible organizations, or arranged by eligible organizations that are religious institutions of higher education, with religious objections to contraceptive coverage.

The final rule explains how non-profit religious organizations, such as non-profit religious hospitals or institutions of higher education, that object to contraception on religious grounds can receive an accommodation that provides their enrollees separate contraceptive coverage. This separate coverage would include no co-pays, but would also incur no cost to the religious organization.

Under the final accommodations, the eligible organizations would not have to contract, arrange, pay or refer for any contraceptive coverage to which they object on religious grounds. An eligible organization is defined as an organization that:

1. Opposes providing coverage for some or all of any contraceptive services required to be covered under Section 2713 of the PHS Act, on account of religious objections;
2. Is organized and operates as a nonprofit entity;
3. Holds itself out as a religious organization; and
4. Self-certifies that it meets these criteria and specifies the contraceptive services for which it objects to providing coverage.

Self-Certification

Each organization seeking to be treated as an eligible organization under the final regulations, to avoid contracting, arranging, paying, or referring for contraceptive coverage, is required to self-certify, prior to the beginning of the first plan year to which an accommodation is to apply, that it meets the definition of an eligible organization.

- A copy of the self-certification needs to be provided to a new health insurance issuer or a new third party administrator if the eligible organization changes issuers or third party administrators.
- The final regulations do not require the self-certification to be submitted to any of the Departments. An eligible organization must simply maintain the self-certification in its records and make the self-certification available for examination upon request.

Separate Payments for Contraceptive Services for Participants and Beneficiaries

- The issuer that receives a self-certification must then expressly exclude contraceptive coverage from the eligible organization's group health insurance coverage.
- The issuer must, contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year, notify

plan participants and beneficiaries that the issuer provides separate payments for contraceptive services at no cost for so long as the participant or beneficiary remains enrolled in the plan.

- The issuer must segregate premium revenue collected from the eligible organization from the monies used to make payments for contraceptive services.
 - When it makes payments for contraceptive services used by plan participants and beneficiaries, the issuer must do so without imposing any premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, its group health plan, or its plan participants or beneficiaries.
 - In making such payments, the issuer must ensure that it does not use any premiums collected from eligible organizations.
 - Issuers have flexibility in how to structure these payments, but must be able to account for this segregation of funds, subject to applicable, generally accepted accounting and auditing standards. Thus, an eligible organization need not contract, arrange, pay or refer for contraceptive coverage.
- Plan participants and beneficiaries may refuse to use contraceptive services.
 - An eligible organization and its group health plan are considered to comply with the contraceptive coverage requirement even if the issuer fails to comply with the requirement to provide separate payments for contraceptive services for plan participants and beneficiaries at no cost.

Notice of Availability of Separate Payments for Contraceptive Services

The final regulations direct that, for any plan year to which an accommodation is to apply, a health insurance issuer providing separate payments for contraceptive services pursuant to the accommodation, or a third party administrator arranging or providing such payments (or its agent), must provide timely written notice about this fact to plan participants and beneficiaries in insured or self-insured group health plans (or student enrollees and their covered dependents in student health insurance coverage) of eligible organizations.

Student Health Insurance Coverage

The HHS final regulation provides that an accommodation applies to student health insurance coverage arranged by an eligible organization that is an institution of higher education in a manner comparable to that in which it applies to group health insurance coverage provided in connection with a group health plan established or maintained by an eligible organization that is an employer. For this purpose, any reference to plan participants and beneficiaries is a reference to student enrollees and their covered dependents.