

Legislative Brief

Health Care Reform - Contraceptive Coverage Sept. 3, 2014

New Accommodations Under ACA Contraceptive Mandate

SUMMARY:

- **Two new accommodations were made under the ACA contraceptive mandate:**
 - **Definition of eligible organization expanded.** Under a proposed rule, pursuant to the U.S. Supreme Court's decision in Hobby Lobby, closely held for-profit entities, that have a religious objection to providing some or all FDA-approved contraceptives, stemming from its owners' sincerely-held religious beliefs, are eligible organizations that may be excluded from the mandate requiring contraceptive coverage.
 - **New alternative for eligible organizations to self-certify.** Under an interim final rule, pursuant to the U.S. Supreme Court's interim order in Wheaton College, an "eligible organization" may simply provide written notice to the Secretary of Health and Human Services (HHS) of its religious objection, rather than self-certify to its plan's insurer or TPA utilizing EBSA Form 700. A model notice was issued and is available for use.
- **A "closely held for-profit entity" is not clearly defined.** The proposed rule offers two alternative approaches for defining such an entity, but seeks comments until Oct. 21, 2014 regarding how a "closely held for-profit entity" should be defined.

BACKGROUND:

- The Affordable Care Act generally requires non-grandfathered health insurance coverage and employer-sponsored group health plans to cover preventive services without cost sharing, including women preventive services such as FDA-approved contraceptives.
- Under final rules issued in June 2013, accommodations are available for certain religious employers (e.g., houses of worship and churches) so that their group health plans may be exempt from having to provide contraceptive coverage.
- The final rules issued in July 2013, provide an additional accommodation for non-profit organizations that object to contraceptive coverage on religious grounds (e.g., religious universities, hospitals or charities) provided that each such "eligible organization" self-certifies utilizing EBSA Form 700, to the plan sponsor's insurer (if the plan was fully insured) or to the plan's third party administrator (if the plan was self-insured). The insurer or TPA must then provide separate payments for contraceptive services for the women in the health plan of the organization, at no cost to the women or to the organization.

NEW ACCOMODATIONS

On Aug. 22, 2014, two new accommodations were made regarding ACA contraceptive coverage:

- Under a proposed rule, pursuant to the U.S. Supreme Court's decision in Burwell v. Hobby Lobby, closely held for-profit entities, that have a religious objection to providing some or all FDA-approved contraceptives, stemming from its owners' sincerely-held religious beliefs, are eligible organizations that may be excluded from the mandate requiring contraceptive coverage.
- Under an interim final rule, pursuant to the U.S. Supreme Court's interim order in Wheaton College v. Burwell, an "eligible organization" may now provide written notice directly to the Secretary of Health and Human Services (HHS) of its religious objection, rather than self-certify to its plan's insurer or TPA utilizing EBSA Form 700. HHS will subsequently notify the plan

sponsor’s insurer or TPA who then are responsible to provide such coverage to applicable individuals at no cost.

COMMENTS SOUGHT REGARDING WHAT CONSTITUTES A “CLOSELY-HELD ENTITY”

The proposed rule acknowledges that a closely held for-profit entity may be an eligible organization under the accommodations regulations, but reserves and seeks comments on the definition of what constitutes a “closely-held entity.” The proposed rules describe two alternative approaches for determining such an entity.

Under one approach, the entity could not be publicly traded, and ownership of the entity would be limited to a certain number of owners. Under an alternative approach, the entity could not be publicly traded, and a minimum percentage of ownership would be concentrated among a certain number of owners.

The number and concentration is not specified in the proposed rules, which solicit public comment on an appropriate number and/or concentration. The proposed rule also solicits comments on other possible approaches and on documentation and disclosure of a closely held for-profit entity’s decision not to provide contraceptive coverage. Comments are sought until Oct. 21, 2014.

WRITTEN NOTICE CONTENTS AND DELIVERY

A written notice must contain the following information:

- Organization name and contact information;
- Type of organization (non-profit entity or other “eligible organization”)
- Plan name;
- Whether the plan is an ERISA plan, church plan or student plan;
- The service provider’s name, contact information and category (insurer or TPA); and
- Description of its objection to providing coverage for all or a subset of the contraceptive services based on sincerely held religious beliefs.

Although HHS has issued a [model notice](#), an eligible organization is not required to use the model notice. An eligible organization may elect to provide written notice to HHS without using the model notice, or, alternatively, may elect to self-certify utilizing EBSA Form 700 and send a copy to each health insurance issuer and third party administrator.

The written notice should be sent to the Secretary of HHS via email or regular first class mail addressed as follows:

EMAIL: marketreform@cms.hhs.gov

U.S. MAIL: Centers for Medicare & Medicaid Services
 Center for Consumer Information & Insurance Oversight
 200 Independence Avenue, SW
 Washington, DC 20201
 Room 739H

Upon receipt of the notice from the plan sponsor, the government will notify the TPA or insurer of the plan sponsor’s objection and advise it of its obligation to provide or arrange for the payment for contraceptive services to the plan participant and covered beneficiaries without cost-sharing or imposing a fee or charge upon the plan participant or the plan sponsor.

The health care reform law—the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.

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