

# Legislative Brief

## Health Care Reform - Contraceptive Mandate

July 3, 2014

### U.S. Supreme Court Limits ACA Contraceptive Mandate

On June 30, 2014, the U.S. Supreme Court, in a 5-4 [decision](#), ruled that closely-held, for-profit corporations cannot be required to provide the contraceptive coverage mandated by the Patient Protection and Affordable Care Act (ACA) if coverage of contraceptives violates the sincerely held religious beliefs of the companies' owners. The Court held that the requirement to provide contraceptive coverage, as applied to "closely-held" for-profit corporations, violates the federal Religious Freedom Restoration Act (RFRA) when providing the coverage would be contrary to the owners' religious belief. The RFRA provides that the government cannot substantially burden a person's exercise of religion without a compelling governmental interest that cannot be satisfied by any less restrictive means.

The contraceptive coverage mandate generally requires non-grandfathered, non-excepted group health plans to provide coverage for all FDA-approved contraceptives without cost-sharing when services are provided in-network. The owners of Hobby Lobby Stores, Mardel and Conestoga Wood Specialties objected to providing health coverage for four types of contraceptives that are inconsistent with their sincere religious beliefs that life begins at conception.

The Court reached its decision by first concluding that closely-held corporations, like the family-owned businesses at issue, were "persons" within the meaning of RFRA and could bring suit under its provisions. Turning to RFRA provisions, the Court held that:

- The contraceptive coverage requirement substantially burdened the exercise of religion given the owners' sincere religious beliefs regarding the contraceptives at issue and substantial fines payable for noncompliance (under ACA employers with group health plans that violate the contraceptive mandate may be subject to an excise tax of \$100 per individual per day of noncompliance); and
- Under the RFRA, the government cannot substantially burden a person's exercise of religion without a compelling governmental interest that cannot be satisfied by any less restrictive means.

However, the U.S. Supreme Court was careful to point out the limited scope of its decision:

- It applies only to closely-held companies with very few shareholders. It does not apply to larger, publicly-traded, for-profit companies, and it does not change the current contraceptive requirements for other employers.
- It applies only to the ACA contraceptive mandate and should not be understood to apply to other mandates that conflict with an employer's religious beliefs.
- It also does not allow discrimination based on religious objections.

The Supreme Court decision suggests that employees of these companies may be able to access contraceptive coverage in the same way that employees of religious non-profit organizations do (e.g., via a

separate rider for contraceptive coverage). The White House is assessing the Court's decision and during a [press briefing](#) stated it will work with Congress to consider alternative options for providing cost-free contraceptive coverage to women affected by the decision.

Additional guidance is expected from Department of Health and Human Services clarifying how this ruling will impact the administration of contraceptive coverage.

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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