



COMPLIANCE ALERT



» 10/06/17 | 2017-08

New Rules Broaden Exemptions to the Contraceptive Coverage Mandate

Overview

Under the Patient Protection and Affordable Care Act (ACA), non-grandfathered group health plans are required to provide preventive care at no cost to the participant. Contraceptive coverage is considered preventive care for this purpose. This mandate has been the subject of litigation and multiple rule making endeavors, including exemptions and an accommodation for religious organizations and certain organizations with sincerely held religious beliefs. The accommodation process involved self-certification that ultimately put the responsibility of providing no-cost preventive care on carriers and third party administrators (TPAs). Today the Department of Health and Human Services (HHS) issued an interim final rule that significantly expands the religious exemption for this mandate to include additional organizations, and creates a new exemption for organizations with sincerely held moral convictions.

Moral Exemption for Organizations with Sincerely Held Moral Convictions

The following non-governmental group health plan sponsors are exempt from the contraceptive coverage mandate if they object to providing this coverage based on sincerely held moral convictions:

- A nonprofit organization
- A for-profit entity that has no publicly traded ownership interests

The exemption also applies to an institution of higher education in its arrangement of student health insurance coverage and health insurance issuers offering group or individual insurance coverage. Note that if you are a group health plan sponsor subject to the preventive care mandate and your plan is insured with an objecting carrier, the plan remains subject to the requirement, and will have to seek a solution with another carrier or self-fund the benefit.

Exemption and Accommodation for Sincerely Held Religious Beliefs

The following non-governmental group health plan sponsors are exempt from the contraceptive coverage mandate if they object to providing this coverage based on sincerely held religious beliefs:

- A church, a convention or association of churches, or a religious order
- A nonprofit organization
- A closely held for-profit entity
- A for-profit entity that is not closely held
- Any other non-governmental employer

This list expands the religious exemption to encompass almost any non-governmental group health plan. The exemption also applies to an institution of higher education in its arrangement of student

health insurance coverage and health insurance issuers offering group or individual insurance coverage. Note that if you are a group health plan sponsor subject to the preventive care mandate and your plan is insured with an objecting carrier, the plan remains subject to the requirement, and will have to seek a solution with another carrier or self-fund the benefit.

There is also a new accommodation process that allows self-funded and fully-insured plan sponsors that object based on sincerely held religious beliefs to voluntarily elect an optional accommodation under which the carrier or TPA will provide payments for all or a subset of contraceptive services for its plan participants. In other words, if an organization objects and does not provide contraceptive coverage, it can elect an accommodation where plan participants can access contraceptive coverage at no cost from the insurance carrier or TPA.

Employer Notes and Action Items

The new rules do not define “sincerely held moral conviction” or “sincerely held religious beliefs” and do not require the plan sponsor to certify their objection or provide specific notice to plan participants. The plan is simply required to comply with its obligations under ERISA to timely disclose plan benefits and changes to participants. A plan sponsor seeking to change its contraceptive coverage offering should be prepared to amend its plan documents and distribute a Summary of Material Reduction (SMR). Insured plans may have to wait until the next policy year to make these changes.

Contact your Alliant representative with questions about this development.

Compliance Alert is presented by the Compliance Practice Group of Alliant Employee Benefits

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