ACA AFFORDABLE CARE ACT

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Healthcare Reform

In Focus: Contraceptive Services

Effective for plan years on or after Aug. 1, 2012, the Affordable Care Act (ACA) requires non-grandfathered health plans, both insured and self-funded, to provide coverage for contraceptive services to women without cost-sharing. Contraceptive services are defined as FDA-approved contraceptive methods, sterilization procedures, and education and counseling services for women of reproductive capacity as prescribed by a healthcare provider. However, through a series of regulations and guidance documents, exceptions have been made for certain employers (as further described below). Final rules addressing contraceptive coverage requirements were published in the Federal Register on July 2, 2013. See: http://www.gpo.gov/fdsys/pkg/FR-2013-07-02/pdf/2013-15866.pdf

Exception for 'religious employers'

The requirement to provide coverage for contraceptive services does not apply to religious employers. The definition of "religious employer" has changed slightly from guidance issued in 2012 to language contained in the final rules. In summary, a religious employer is an employer that is organized and operates as a non-profit entity and meets requirements in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

Exception for 'eligible organizations'

The requirement to provide coverage for contraceptive services also does not apply to "eligible organizations." However, the definition of eligible organization and the administrative steps that an eligible organization must take in order to exclude contraceptive coverage varies, depending on the plan year at issue, are:

1. **For plan years prior to Jan. 1, 2014, an eligible organization is defined as an entity that:**
   a. Is organized and operates as a non-profit entity;
   b. Has not, from Feb. 10, 2012, onward, provided all or the same subset of contraceptive coverage otherwise required because of religious beliefs of the organization;
   c. Provided enrollees with the requisite notice that some or all contraceptive services are not covered; and
   d. Self-certifies to (a) through (c) above.

2. **For plan years on or after Jan. 1, 2014, an eligible organization is an entity that:**
   a. Is organized and operates as a non-profit entity;
   b. Opposes providing coverage for some or all contraceptive services on account of religious objections;
   c. Holds itself out as a religious organization, and
   d. Self-certifies that it satisfies criteria (a) through (c) above prior to the first plan year to which the exception applies.

Impact of final rule published on July 2, 2013, on eligible organizations sponsoring self-funded group health plans and their third party administrators

The final rule provides that self-funded group health plans sponsored by eligible organizations continue to be exempt from the contraceptive services requirement for plan years on and after Jan. 1, 2014, if the plan's third party administrator agrees to separately arrange for payments of contraceptive services for plan participants at no cost to the plan or plan participants.

For the Certification Form for Eligible Organizations (EBSA Form 700), click here. An eligible organization must provide the self-certification to the plan's TPA.

In August 2014, in light of the Supreme Court's recent interim order in a case involving Wheaton College, interim final regulations were published to establish another option for an eligible organization instead of providing self-certification to a plan's TPA. Under the interim final regulations, an eligible organization may notify the Department of Health and Human Services (HHS) in writing of its religious objection to contraception coverage. The Department of Labor will notify the TPA for a self-insured plan that the plan sponsor objects to providing contraception coverage and that the TPA is responsible for paying for contraceptive services as long as the plan participants remain enrolled in the health plan and as long as the TPA continues to contract with the plan sponsor. Contraceptive services are provided at no cost to plan participants. Regardless of whether the eligible organization self-certifies in accordance with the final rules, or provides notice to HHS in accordance with the August 2014 interim final regulations, the obligations of TPAs regarding providing or arranging separate payments for contraceptive services are the same. Click here for the notice form under the interim final regulations.

TPAs that agree to remain in a contractual relationship with the employer will then use a model notice to communicate to plan participants the availability of TPA payments for contraceptive services. The notice will be distributed during the same period as (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of each applicable plan year. The payments are not health insurance policies, and the TPA can seek to make arrangements with an issuer offering coverage through a federally facilitated exchange to obtain reimbursement for its costs (including an allowance for administrative costs and margin). If the TPA and and issuer reach agreement, the issuer offering coverage through the federally facilitated exchange can receive an adjustment to the Federally Facilitated Exchange User Fee, and the issuer is required to pass on a portion of that adjustment to the TPA to account for the costs of providing or arranging payments for contraceptive services.

Contraceptives and Closely Held For-Profit Entities

The U.S. Departments of Health and Human Service, Labor and the Treasury released final regulations affecting how contraceptive service benefits are paid for participants that are covered under non-grandfathered group health plans sponsored by closely held for-profit entities that object to covering some or all contraceptive services on religious grounds. The new final regulations become effective on the first day of the first plan year that begins on or after Sept. 14, 2015.

The new regulations finalize 2014 interim final rules requiring an insurer, or third-party administrator that agrees, to provide reimbursement for contraceptive services without cost sharing when provided in-network to participants when an eligible non-profit organization objects to providing coverage of some or all contraceptive services on religious grounds.

The final regulations extend this accommodation to for-profit entities that meet the following two conditions:

- The company must be a closely held for-profit entity, which is defined as not being publicly traded and having an ownership structure under which more than 50 percent of the value of its organization's ownership interest is owned directly or indirectly by five or fewer individuals, or has an ownership structure that is substantially similar as of the date of the entity's self-certification or notice to the HHS Secretary.
- The for-profit's highest governing body must adopt a resolution or similar action establishing that it objects to covering some or all contraceptive services on account of the owner's sincerely held religious beliefs.

PLEASE NOTE: This document is designed to provide a high-level overview of aspects of the Affordable Care Act (ACA), as modified by the Health Care and Education Reconciliation Act. It is not comprehensive and does not constitute legal or tax advice for healthcare reform implementation. Please consult a professional benefit adviser or legal counsel regarding how the law may impact your specific benefit plan.

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