Obama Administration Modifies Rules on Religious Organizations and Coverage of Contraceptives

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Under proposed rules published by the Obama administration on February 1, 2013, religious organizations will no longer be required to subsidize or directly provide contraceptive coverage to their employees under a group health plan. However, the proposed rules would require an insurance carrier or third-party administrator (TPA) of a religious employer to facilitate coverage for contraceptive items and services at no cost to participants or the religious organization.

This Aon Hewitt bulletin provides a description of the proposed rules, including:

- The broadened definition of an eligible organization;
- The accommodation made for insured group health plans and student health plans;
- Accommodations for self-insured group health plans;
- The notice of availability of contraceptive coverage; and
- Contraceptive-only excepted benefits.

The proposed rules were issued jointly by the Treasury, Internal Revenue Service, Department of Labor, and Department of Health and Human Services (the agencies).

Background

The Patient Protection and Affordable Care Act (Affordable Care Act) requires non-grandfathered group health plans and health insurance issuers to provide women’s preventive services at no cost. Such preventive services include all FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity, as prescribed by a health care provider. The proposed rules attempt to accommodate religious organizations that object to providing for contraceptive coverage for their employees and dependents and, at the same time, attempt to ensure that those employees and dependents still have access to contraceptive coverage at no cost, as required under the Affordable Care Act. The proposed rules do this by broadening the definition of an “eligible organization” and placing the requirement for providing contraceptive coverage on that organization’s insurer or TPA.

Definition of “Eligible Organization” Exempt From Contraception Mandate

The proposed rules broaden the definition of an eligible organization to exclude organizations such as religiously affiliated hospitals and educational institutions from the contraceptive requirements that were not originally excluded under the definition set forth in the prior rule. In the prior rule, a religious organization was more narrowly defined to include only those organizations that served their immediate
congregation and did not employ workers of other faiths. The revised definition includes all religious organizations including those that provide social services to the community, such as a soup kitchen, or that employ people of different religious faiths, such as a hospital or educational institution. However, for-profit employers will not qualify as eligible organizations and will still have to directly comply with the preventive care requirements.

Specifically, a group health plan established or maintained by an eligible organization with religious objections to contraceptive coverage, and any group health insurance provided in connection with that plan, is exempt from the Affordable Care Act mandate to provide contraceptive services under the proposed rules if the organization:

- Opposes providing coverage for some or all required contraceptive services;
- Is organized and operates as a nonprofit entity;
- Holds itself out as a religious organization; and
- Self-certifies that it satisfies the first three criteria.

The self-certification must specify which contraceptive methods the organization will not cover. The organization must maintain the self-certification form in its records for each plan year to which the accommodation applies and make it available for examination on request. The agencies intend to issue future guidance on the self-certification form.

**Coverage of Contraceptive Services by Insurer of Eligible Organization**

If benefits under the eligible organization’s group health plan are insured, the proposed rules provide that the insurer will assume sole responsibility, independent of the eligible organization and its plan, for providing contraceptive coverage at no cost to participants. Once an eligible organization provides a copy of its self-certification to the insurer (or to any other issuer if a separate issuer is used for coverage, like prescription drug coverage), the insurer is then responsible for providing plan participants with contraceptive coverage through an individual policy, certificate, or contract of insurance with no cost.

Participants and beneficiaries would automatically be enrolled in these separate individual health insurance contraceptive policies, effective at the beginning of the plan year of their group health plan, to the extent possible, to prevent a delay or gap in contraceptive coverage.

**Student Health Plans**

The proposed rules also provide a similar approach for fully insured student health plans. Once the insurer receives a self-certification from an institution of higher education that is otherwise an eligible organization, the insurer offering student health coverage would provide contraceptive coverage directly to student enrollees and their covered dependents through individual policies.
Application to Self-Insured Group Health Plans Still Unclear

With respect to self-insured plans, the agencies are proposing three alternative approaches for providing coverage to employees of eligible organizations who are exempt from the requirements and otherwise provide coverage through a self-insured plan. In every approach, however, TPAs for the self-insured plan of an eligible exempt organization will partner with insurance companies to provide contraceptive coverage to participants in the self-insured plan with no involvement or payment from the employer. The insurance companies that provide such coverage would then receive a credit from user fees the insurance companies are required to pay in the federally facilitated Exchange, as a way to offset the cost of providing the contraceptive coverage. The agencies are soliciting comments on these approaches.

Notice of Contraceptive Coverage

Issuers providing individual contraceptive policies would have to provide participants and beneficiaries in both insured and self-insured group health plans with a written notice regarding the availability of the separate contraceptive coverage. The notice would be provided annually separate from but contemporaneously with any application materials distributed in connection with enrollment or re-enrollment in group health plan coverage. The proposed rules provide model language that can be used to satisfy the notice requirement.

Contraceptive-Only Coverage Constitutes Affordable Care Act-Excepted Benefits

The proposed rules also create an additional category of excepted benefits for individual contraceptive policies, thus exempting these policies from most of the Affordable Care Act’s insurance market reforms. However, these individual policies would continue to be subject to certain insurance market reforms, including:

- Guaranteed renewability of coverage;
- Prohibition on lifetime and annual dollar limits on essential health benefits;
- Prohibition on rescissions of coverage; and
- Internal appeals and external review.

Next Steps

Comments on the proposed rules are due by April 8, 2013.

Resources


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