



LEGAL ADVICE FOR HEALTH PLANS

HEALTH LAW ALERT

October 13, 2017

Religious Exception to Contraception Mandate Expanded New Exceptions for “Moral Objection” and “Objecting Individuals” Created

Today, the Departments of Health and Human Services, Labor, and the Treasury (the Agencies) formally published two Interim Final Rules¹ that reduce the scope of the Affordable Care Act’s requirement that health plans cover women’s contraceptive care without imposing any cost-sharing requirements. One Interim Final Rule expands the current religious exemption to include health plans sponsored by the following entities, provided that the entities object to contraceptive coverage based on “sincerely held religious beliefs”: **any** non-governmental employer’s employee group health plans, an institution of higher education’s student health insurance coverage, and all of a health insurer’s group and individual coverage. The second Interim Final Rule creates a new exception to the contraceptive mandate for health plans sponsored by an entity that objects to the mandate based on “sincerely held moral convictions.” Each Rule also creates a mechanism that permits (but does not require) health plan sponsors to give “objecting individuals” a “separate policy, certificate or contract of insurance or a separate group health plan or benefit package option” that does not cover women’s contraceptive care.

The Interim Final Rules went into effect on October 6 and are published at 82 *Federal Register* 47792 ([click here](#)) (rule addressing the religious belief exception) and at 82 *Federal Register* 47838 ([click here](#)) (rule addressing the moral conviction exception). Comments concerning the Rules are due by December 5, 2017.

[Click here](#) for my compilation of Selected Federal Health Insurance Provisions incorporating the Interim Final Rules into previously-published rules (or see the “Resources” page at tbixbylaw.com). (See “Vol. I Federal Insurance Rules, Chapters 144-153,” at pages 98-104 (45 C.F.R. §§ 147.130 – 147.133).)

¹ The two Interim Final Rules were published last week on the Federal Register’s website. The Rules must be formally published in the Federal Register to take effect.

Religious Exemption

Previously, the religious exemption applied to entities that objected to contraceptive coverage “on account of religious objections,” provided that the entities were either (1) non-profit religious organizations or (2) certain closely-held, for-profit entities. To qualify, an entity was required to “self-certify” its eligibility for the exemption by notifying either the Department of Health and Human Services or the entity’s insurer. The previous rule established an “accommodation” through which women covered by an exempted employer would be entitled to receive contraceptive coverage through other means, notwithstanding the employer’s objection to providing the coverage.

The revised religious exemption applies to the following entities, provided that they object to contraceptive coverage “based on . . . sincerely held religious beliefs”: any non-governmental employer (with respect to its employee group health plan—whether insured or self-funded), any institution of higher learning (with respect to student health insurance coverage it sponsors), and any insurer (with respect to all of its group and individual coverage). No self-certification process is required under the revised exemption. Exempted entities (other than insurers) may elect to permit members to obtain contraceptive coverage through the “accommodation” established under the previous rule, but they are not required to do so. Thus, the “accommodation” is available at the option of the employer that elects to take advantage of the religious exemption in the first place.

Exception for Moral Conviction

The second Interim Final Rule establishes a similar exception for certain entities that object to contraceptive coverage “based on . . . sincerely held moral convictions.” Entities with such objections that may be exempted from providing contraceptive coverage through employer-sponsored group health plans (whether insured or self-funded) include nonprofit organizations and for-profit entities that are not publicly traded. Institutions of higher education that object to contraceptive coverage based on moral convictions are not required to provide such coverage in student health plans they sponsor and insurers with such objections are not required to provide contraceptive coverage in their group or individual plans.

Individual Exceptions

Finally, the Interim Final Rules create an exception for “objecting individuals” who are enrolled in group or individual coverage that otherwise provides coverage for contraceptive care without imposing any cost-sharing requirements. Under the exception, an insurer may, but is not required to, offer a “separate policy, certificate or contract of insurance” that does not cover contraceptive care to an individual who objects to having such coverage based on sincerely held religious beliefs or sincerely held moral convictions. Similarly, an employer-sponsored group health plan may, but is not required to, offer “a separate group health plan or benefit package option” that does not cover contraceptive care to such an individual.

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