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Expanded Contraception Coverage Exemption For Religious Organizations Proposed By HHS And IRS

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The U.S. Departments of Health and Human Services and Treasury have released [proposed regulations](#), a [fact sheet](#), and a [press release](#) on the Affordable Care Act contraceptives coverage under Women's Preventive Health Services and the exemption for religious organizations. This proposal, issued on January 30, 2013, attempts to accommodate religious employers' objections to all or some contraceptive coverage and address the healthcare needs of women covered by their plans.

While the original release of the preventive health standards in February 2011 included an exemption and temporary enforcement safe harbor for religious employers, a number of religious organizations and private employers objected vehemently, filing comments and lawsuits to prevent the proposal's enforcement. Under the new proposal, the government agencies would expand the definition of exempt religious employers, but also would enable women covered by these employers' plans to obtain the contraceptive coverage as a preventive health benefit at no additional cost, either to them or their employer.

The new rules expand the religious employer exemption by eliminating the requirements that an employer's purpose must include the inculcation of religious values, and that it must employ primarily persons who share its religious tenets. To be eligible for the exemption, an organization must maintain in its records a self-certification signed annually that the organization:

- Opposes providing some or all of any contraceptive services required to be covered under the preventive health services requirements on account of religious objections

- Is organized and operates as a nonprofit entity that holds itself out as a religious organization
- Specifies the contraceptive services for which it will not provide coverage through its plan(s)

This expands the organizations eligible for the exemption to include religious institutions of higher education and charitable social service agencies operated by religious organizations. The proposed regulations expressly include student health insurance coverage arranged by eligible organizations that are religious institutions of higher education.

If an eligible employer maintains an insured plan, the employer must provide a copy of the self-certification to the issuer, and the issuer must notify all persons covered under the plan that it will cover contraceptives excluded from the religious employer's plan through a separate excepted benefits policy. Model language for the notice is included in the proposed regulations. The proposed regulations would fund the additional coverage provided by the insurer by adjusting the monthly user fee that insurers must pay to sell plans through federally facilitated Exchanges.

The agencies are considering three alternative approaches for providing persons covered by self-insured plans with supplemental coverage. They state, however, that all approaches involve the self-certification process by the plan and the reimbursement of third-party administrators and issuers for the separate coverage. They are soliciting comments on the alternatives.

The exemptions are not available to private employers owned by individuals whose religious convictions also conflict with the inclusion of contraceptive coverage under the plans they provide to their employees. As a result, we expect that the lawsuits brought by secular employers challenging the contraceptive coverage mandate will continue in the courts.

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