

CBIZ Health Reform Bulletin

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Subject: **Preventive Health Services for Women: Regulations Final – Limited Exception for Certain Church Plans**
Date: February 13, 2012

More health care reform guidance has been finalized, of sorts, specifically relating to required coverage for preventive health care services, and more specifically, women's health services.

As background, non-grandfathered plans, including plans that lose grandfathered status, must provide coverage for preventive health services, without cost, to participants. Last summer, the governing Agencies issued a proposed amendment expanding certain preventive services applicable to women (see the CBIZ Health Reform Bulletin, [Preventive Care Coverage Expanded to include Women's Health Services](#), 8/3/2011). For plan years beginning on or after August 1, 2012 (January 1, 2013 for calendar year plans), plans must include coverage for these women's health services:

1. Annual well-women care visits, including preconception and prenatal care.
2. Gestational diabetes screening for certain high-risk pregnant women.
3. Human papillomavirus/DNA test screening every 3 years, beginning at age 30.
4. Annual counseling for sexually transmitted infections.
5. Annual counseling and screening for human immune-deficiency virus.
6. Contraceptive methods and counseling, including coverage for prescribed FDA-approved contraceptive methods and sterilization procedures.

Group health plans sponsored by certain religious employers are exempt from the requirement to cover contraceptive services. This very narrow exemption applies to religious organizations that specifically serve that particular religious population. For this purpose, a religious employer is defined as one that:

1. Has the inculcation of religious values as its purpose;
2. Primarily employs persons who share its religious tenets;
3. Primarily serves persons who share its religious tenets; and
4. Is a non-profit organization, as defined by IRC § 6033.

This 'religious employer' definition is particularly problematic in that it leaves a wide group of church organizations without the ability to use the exception. Examples of church organizations that would *not* fit within this narrow exception include, but are not limited to, hospitals, colleges and universities, private primary and secondary schools, and social service organizations. As a general matter, these organizations serve people of multiple denominations, and their services relate to medicine, education, social service among others.

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In response to this concern, on January 20, 2012, the Obama Administration [announced](#) a one-year delay for plans sponsored by religious employers to give such plans time to figure out compliance. If the religious employer does not offer contraceptive coverage in its plan, it would be required to notify its employees about the excepted coverage, and provide information about contraceptive services available at community health centers, public clinics, and certain hospitals receiving income-based support. This created further concern by organizations that have a religious opposition to such coverage. Of particular concern is requiring these organizations to pay for such coverage.

On Friday, February 10, 2012, the Obama Administration [announced](#) that, during the transition year, regulations will be proposed and finalized that will exempt religious organizations from the requirement to include the contraceptive coverage in their health plans and relieve them of the obligation to pay for such coverage.

The Obama Administration has indicated that women working for these religious organizations will, however, still be entitled to such coverage at no cost, directly from the insurer. Thus far, there has been no guidance on how this will be addressed for self-funded plans. It should also be noted, as mentioned above, that grandfathered plans, those in existence on March 23, 2010 that have not undergone significant change are generally exempt from the requirement to provide preventive services at no cost.

Clearly, many issues remain to be resolved; but at least for this near term, plans sponsored by employers with religious connections and with objection to this type of coverage are relieved from the obligation to provide it. Stay tuned for further developments on this issue.

About the Author: Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Leawood, Kansas office.

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