

legislative update

Update 2013-4 - Updated Women's Health Care Provisions

On February 1, CMS released a Notice of Proposed Rulemaking that updates the definition of a “religious employer” and revises the procedure to provide contraceptive services to employees of religious employers.

Under the ACA, contraceptive services are considered preventive care, and therefore must generally be made available to participants in group health plans at no charge. The regulations exclude “religious employers” from this requirement. However, the definition of a religious employer was rather narrow, essentially limited to churches only. This left a large number of nonprofit organizations affiliated with religious employers in a position of sharing the same beliefs as the religious employer but not qualified for the exception.

With this NPRM, CMS now defines a religious employer as an organization that:

1. Opposes providing coverage for some or all of any contraceptive services required to be covered under Section 2713 of the PHS Act, on account of religious objections;
2. Is organized and operates as a nonprofit entity;
3. Holds itself out as a religious organization; and
4. Self-certifies that it meets these criteria and specifies the contraceptive services for which it objects to providing coverage.

Based on this definition, eligible employers would not be required to provide contraceptive services as part of their preventive care coverage.

Contraceptive Services must still be made available, however, to those women who wish to utilize them. In the case of insured plans, the religious employer would provide their self-certification to the insurance carrier, and in turn the carrier would make separate, individual market contraceptive coverage available at no cost to plan participants. The employer would not have to pay for this service.

Self-funded plans will need to make arrangements with their TPA to work with an insurance carrier to provide the individual market coverage at no cost to the employee. The costs incurred by the insurer and the TPA will be offset by adjustments in the federally-facilitated Exchange user fees the carriers pay.

Finally, if the religious employer is a nonprofit institution of higher education, the NPRM specifies that the employer could use this same approach for student coverage.