



Monday, August 3, 2015

Preventive Care Coverage Final Rules

The Departments of Health and Human Services (HHS), Treasury, and Labor (DOL) (“the Departments”) recently issued [final regulations](#) on coverage of certain preventive care services under the Affordable Care Act (ACA). These regulations finalize, with some modifications, July 2010 interim final regulations regarding coverage of recommended preventive services, August 2014 interim final regulations regarding the process an eligible organization uses to provide notice of its religious objection to coverage of contraceptive services, and August 2014 proposed regulations regarding the definition of an eligible organization. The final regulations also incorporate previously issued FAQ guidance and minor changes regarding other aspects of the preventive care mandate.

Background

The ACA requires that non-grandfathered health plans provide coverage without participant cost sharing for preventive care services recommended by the U.S. Preventive Care Task Force with a rating of A or B, immunizations recommended by the CDC Advisory Committee on Immunization Practices, and children’s and women’s care guidelines supported by HHS. The guidelines adopted by HHS related to women’s preventive care include coverage of all FDA-approved contraceptive methods.

In response to protests from religious organizations, the Departments introduced regulations granting an exception to the contraceptive coverage requirement for group health plans established or maintained by certain religious employers and creating an “accommodation” for group health plans established or maintained by certain nonprofit religious organizations with religious objections to covering contraceptive services. Under the accommodation, the employer plan is exempt from contracting, providing, paying or referring for such services, but coverage will still be made available at no cost to participants by the plan insurer or TPA. To avail itself of the accommodation, an eligible organization completes a self-certification form (EBSA Form 700) and provides it to the plan insurer or TPA.

In *Wheaton College v. Burwell*, the Supreme Court issued an order that the religious school does not need to use EBSA Form 700 or provide a copy to its insurer or TPA. In *Burwell v. Hobby Lobby, Inc.*, the Supreme Court extended the accommodation to private, closely-held corporations with religious objections to covering contraceptive services. As a result, in August 2014 the Departments issued proposed regulations that solicited comments regarding an alternative

method for eligible organizations to seek the accommodation and regarding changes to the definition of an eligible organization.

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Requesting Accommodation

As an alternative to using EBSA Form 700 and providing it directly to the insurer or TPA, the final regulations establish that an eligible organization may notify HHS in writing of its religious objection to providing coverage for contraceptive services. HHS or the DOL will then notify the plan's insurer or TPA of the need for the accommodation for the organization's plan members, with no involvement necessary by the organization.

Eligible Organization

The final regulations expand the definition of an eligible organization to include a closely held for-profit entity that has a religious objection to providing coverage for some or all contraceptive services. A qualifying closely held for-profit entity is one that is not a nonprofit entity; has no publicly traded ownership interests; and has more than 50% of the value of its ownership interest owned directly or indirectly by five or fewer individuals, or has an ownership structure substantially similar to this definition. In addition, to be eligible, the for-profit entity's highest governing body must adopt a resolution or similar action, under the organization's applicable rules of governance and consistent with state law, establishing that it objects to covering some or all of the contraceptive services on account of the owners' sincerely held religious beliefs.

Other Preventive Care Provisions

The final regulations also incorporate the following clarifications published previously in the form of FAQ guidance and other minor changes:

- Adoption of the "primary purpose" test for determining cost sharing requirements for an office visit in which preventive services are provided but not necessarily billed separately from other services.
- A plan is not required to provide coverage and may impose cost sharing for out-of-network preventive care, unless the plan does not have an in-network provider for the service.
- If a preventive care recommendation does not specify frequency, method, etc. for provision of the service, the plan may use reasonable medical management techniques to determine limitations.
- A plan may cover additional preventive services and impose cost sharing if it chooses and may impose cost sharing for treatment that is not a recommended preventive service, even if it results from one.

- A plan that must provide coverage on the first day of the plan year for a recommended preventive service generally must provide that coverage for the entire plan year, even if the recommendation changes during the plan year, unless certain requirements are met.

Effective Date

These final regulations are effective as of the first day of the plan year that begins on or after September 14, 2015.

ACA REGULATIONS & GUIDANCE ISSUED IN THE LAST THREE MONTHS

Jul. 2015: IRS Issues [Notice 2015-52 Excise Tax on High Cost Employer-Sponsored Health Coverage](#) Additional Proposed Guidance

Jul. 2015: Agencies Issue [Final Rules on Coverage of Preventive Care](#)

Jun. 2015: [Trade Preferences Extension Act of 2015](#) Increases ACA Reporting Penalties

Jun. 2015: HHS Issues [Guidance on Election of a Federally-administered External Appeal Review Process for Health Plans](#)

Jun. 2015: IRS Issues [Notice 2015-43 Expatriate Health Coverage Clarification Act of 2014, Interim Guidance](#)

Jun. 2015: IRS Issues [Draft 2015 Form 1095-C](#) and [Draft 2015 Form 1094-C](#)

Jun. 2015: Agencies Issue Final [SBC Regulations](#) and [Fact Sheet](#)

May 2015: ACA FAQs XXVII – [Cost Sharing Limits and Provider Nondiscrimination](#)

May 2015: IRS Issues Q&As on [Section 6056 Rules](#) and [Completing Forms 1094-C and 1095-C](#)

May 2015: ACA FAQs Part XXVI – [Preventive Care](#)

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