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FINAL REGULATIONS ON MORAL AND RELIGIOUS EXEMPTIONS FROM CONTRACEPTIVE SERVICES COVERAGE

The Departments of Health and Human Services, Treasury and Labor (the Departments) recently issued final rules for organizations with religious or moral objections to covering contraceptive services. The proposed rules were covered in detail in *Reform Update* 136, which can be found at <http://mcgrawwentworth.com/resources/reform-update>. The final rules include all the key provisions in the proposed rules.

The Affordable Care Act (ACA) requires non-grandfathered group health plans to cover specific contraceptive services with no cost-sharing to plan members. This requirement initially had a very narrow exception for church organizations.

Over the last several years, the exemption for contraceptive services coverage has broadened to include many more organizations with religious objections to providing this coverage. The most recent final regulations expand the number of reasons organizations can claim either religious or moral objections to providing this coverage.

Different organizations may claim religious or moral exemptions as follows:

Type of Employer	Religious Exemption Available	Moral Exemption Available
Church	Yes	No
Other nonprofit	Yes	Yes
Closely held for-profit	Yes	Yes
Other for-profit	Yes	Yes/No (publically traded companies)
Other non-government	Yes	No
Government	No	No
Higher education	Yes	Yes

Publicly-traded entities cannot claim a moral objection. An insurance carrier does not need to provide the coverage if the employer claims either exemption.



Organizations eligible to claim *religious* exemptions can remove coverage for specific contraceptive services if they have sincerely held religious objections to covering them under their employer health plans.

Organizations eligible to claim *moral* exemptions can remove coverage for specific contraceptive services if they have sincerely held moral objections to covering them under their employer health plans. Employers morally opposed to abortion, for example, consider certain types of birth control to be forms of abortion. This new exemption will allow them to exclude coverage for specific contraceptives services which they consider abortifacients (such as RU 486).

The Obama administration required insurance carriers or third-party administrators to cover plan members' contraceptive services directly if the employer objected to covering them.

Under these new final regulations, that accommodation process becomes optional. An employer can claim an accommodation by either filing EBSA Form 700 or providing written notice to HHS of its objection to covering any contraceptive services.

Qualifying employers can simply not cover the contraceptive services they oppose on moral or religious grounds. If they do not want to offer any accommodation, they need to make sure the Summary Plan Description (SPD) and Summary of Benefits and Coverage (SBC) properly reflect the exclusion.

CONCLUDING THOUGHTS

These final rules are slated to take effect January 14, 2019. However, a national injunction is in place because of two Federal lawsuits. Currently, organizations may not be permitted to claim these expanded moral or religious exemptions as a result of these Federal lawsuits. Marsh & McLennan Agency will keep you posted on these lawsuits.

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