

Proposed Rules Create Individual Contraception Coverage Arrangement

March 1, 2023

Quick Facts

- The Affordable Care Act (ACA) requires most health plans to cover contraceptive services at no cost-sharing.
- In 2018, final regulations allowed certain entities – those with religious or moral objections to contraception – a path to avoid the contraception requirement, and voluntarily offer an accommodation for plan participants to provide coverage through their issuer or third-party administrator (TPA).
- Three Federal Departments recently released proposed rules that eliminate the accommodation for entities and provide a new mechanism for individuals to obtain contraception at no cost to the individual or their plan sponsor.
- The proposed rules eliminate the moral exemption while preserving the religious exemption.

Background

The ACA requires non-grandfathered group health plans and individual health insurance to cover certain preventive services without cost-sharing, including contraception coverage. In 2018, final regulations published by the Internal Revenue Service (IRS) the Department of Labor (DOL) and the Department of Health and Human Services (HHS), collectively known as the Departments, provided qualifying religious employers and other entities an exemption from the contraception requirement under the ACA because of sincerely held religious beliefs.

The final rules extended the exemption to entities that had a sincerely held moral objection to contraception. Under the final rules, entities that qualified for an exemption may voluntarily provide an accommodation that would provide contraceptive services to individuals enrolled in the objecting entity's health plan at no cost to the individual or the organization. To participate in the accommodation, the plan sponsor was required to complete a form describing its religious or moral objection and provide the form to their health plan issuer, third-party administrator (TPA) or the Federal government. Upon completing the form, the entity was not obligated to provide contraceptive services, and the plan issuer or TPA would then provide separate payments for contraception to the individual at no cost to the plan participant or organization.

Proposed Rules

On January 30, 2023, the Departments [announced a proposed rule](#) intended to increase access to birth control coverage under the ACA, while preserving the religious exemption to contraceptives for certain objecting entities. The proposed guidance was highlighted in a [Fact Sheet](#) published on January 30, 2023, and published in the [Federal Register](#) on February 2, 2023.

Individual Contraception Arrangement

The proposed rules provide a new method for individuals covered by an objecting entity to obtain access to contraception at no cost by creating a mechanism outside of the group health plan or issuer. The provider will be reimbursed for the services from a participating qualified health plan (QHP) issuer in the Federally-facilitated Exchange (FFE), or State-based Exchange on the Federal platform (SBE-FP) with which it has a signed agreement.

Changes to the Moral Exemption

The proposed regulations would rescind the moral exemption and accommodation provided in the 2018 final regulations. The Departments maintain that only a small number of entities have expressed a desire for the moral exemption and therefore it is no longer needed.

The proposed rules leave the religious exemption in place.

Summary

Since the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization (Dobbs)*, the Biden administration has made clear its intent to maintain women's access to contraception as an essential part of women's reproductive healthcare.

There are 60 days from the date of publication (February 2, 2023) in the Federal Register for public comment, at which point the Departments will review and make a final decision on the proposed rule and its potential structure.

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