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legislativeUPDATE

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New contraception rules post-Hobby Lobby

New [proposed](#) and [interim rules](#) were recently issued in response to the Supreme Court's Hobby Lobby decision. The new rules provide new alternatives for certain employers who object on religious grounds to providing coverage of contraceptive services. The Affordable Care Act (ACA) requires that non-grandfathered group health plans cover FDA approved prescribed contraceptives, sterilization procedures, and patient education and counseling without charging cost-sharing, like a co-pay, co-insurance, or a deductible. Group health plans of qualifying nonprofit "religious employers" - primarily churches and other houses of worship - are exempted from having to provide contraceptive coverage. The proposed rules did not change this exemption.

The new rules address both *closely held for-profit and other non-profit entities*:

Rule for Closely Held For-Profit Entities: In a ruling on religious freedom, the Supreme Court (in the Hobby Lobby case) held that the requirement to provide certain contraceptive coverage to employees under an employer sponsored plan could not be applied to closely-held for-profit corporations whose owners had religious objections to providing such coverage. The decision did not apply to publicly-traded organizations or to privately-held companies that do not have religious objections. There is currently no exemption or accommodation for these entities. See our [Update](#) for more information on the Supreme Court ruling.

A proposed rule solicits comments on how to extend to certain closely held for-profit entities, like Hobby Lobby, the same accommodation that is available to non-profit religious organizations (as described below). Under the proposal, these companies would not have to contract, arrange, pay or refer for contraceptive coverage to which they object on religious grounds. The proposal seeks comment on how to define a closely held for-profit company and whether other steps might be appropriate to implement this policy. The proposed rules describe two alternative approaches for defining such an entity. Under one approach, the entity could not be publicly traded, and ownership of the entity would be limited to a certain number of owners. Under an alternative approach, the entity could not be publicly traded, and a minimum percentage of ownership would be concentrated among a certain number of owners. The number and concentration is not specified in the proposed rules. The rule also solicits comments on other possible approaches and on documentation and disclosure of a closely held for-profit entity's decision not to provide contraceptive coverage. The proposed rules further provide that valid corporate action taken in accordance with the entity's governing structure, in accordance with state law, stating its owner's religious objection can serve to establish that the entity objects to providing contraceptive coverage on religious grounds.

Rule for Non-Profit Entities: Accommodations are available for other non-profit religious organizations - such as hospitals and schools - that complete a government [EBSA Form 700](#) to self certify their objection to contraceptive coverage on religious grounds. Under the accommodation, an “eligible organization” does not have to contract, arrange, pay or refer for contraceptive coverage. Three days after the Hobby Lobby decision, the Supreme Court issued an order saying Wheaton College, a Christian liberal-arts school, didn’t have to fill out the form to facilitate contraceptive coverage for its employees and students. The school said that completing the form would make it complicit in the coverage. Wheaton covers most birth control, but objects to two abortifacient pills (Plan B One-Step and Ella). Under the new interim rules, religious nonprofits can write a letter to the Department of Health and Human Services (HHS) announcing their objections instead of filling out the form. Alternatively, the eligible organization may elect to provide notice to HHS using a new [model form](#). Under all alternatives, the insurers and TPAs must also notify participants and beneficiaries in writing that separate payments for contraceptive services are available at no cost ([model language](#) is available). The new accommodation alternatives are intended to relieve employers of any moral objections to the coverage.

For more information about the new rules, see the [fact sheet](#) and the [press release](#).

These accommodation approaches remain controversial and it isn’t clear if these proposed compromises will satisfy the groups or the Supreme Court. Some employers, like Hobby Lobby, are willing to cover most methods of contraception, as long as they can exclude drugs or devices that work after an egg has been fertilized. Other employers object to paying for or being complicit in providing any form of birth control. Conner Strong & Buckelew will continue to monitor the many ongoing court challenges from the non-profit and for-profit groups seeking relief from the contraceptive coverage mandate and the accompanying fines.

Should you have questions about this or any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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