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Final Rules on Religious Organizations and Contraception Coverage

The Obama administration issued [final rules](#) addressing how healthcare reform's contraceptive coverage mandate applies to religious organizations and other organizations that object to contraceptive coverage on religious grounds. These rules exempt religious employers (i.e., churches and houses of worship) from the contraceptive coverage mandate, and provide that non-exempt, non-profit religious organizations that object to contraceptive coverage on religious grounds do not have to contract, arrange, pay, or refer for contraceptive coverage. The agencies declined to issue any exemption or safe harbors for nonprofit secular employers and for-profit employers with religious objections.

Background. Under healthcare reform's preventive services rules, a non-grandfathered, non-excepted group health plan must provide certain contraceptive coverage without cost-sharing when services are delivered by in-network providers.

Since many religious organizations do not condone contraceptive services, the agencies have been considering how to apply the mandated coverage of contraception rules to these employers. The agencies previously created special exemptions for religious organizations that don't want their health plans to provide contraception benefits, and a safe harbor from agency enforcement for non-exempt, non-profit organizations with religious objections for plan years beginning before August 1, 2013. The new rules now extend the [temporary enforcement safe harbor](#) until the first plan year beginning on or after January 1, 2014.

Exemption for Religious Employers. The rules finalize a proposed simpler definition of "religious employer" for purposes of the exemption from the contraceptive coverage requirement in response to concerns raised by some religious organizations. Nonprofit churches and conventions or associations of churches may exclude contraceptive coverage from their health plans for their employees and their dependents. (Previously these organization were required to have as their purpose the inculcation of religious values, and to primarily employ and serve persons who share their religious tenets). The changes apply for plan years beginning on or after August 1, 2013.

Other Non-Profit Religious Organizations. The final rules provide an accommodation for other non-profit religious organizations - such as hospitals and schools - that have religious objections to contraceptive coverage, and self-certify that they meet certain criteria. Specifically, an eligible organization:

- opposes providing coverage for some or all of any contraceptive services on account of

- religious objections;
- is organized and operates as a nonprofit entity;
- holds itself out as a religious organization; and
- self-certifies that the organization meets these criteria and specifies the contraceptive services for which it objects to providing coverage. The final rules made changes to the self-certification requirement and to the permitted accommodations. For plan years beginning on or after January 1, 2014, self-certification must be made in a specified form and manner, using a new [self-certification](#) for eligible organizations.

Under the accommodation, these organizations will not have to contract, arrange, pay for or refer contraceptive coverage to which they object on religious grounds, but such coverage must be separately provided to women enrolled in their health plans at no cost. With respect to women who receive health coverage as employees:

- Eligible organizations with insured health plans must provide a copy of their self-certifications of eligible organization status to their health insurers, and the insurers must provide separate payments for contraceptive services for the women covered by the plans at no cost to the women or to the organizations. (Premium revenues from eligible organizations must be segregated from the funds used to make the payments.) In a change from the prior rules, individual insurance policies are not required for this purpose.
- Eligible organizations with self-insured health plans must provide a copy of their self-certifications of eligible organization status to their third-party administrators (TPAs), and the TPAs must provide or arrange separate payments for contraceptive services for the women covered by the health plans at no cost to the women or to the organizations. The TPA may pay the separate payments on its own or arrange for an insurer or other entity to provide them. TPAs must also take on the statutory responsibilities of a plan administrator under ERISA. Plans with no TPA can apply for an enforcement safe harbor while an additional accommodation is considered.

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). These provisions apply for plan years beginning on or after January 1, 2014. The temporary enforcement safe harbor has been extended to encompass plan years beginning on or after August 1, 2013 and before January 1, 2014 to allow time to prepare for and implement the accommodations.

Employers looking to take advantage of the religious-employer exemption should confer with counsel to ensure that all criteria are met. Controversy over the contraceptive services coverage mandate is expected to continue based on religious liberty concerns. There have been many religious court challenges to the contraceptive coverage mandate with varying results, and it is likely the U.S. Supreme Court will eventually be asked to weigh in. 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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