



# SecureOne Benefit Administrators, Inc. ACA Compliance News

July 2015

## CMS Issues Final Rule on Women's Preventative Services

### CMS ISSUES FINAL RULE ON PREVENTATIVE SERVICES

On July 10, 2015, CMS issued the final rules on Women's Preventative Services Coverage and Non-Profit Religious Organizations. Below is the Fact Sheet issued by CMS that briefly summarizes the final rule.

#### Women's Preventative Services coverage and Non-Profit Religious Organizations

##### Fact Sheet: Women's Preventive Services Coverage, Non-Profit Religious Organizations, and Closely-Held For-Profit Entities

Most health plans are required to cover certain recommended preventive services, including certain women's preventive health services, without charging cost sharing, like a co-pay, co-insurance, or deductible. The independent Institute of Medicine (IOM) provided recommendations to the Department of Health and Human Services (HHS) regarding which preventive services help keep women healthy. The IOM recommendations included covering all FDA-approved contraceptive services for women with child-bearing capacity, as prescribed by a provider, because of the health benefits for women that come from using contraception. In fact, nearly 99 percent of women in the United States have relied on contraceptive services at some point in their lives, but more than half, between the ages of 18 and 34, have struggled to afford it. Under Affordable Care Act (ACA) rules, starting in 2012, women enrolled in most health plans and health insurance policies (non-grandfathered plans and policies) are guaranteed coverage for recommended preventive care, including all FDA-approved contraceptive services prescribed by a health care provider, without cost sharing. New rules posted on July 10, 2015 finalize with minor changes the interim final rules for preventive services coverage and also finalize last August's proposed rules to provide an accommodation for certain closely held for-profit entities with religious objections to providing coverage for some or all contraceptive services. The rules also finalize the preventive services interim final rules from 2010 with few changes, such as standards to ensure that when a recommendation or guideline for a preventive services is downgraded in the middle of a plan year, group health plans and insurers generally must continue to cover the preventive service without cost sharing through the end of the plan year, except in certain limited instances related to, for example, safety concerns.

#### Exemption for Religious Employers

Under Affordable Care Act (ACA) rules, starting in 2012, women enrolled in most health plans and health insurance policies (non-grandfathered plans and policies) are guaranteed coverage for recommended preventative care, including all FDA-approved contraceptive services prescribed by a health care provider, without cost sharing. New rules posted on July 10, 2015 finalize, with minor changes, the interim final rules for preventative services coverage and also finalize last August's proposed rules to provide an accommodation for certain closely held for-profit entities with religious objections to providing coverage for some or all contraceptive services. The rules also finalize the preventative service interim final rules from 2010 with few changes, such as standards to ensure that when a recommendation or guideline for a preventative service is downgraded in the middle of a plan year, group health plans and insurers generally must continue to cover the preventative service without cost sharing through the end of the plan year, except in certain limited instances related to, for example, safety concerns.

#### Exemption for Religious Employers

Under final rules issued in July 2013, group health plans of "religious employers" are exempt from having to provide coverage for contraceptive services. The definition of "religious employer" for purposes of the exemption is based solely on section 6033(a)(3) (A)(i) or (iii) of the Internal Revenue Code, which primarily concerns churches and other houses of worship. A house of worship is exempt even if it provides charitable social services to, or employs, persons of different religious faiths.

#### Accommodations for Additional Non-Profit Religious Organizations

The final rules issued in July 2013, also provide an accommodation for other non-profit religious organizations that object to providing contraceptive services coverage on religious grounds. An eligible organization, under the July 2013, final rules, is one that:

1. on account of religious objections, opposes providing coverage for some or all of any contraceptive services otherwise required to be covered;
2. is organized and operates as a nonprofit entity;
3. holds itself out as a religious organization; and
4. self-certifies that it meets these criteria in accordance with the provisions of the final regulations





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Under the accommodation, an eligible organization does not have to contract, arrange, pay, or refer a person for contraceptive services coverage. At the same time, contraceptive services are available for women enrolled in the health plan of the organization at no cost to the women or to the organization.

Under the 2013 final rules, with respect to insured health plans, including student health plans, in order for an organization to be eligible for the accommodation, it provides a copy of its self-certification to its health insurance issuer. These issuers must then provide separate payments for contraceptive services for the women in the health plan of the organization, at no cost to the women or to the organization. As explained in the final rules, evidence suggests that providing such payments is cost-neutral for issuers.

Also under the 2013 final rules, with respect to self-insured group health plans, in order for an organization to be eligible for the accommodation, it provides a copy of its self-certification to its third party administrator (TPA). The TPA must provide or arrange separate payments for contraceptive services for the women in the health plan of the organization, at no cost to the women or to the organization. The costs of such payments can be offset by adjustments in Federally-facilitated Marketplace user fees paid by a health insurance issuer with which the TPA has an arrangement.

### **Additional Notification Option for the Accommodation**

In August 2014, interim final regulations were published to establish another option for an eligible organization to avail itself of the accommodation. Under the interim final regulations, an eligible organization may notify the Department of Health and Human Services (HHS) in writing of its religious objection to providing coverage for contraceptive services. HHS will then notify the insurer for an insured health plan, or will work with the Department of Labor to notify the TPA for a self-insured plan, that the organization objects to providing coverage for contraceptive services and that the insurer or TPA is responsible for providing enrollees in the health plan separate no-cost payments for contraceptive services. These interim final regulations are finalized in new rules posted on July 10, 2015.

### **Accommodation Extended to Certain Closely Held For-Profit Entities**

Also in August 2014, in response to the Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the Departments proposed regulations that solicited comments on expanding the availability of the accommodation to include a closely held for-profit entity that has a religious objection to providing coverage for some or all contraceptive services. The final rules define a qualifying closely held for-profit entity as an entity that (i) is not a nonprofit entity; (ii) has no publicly traded ownership interests; and (iii) has more than 50 percent of the value of its ownership interest owned directly or indirectly by five or fewer individuals - a definition based on a test that is already used in Federal tax law. For purposes of this definition, all of the ownership interests held by members of a family are treated as being owned by a single individual. Based on available information, the Departments believe that this definition includes all of the for-profit companies that have challenged the contraceptive-coverage requirement. In addition, the rule provides that entities whose ownership structure is substantially similar to this definition can also qualify for the accommodation. An organization that is unsure about whether its ownership structure qualifies as "substantially similar" can seek guidance from HHS.

Additionally, to be eligible for the accommodation, the for-profit entity's highest governing body (such as its board of directors, board of trustees, or owners, if managed directly by its owners) must adopt a resolution or similar action, under the organization's applicable rules of governance and consistent with applicable state law, establishing that it objects to covering some or all of the contraceptive services on account of the owners' sincerely held religious beliefs. A qualifying closely held for-profit entity seeking the accommodation may use either of the two notification options discussed in this Fact Sheet that are available to qualifying non-profit entities that seek the accommodation.

The final 2013 regulations on preventive services coverage are available at: [www.gpo.gov/fdsys/pkg/FR-2013-07-02/pdf/2013-15866.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-07-02/pdf/2013-15866.pdf)

Today's final regulations that finalized the alternative notification option, and extend the accommodation to qualifying closely held for-profit entities can be found at: [www.ofr.gov/inspection.aspx](http://www.ofr.gov/inspection.aspx)

For more information on women's preventive services coverage visit: [www.hhs.gov/healthcare/facts/factsheets/2011/08/womensprevention08012011a.html](http://www.hhs.gov/healthcare/facts/factsheets/2011/08/womensprevention08012011a.html)

For required health plan coverage guidelines for women's preventive services visit: [www.hrsa.gov/womensguidelines](http://www.hrsa.gov/womensguidelines)

For the self-certification form for eligible organizations visit: [//cms.gov/CCIIO/Resources/Forms-Reports-and-other-Resources/index.html#Prevention](http://cms.gov/CCIIO/Resources/Forms-Reports-and-other-Resources/index.html#Prevention)



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