



OLR RESEARCH REPORT

May 14, 2012

2012-R-0192

INSURANCE COVERAGE FOR CONTRACEPTION

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You asked for a comparison of federal and state religious employer exemptions for insurance coverage of contraceptives as of August 2011. In particular, you asked which exemption is broader.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be construed as one.

SUMMARY

Both federal and state law requires health insurance policies to cover contraceptives in certain circumstances. State law and federal rules implementing federal law exempt certain religious employers from the insurance coverage requirement. The state exemption appears to be the broader exemption, meaning more organizations would be able to claim the exemption under state law than under the federal rule.

The federal exemption contained in the August 2011 interim final rules is narrowly drawn to apply to nonprofit religious organizations that “primarily” employ and serve people who share the organizations’ religious tenets. In practice, Catholic organizations, such as universities and hospitals, seem to hire and serve people regardless of whether they share the organizations’ religious tenets. Thus, it appears that such organizations would not qualify for the federal exemption.

The state exemption is broadly drafted to apply to “qualified church-controlled organizations” and church-affiliated organizations. Although the law does not define “church-affiliated organizations,” this seems to include universities and hospitals affiliated with the Catholic Church, regardless of their practices to hire and serve people from the general public.

FEDERAL RULE

The 2010 Patient Protection and Affordable Care Act (PPACA) requires group health plans to cover, with no cost-sharing requirements, certain preventive services, including women’s preventive care and screenings (PPACA § 2713). In 2011, the U.S. Department of Health and Human Services (HHS) adopted the Institute of Medicine’s (IOM) recommendations for women’s preventive health care.

Drawing on the IOM recommendations, HHS issued interim final rules in August 2011 that require most health insurance plans to cover preventive services for women, including contraception, without charging a co-payment, coinsurance, or deductible. But the rule allows certain nonprofit religious employers that offer insurance to their employees to choose whether to cover contraceptive services (45 CFR § 147.130(a)(1)(iv)(B)).

The rule defines “religious employer” as an organization that:

1. has the inculcation of religious values as its purpose,
2. primarily employs people who share its religious tenets,
3. primarily serves people who share its religious tenets, and
4. is a nonprofit organization under IRS Code §§ 6033(a)(1) and 6033(a)(3)(A)(i) or (ii) (e.g., churches).

The federal contraception coverage requirement is effective for plan years beginning on and after August 1, 2012. But HHS announced on January 20, 2012 that nonprofit religious employers who do not currently cover contraceptives in their insurance plans will have until August 1, 2013 to comply.

STATE LAW

State law requires insurance plans that cover prescription drugs to also cover prescription contraceptives ([CGS §§ 38a-503e](#) and [38a-530e](#)). But the law allows a religious employer or individual to decline contraceptive coverage if it conflicts with bona fide religious beliefs.

The law defines “religious employer” as an employer that is a church-controlled organization as defined in 26 USC 3121 or a church-affiliated organization. “Qualified church-controlled organization” is any church-controlled 501(c)(3) tax-exempt organization that (1) does not generally offer goods, services, or facilities for sale to the general public or (2) receives less than 25% of its financial support from government grants or receipts from goods and services in related activities or business. State law does not define “church-affiliated organization.”

People or employers who wish to be exempt from the contraceptive coverage requirement based on religious grounds must request the exemption from the insurer in writing.

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