

# Health Care Reform Management Alert Series

Issue 25

## New Preventive Care Guidelines Issued for Contraceptives and Women's Health Care

This is the twenty-fifth issue in our health care reform series of alerts for employers on selected topics in health care reform. (Our general summary of health care reform and other issues in this series can be accessed by clicking [here](#).) This series of Health Care Reform Management Alerts is designed to provide a more in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

This supplements Issue 10 of our Health Care Reform Management Alert Series, which addressed the new Patient Protection and Affordable Care Act (PPACA) requirement that non-grandfathered plans offer in-network preventive care with no cost-sharing for participants.

Applies to grandfathered plans

Applies to new health plans and plans that lose grandfathered status

### New Preventive Care Coverage Requirements

PPACA requires preventive care and screening for women in accordance with guidelines to be adopted by the Health Resources and Services Administration (HRSA). Accordingly, the HRSA has issued new guidelines for women's preventive care. These new preventive services include:

- Annual well-woman preventive care visits, including preconception and prenatal care;
- Screening for gestational diabetes;
- HPV testing for women over 30, no more than once every three years;
- Annual counseling on sexually transmitted infections for all sexually active women;
- Annual counseling and screening for HIV;
- Breastfeeding support and counseling, including the cost of renting breastfeeding equipment;
- Annual screening and counseling for interpersonal and domestic violence; and
- All FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity, as prescribed.

The new HRSA guidelines do not become mandatory until the first plan year that begins on or after August 1, 2012. For calendar-year, non-grandfathered plans, first dollar coverage of the services listed above will not be mandatory until January 1, 2013.

## Limited Exemption for Religious Employers

Before the HRSA announced the new guidelines, certain faith-based employers raised objections to being required to provide first dollar coverage for birth control services. In direct response to these comments, the Departments of Treasury, Labor, and Health and Human Services issued interim final regulations that give the HRSA the discretionary authority to release “religious employers” from compliance with preventive care guidelines. Exercising this discretionary authority, the HRSA agreed to exempt religious employers from implementing coverage of contraceptives. (Note, however, that the exemption does not apply to the other women’s care recommendations, such as STI and HIV counseling).

To be eligible for the exemption, an organization must be a certain type of religious non-profit organization whose purpose is the “inculcation of religious values.” Additionally, the organization must primarily employ and serve persons who share the religious tenets of the organization. In the Preamble to the interim regulations, the Departments explain that this definition conforms to the definitions used in state laws that exempt religious organizations from similar contraceptive care requirements. The Departments have solicited comments, so the definition may change when final regulations are issued.

## Employer Action Plan

- Determine whether your plan is grandfathered.
- If your plan is not grandfathered, review the list of new preventive care recommendations and confirm that your plan will be prepared to offer these services as of the first plan year beginning on or after August 1, 2012, with no in-network cost-sharing (such as co-pays, deductibles, or co-insurance).
- As with all preventive services, determine whether to impose cost-sharing on out-of-network preventive services.
- Review formularies and consider adding generic options for contraceptive drugs, if not already offered.
- For faith-based organizations, review the definition of “religious employer” to determine whether the exemption for contraceptive care will apply.

By: *Judith Wethall* and *Finn Pressly*

*Judith Wethall* is a partner in Seyfarth’s Chicago office, and *Finn Pressly* is an associate in the firm’s Chicago office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Judith Wethall at [jwethall@seyfarth.com](mailto:jwethall@seyfarth.com), or Finn Pressly at [dpressly@seyfarth.com](mailto:dpressly@seyfarth.com).



**Breadth. Depth. Results.**

[www.seyfarth.com](http://www.seyfarth.com)