

FACT SHEET: Religious and Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act

On October 6, 2017, the Departments of Health and Human Services, Treasury, and Labor (the Departments) announced two companion interim final rules that provide conscience protections to Americans who have a religious or moral objection to paying for health insurance that covers contraceptive methods, including certain contraceptives that many may view as abortifacients, as well as sterilization procedures.

Background

- Prior to October 6, 2017, the regulations and guidance issued by the Departments required health insurance issuers and group health plans to provide coverage for all FDA-approved contraceptive methods, sterilization procedures, and associated patient education and counseling for all women with reproductive capacity, as prescribed.
 - The previous regulations provided a narrow exemption for churches, integrated auxiliaries, and religious orders with respect to their exclusively religious activities, if such organizations had religious objection to providing some or all of the required contraceptives.
 - The previous regulations provided an accommodation for religious non-profits and closely held for-profit organizations that had religious objections to covering some or all contraceptives. Under the accommodation, the entity's insurer or third party administrator was responsible for providing contraceptive services to the entity's beneficiaries without cost to the entity, the entity's group plan, or the beneficiaries. Third party administrators could seek reimbursement of the expenses associated with such payments by means of a reduction in users fees paid with respect to participation on Federally-Facilitated Exchanges.
- The Trump administration inherited the losing side of more than 50 lawsuits that were filed against the Obama administration by organizations that have sincerely held religious or moral objections to paying for or providing contraceptive or abortion-inducing drugs or devices. The Mandate as defined by the previous administration has suffered defeats in court, including the Supreme Court, which protected religious business owners from government punishment under the contraceptive mandate.

Interim Final Rules (IFRs)

Exemptions for Religious Beliefs – (IFR 2017-21851) –

- The first of two companion rules provides an exemption from the contraceptive coverage mandate to entities and individuals that object to contraceptive coverage on the basis of sincerely held religious beliefs. Thus,

entities that have sincerely held religious beliefs against providing contraceptive/abortifacient services would be exempt from the mandate and no longer be required to provide such coverage.

- The rules maintain the availability of the accommodation, but make it voluntary, at the option of the entity. That is, an otherwise exempt entity can elect to take advantage of the accommodation for its employees and their dependents.

Entities that hold a requisite objection to covering some, but not all, contraceptive items would be exempt with respect to the items to which they object, but not with respect to the items to which they do not object.

- The exemption is also applicable to institutions of higher education, insurance issuers to the extent they provide a plan to otherwise exempt entities, and individuals whose employers and issuers are willing to provide them a plan compliant with the individuals' beliefs.
- Read More - <https://www.federalregister.gov/d/2017-21851>

Exemptions for Moral Convictions (IFR 2017-21852) –

- This rule applies the same protections to organizations and small businesses that have objections on-the-basis of moral conviction which is not based in any particular religious belief.
- The IFR expands exemptions to the contraceptive mandate to protect certain entities and individuals that object to coverage of some or all contraceptives based on sincerely held moral convictions.
 - The IFR applies to nonprofit organizations and some businesses, and to institutions of education, issuers, and individuals similar to how the Religious IFR applies, but does not include plan sponsors that are publicly traded.
 - Based on case law, the preamble to the IFR outlines the standard for sincerely held moral convictions. The courts have recognized exemptions in certain areas for individuals who object on the basis of moral convictions: (1) that the “individual deeply and sincerely holds”; (2) “that are purely ethical or moral in source and content; (3) “but that nevertheless impose upon him a duty”; (4) and that “certainly occupy in the life of that individual a place parallel to that filled by ... God’ in traditionally religious persons,” such that one could say “his beliefs function as a religion in his life.”
 - Exemptions for moral convictions related to abortion and sterilization were created 45 years ago by Senators Frank Church and Adali Stevenson III, and Congress has used them in several other laws.
 - Read More - <https://www.federalregister.gov/d/2017-21852>

- The IFR leaves unchanged HRSA’s authority to decide whether to include contraceptives in the women’s preventive services Guidelines for entities that are not exempted by law, regulation, or the Guidelines

Effective Date: These rules took effect upon display on the Federal Register October 6, 2017. The Departments will be accepting public comments on the IFRs through December 5, 2017.

Impact: HHS estimates these IFRs will affect approximately 200 employers who filed lawsuits or have religious objections, or will impact no more than 120,000 women.

Applicable Exemptions: The regulations exempt entities only from providing an otherwise mandated item to which they object on the basis of their religious beliefs or moral conviction. The entities include:

- Churches, integrated auxiliaries, and religious orders with religious objections;
- Nonprofit organizations with religious or moral objections;
- For-profit entities that are not publicly traded with religious or moral objections;
- For-profit entities that are publicly traded with religious objections;
- Other non-governmental employers with religious objections;
- Institutions of higher education with religious or moral objections;
- Individuals with religious or moral objections, with employer sponsored or individual market coverage, where the plan sponsor and issuer (as applicable) are willing to offer them a plan omitting contraceptive coverage to which they object;
- Issuers with religious or moral objections, to the extent they provide coverage to a plan sponsor or individual that is also exempt.

Un-impacted: The regulation leaves in place preventive services coverage guidelines where no religious or moral objection exists.

- These rules will not affect over 99.9 percent of the 165 million women in the U.S.
- Current law already exempts over 25 million people from the preventive-care mandate because the mandate does not apply to plans insured through grandfathered coverage that existed prior to the Affordable Care Act (and its implementing regulations issued under the Obama Administration).
- The regulations leave in place government programs that provide free or subsidized contraceptive coverage to low income women, such as through community health centers.

Unintended Pregnancies: 89 percent of women who are at risk of unintended pregnancy and are living at 0 to 149 percent of the poverty line are already using contraceptives, as are 92 percent of those with incomes of 300 percent or more of the Federal poverty level. The rates of—and reasons for—unintended pregnancy are difficult to measure. The IFRs also do not change access to contraception for low-income women through places like

community health centers, or through their employer's coverage if the employer does not have religious or moral objections. These regulations do not ban any drugs or devices.

Notices: The expanded exemptions use the same approach as the previous exemptions, under which exempt groups are not required to file notices. If an entity improperly claims the exemption, it risks fines and lawsuits for not complying with the Mandate. That is the same deterrence the Obama administration used instead of requiring religious employers to submit notices.

If exempt groups wish to use the optional accommodation processes, they may file the previously established form or notice on a voluntary basis. Directions may be found [here](#).