

CLIENT NEWS BRIEF

State Law Limits Impact of Contraceptive Coverage Rollback on California Employers

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The Trump Administration has issued a significant rollback of Affordable Care Act (ACA) rules that require employers to include cost-free contraceptive coverage in health insurance plans offered to employees. The changes, however, do not apply to most government agency employers and will have a limited impact on California employers. California is one of four states with laws that mandate contraceptive coverage in employer-offered health insurance plans.

The new federal interim rules, which were issued on October 6, 2017 and became effective immediately, permit all non-governmental employers, health plans and third party administrators, as well as colleges and universities that provide student health insurance, to seek an exemption from the requirement that they provide contraceptive coverage if doing so violates a "sincerely held" religious belief. Employers may invoke the exemption to avoid covering some or all of the Food and Drug Administration (FDA)-approved contraceptive services health plans are required to cover under the ACA.

The interim rules also extend the contraceptive coverage exemption to nonprofit organizations, for-profit entities that have no publicly traded ownership interests, health insurance issuers and colleges and universities if providing such coverage would violate a "sincerely held" moral conviction. While not included in the federal interim rule, the Administration is seeking comments on whether this contraceptive coverage exemption should be expanded to cover publicly traded corporations and non-federal government plan sponsors.

The interim rules also permit employees who do not want contraceptive coverage due to their religious beliefs or moral convictions to ask their employer to provide alternative health coverage that does not include coverage for contraceptives. The new rules permit any willing insurer or employer, including government agency employers, to provide such alternative coverage.

Prior ACA rules only permitted houses of worship and integrated auxiliary institutions to exempt themselves from the contraceptive mandate. Those rules created an accommodation for other nonprofit religious organizations and closely held corporations that objected to providing such coverage for religious reasons that required insurers to continue to provide contraceptive coverage without cost and also established mechanisms for repayment. The prior federal accommodation is now optional for employers who are eligible for an exemption on religious or moral grounds.

While the new federal rules may reduce access to contraceptives across most of the country, they will have little impact in California, which requires most employers to provide contraceptive coverage at no cost to insured employees.

California's Contraceptive Coverage Equity Act of 2014 (the Act) requires health plans and insurers doing business in California, including Medi-Cal managed



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care plans, to cover FDA-approved contraceptive drugs, devices and products for women, as well as related counseling and follow-up services and voluntary sterilization procedures, without cost. This California law applies to health care service plan contracts and health insurance policies issued, amended or renewed on or after January 1, 2016.

The Act exempts religious employers, defined as a house of worship or integrated auxiliary institution for which (1) the inculcation of religious values is the purpose of the entity; (2) the entity primarily employs persons who share the religious tenets of the entity; (3) the entity serves primarily persons who share the religious tenets of the entity; and (4) the entity maintains nonprofit status. The Act does not apply to grandfathered health plans.

The Act does not address the interim federal provision that allows certain employees to request alternate health benefits without contraceptive coverage, and based upon current law, it is unclear whether government agency employers may consider such requests.

The federal interim rules regarding contraceptive coverage are temporary and are subject to a comment period that is open through December 5, 2017. The interim rules on religious belief exemptions may be viewed [here](#), and the interim rules on accommodations and exemptions for moral convictions may be viewed [here](#).

For more information on the federal government's interim contraceptive coverage rules, state coverage rules or health care coverage in general, contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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