

Final Regulations on Contraceptive Coverage under Affordable Care Act – the Religious Exemption

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The Departments of Treasury, Labor and Health and Human Services have released Final Regulations providing much-needed guidance with respect to defining a “closely-held corporation.” The Final Regulations, released on July 14, 2015, also provide guidelines for establishing a religious objection for purposes of qualifying for exemption from the Affordable Care Act (“ACA”) mandate to provide contraceptive coverage under an employer health plan in light of the U.S. Supreme Court’s decision in *Burwell v. Hobby Lobby Stores, Inc., et al.*, 134 S. Ct. 2751, 573 U.S. ____ (2014).

The Final Regulations are effective on September 14, 2015, and applicable as of the first day of the first plan year that begins on or after September 14, 2015.

Background

The ACA requires all non-grandfathered group health plans and health insurance issuers to provide, without cost sharing, coverage of specified preventive services. Included in these services are preventive care and screenings for women as provided in the guidelines of the Health Resources and Services Administration. These guidelines require coverage of contraceptive services.

The implementation of the ACA’s preventive care rules has given rise to considerable controversy and many lawsuits by employers who object on religious grounds to providing all or some contraceptive services to their employees and, in the case of colleges and universities, to students covered by student health plans. The Supreme Court addressed the issue in *Burwell v. Hobby Lobby* and in orders in several other cases. It held in *Hobby Lobby* that closely-held corporations cannot be required to provide contraceptive coverage as mandated by the ACA. (See our article, [Supreme Court Rules Closely Held Companies Not Subject to Contraceptive Coverage](#)

[Mandate of Health Care Reform Law.](#))

Definition of Closely-Held Corporation

The Final Regulations provide an exemption to the contraceptive coverage mandate for closely-held, for-profit companies that object to providing contraceptive coverage based on their owners' religious beliefs. "Closely-held corporation" is defined in the Final Regulations as a for-profit entity which is 50 percent owned (directly or indirectly) by five or fewer individuals, or which has a substantially similar ownership structure. The Final Regulations expressly exclude publicly-traded companies from eligibility for the exemption. The definition of "closely-held" is similar, but not identical, to the general tax law definition. Thus, for example, a personal service corporation may qualify for the exemption. Additionally, a for-profit entity controlled by a non-profit "eligible organization" (a religious organization exempt from the contraceptive coverage mandate) also may qualify. The Final Regulations provide that a for-profit entity may send a letter to the Internal Revenue Service for further information regarding whether its ownership structure qualifies for the exemption.

Evidencing Religious Objection

The Final Regulations provide that in order to be eligible for the exemption, the closely-held corporation's highest governing body (such as the Board of Directors or Board of Managers) must adopt a resolution or similar action consistent with the organization's governance rules establishing that the organization objects to providing contraceptive coverage based on its owners' sincerely-held religious beliefs.

A for-profit entity seeking the exemption is not required to provide *documentation* of its religious objection to the federal government or to the insurer or third-party administrator, although *communication* of the decision to those parties, in the manner provided in August 14, 2014, interim regulations, is required. It is not necessary for an organization's by-laws, mission statement, or other documents to evidence the organization's religious character. Earlier guidance provides that where eligible organizations or closely-held corporations satisfy the criteria for the exception, their insurers and third-party administrators are required to provide the contraceptive coverage the organization has objected to on religious grounds without cost-sharing.

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