

FOR IMMEDIATE RELEASE

November 7, 2018

Contact: HHS Press Office

202-690-6343

media@hhs.gov

Fact Sheet: Final Rules on Religious and Moral Exemptions and Accommodation for Coverage of Certain Preventive Services Under the Affordable Care Act

On November 7, 2018 the Departments of Health and Human Services, Treasury, and Labor (the Departments) announced two final rules, on display at the Federal Register, that provide conscience protections to Americans who have a religious or moral objection to health insurance that covers contraceptive methods, including certain contraceptives that many view as abortifacients, and/or sterilization procedures.

Background

- The Affordable Care Act (ACA) did not require contraceptive coverage in health insurance. It did not require the government to violate religious or moral objections to providing or purchasing such coverage. In addition, it exempted plans grandfathered under the ACA – which cover millions of women – from being required to provide preventive services coverage with no cost-sharing.
- Starting in 2011, the Departments issued regulations and guidance requiring non-grandfathered group health plans and health insurance issuers to cover all FDA-approved contraceptive methods, sterilization procedures, and related education and counseling.
 - The previous administration offered a narrow exemption for churches, religious orders, and integrated auxiliaries (organizations with financial support primarily from churches).
 - The previous administration created an accommodation for religious non-profits and, after the Supreme Court's decision in *Hobby Lobby*, for 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 plan participants and beneficiaries.
- The Trump administration inherited dozens of lawsuits filed against HHS by organizations with sincerely held religious or moral objections to paying for or providing contraceptive or abortion-inducing drugs and devices.
- In October 2017, the Trump administration issued two interim final rules seeking public comment. The rules protected the conscientious objections of Americans subjected to the federal contraceptive

guidelines, while maintaining the contraceptive coverage requirement in nearly all cases. The administration received over 100,000 public comment submissions by the December 2017 deadline.

- In three lawsuits filed against the interim final rules, the government won one, while two judges enjoined enforcement of the interim final rules. The cases are on appeal.
- In many cases filed against the contraceptive mandate promulgated by the previous administration, courts have granted permanent injunctions protecting non-profit organizations from the contraceptive mandate and accommodation.

Final Rules Concerning Religious and Moral Exemptions

Exemptions for Religious Beliefs – (CMS-9940-F2)

- The first of two final rules provides an exemption from the contraceptive coverage mandate to entities and individuals that object to services covered by the mandate on the basis of sincerely held religious beliefs. Thus, entities that have sincerely held religious beliefs against providing contraceptive services (or services which they consider to be abortifacients) would be exempt from the mandate and no longer be required to provide such coverage.
- The rules maintain the availability of the accommodation, in which the entity's insurer or third party administrator is responsible for providing contraceptive services to the entity's plan participants and beneficiaries, but they make it voluntary, at the option of the entity. That is, an otherwise exempt entity can elect to take advantage of the accommodation, which would provide contraceptive coverage to its employees and their dependents. Entities that object to covering some, but not all, contraceptive items would be exempt with respect to only those methods to which they 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.
- The Departments thoroughly considered and responded to the many public comments submitted under the interim final rule. In response to various comments, the final rule differs from the interim final rule in technical ways to ensure the text and operation of the rule is clear, and that insurers can rely on its procedures.
- Read More: <https://www.federalregister.gov/documents/2018/11/15/2018-24512/religious-exemptions-and-accommodations-for-coverage-of-certain-preventive-services-under-the>

Exemptions for Moral Convictions (CMS-9925-F)

- This rule gives nonprofit organizations, small businesses, and individuals that have non-religious moral convictions opposing services covered by the contraceptive mandate protections that are similar to the religious final rule's protections for religious organizations and businesses.

- The exemptions apply to nonprofit organizations and to closely held businesses, as well as to institutions of education, health insurance issuers serving exempt entities, and individuals. The voluntary accommodation is also available to entities with moral convictions against providing contraceptive services (or services which they consider to be abortifacient) in their health plans.
- The Departments considered public comments and decided at this time not to extend the moral exemptions to publicly traded businesses or government entities. The Departments thoroughly considered and responded to the many public comments and made technical changes to ensure the rule is clear.

- Based on case law, the preamble to the rule explains that moral convictions are protected in ways similar to religious beliefs, when the convictions are those: (1) that a person “deeply and sincerely holds”; (2) “that are purely ethical or moral in source and content; (3) “but that nevertheless impose ... a duty”; (4) and that “certainly occupy ... a place parallel to that filled by ... God’ in traditionally religious persons,” such that one could say the “beliefs function as a religion.”

- Exemptions for moral convictions related to abortion and sterilization were created in federal law 45 years ago by Senators Frank Church and Adlai Stevenson III, Congress has repeated them in many laws since then. In signing the ACA, President Obama issued an executive order promising to respect those laws.

- Read More: <https://www.federalregister.gov/documents/2018/11/15/2018-24514/moral-exemptions-and-accommodations-for-coverage-of-certain-preventive-services-under-the-affordable>

Applicable Exemptions: The regulations exempt entities only from providing an otherwise mandated contraceptive 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;
- Non-governmental 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/or 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.

Effective Date: The rules take effect 60 days after their publication in the Federal Register.

Impact: The Departments estimate the exemptions should affect no more than approximately 200 employers with religious or moral objections, with many entities not being affected because they were already permitted not to cover contraceptives under the previous rules, or are protected by permanent court injunctions. The Departments estimate the exemptions may affect the coverage of approximately 6,400 women, and state that in no case will they impact more than 127,000 women, which the Departments suggest is far more than will actually be impacted.

No Impact: These rules affect a small fraction of the 165 million women in the U.S. The rules leave in place contraceptive coverage guidelines where no religious or moral objection exists, and they do not change the Health Resources and Services Administration's authority to decide whether to include contraceptives in the women's preventive services guidelines for other entities.

- The ACA itself exempts tens of millions of people from the preventive services coverage mandate who are in grandfathered coverage that existed prior to the ACA.
- The rules leave in place government programs that provide free or subsidized contraceptive coverage to low income women, such as through community health centers.
- These regulations do not ban any drugs or devices, or prohibit any employer from covering contraceptives.
- The rules exempt publicly traded religious entities if they object to contraceptive coverage, but no such entity has ever been identified.
- The rules do not exempt publicly traded entities that have non-religious moral objections, nor has any such entity been identified. The only entities known to express non-religious moral objections are pro-life organizations whose employees share the objections.

Notices: The expanded exemptions use the same approach taken during the previous administration, 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. If exempt groups wish to use the optional accommodation process, they may file the same kind of form or notice set forth under the previous accommodation process. Those forms are being updated in conjunction with these final rules.

###

Note: All HHS press releases, fact sheets and other news materials are available at <https://www.hhs.gov/news>.

Like [HHS on Facebook](#), follow HHS on Twitter [@HHSgov](#), and sign up for [HHS Email Updates](#).

Last revised: November 7, 2018