

Contraceptive Coverage Requirement Timeline

Prepared By: Dipti Singh

Date: May 14, 2013

The Affordable Care Act's ("ACA") requirement that most new health insurance plans cover women's preventive health services—including contraception—without cost-sharing is a significant triumph for millions of women who are currently insured or who will obtain health insurance through the ACA. Unfortunately, various ongoing efforts could deprive many women of the right to obtain affordable birth control. This timeline provides a history of the requirement's adoption and its implementation.

- **March 23, 2010:** The ACA becomes law requiring new group health plans and health insurance issuers to cover such additional women's health preventive care and screenings as provided for in guidelines supported by the Health Resources and Services Administration ("HRSA").¹
- **July 19, 2010:** The Department of Health & Human Services ("HHS"), the Department of Labor, and the Department of the Treasury ("the Departments") issue interim final regulations implementing § 2713 of the Public Health Service Act ("PHS Act"), which provide that a non-grandfathered group health plan or health insurance issuer must cover certain items and services, without cost-sharing, as recommended by the U.S. Preventive Services Task Force ("USPSTF"), the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and HRSA.² (33 comments received).
- **July 19, 2011:** Institute of Medicine ("IOM") issues report, *Clinical Preventive Services for Women: Closing the Gaps*.³
- **August 1, 2011:** HRSA adopts and releases guidelines for women's preventive services based on IOM's recommendations, including required coverage of all FDA-

¹ Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010), § 1001, 42 U.S.C. § 300gg-13 (amending § 2713 of the PHS Act).

² Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Act, 77 Fed. Reg. 41,726 (July 19, 2010).

³ Inst. of Medicine of the Nat'l Academies, *Clinical Preventive Services for Women: Closing the Gaps* at 1-2 (2011), <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>. HRSA charged the IOM with developing recommendations on the preventive services necessary to ensure women's health and well-being. *Id.* at 1. To this end, the IOM convened a committee of 16 eminent researchers and practitioners to serve on the Committee on Preventive Services for Women. *Id.* at 2.

approved methods of contraception, sterilization procedures, and counseling. HRSA adds “as prescribed” to the recommendation, raising questions about coverage of over-the-counter contraceptives.⁴

- **August 3, 2011:** The Departments issue amendments to the interim rules that provide HRSA discretion to exempt group health plans established or maintained by certain religious employers (and any group health insurance provided in connection with such plans) from any requirement to cover contraceptive services.⁵ (84,088 comments received)
- **November 10, 2011:** Belmont Abbey College challenges the contraceptive coverage mandate.⁶
- **January 20, 2012:** Secretary Sebelius reaffirms exemption authorized in the amended interim final regulations, and indicates that a safe harbor would be provided for certain other religiously affiliated non-profit organizations.
- **February 10, 2012:**
 - President Obama [announces](#) plan to implement an “accommodation” for certain religious groups.
 - Center for Consumer Information and Insurance Oversight (“CCIO”) and Centers for Medicare & Medicaid Services (“CMS”) issue guidance on safe harbor from the contraceptive coverage requirement.⁷
- **February 15, 2012:** The Departments finalize, without change, the interim final regulations authorizing exemption of group health plans and group health insurance coverage sponsored by certain religious employers from requirement to cover contraception, effective April 16, 2012.⁸
- **February 16, 2012:** First Congressional hearing on contraceptive coverage rule before the Committee on Oversight & Government Reform, “Lines Crossed:

⁴ U.S. Dep’t of Health & Human Servs., Health Res. & Servs. Admin., Women’s Preventive Services: Required Health Plan Coverage Guidelines, <http://www.hrsa.gov/womensguidelines>.

⁵ Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46621 (Aug. 3, 2011).

⁶ *Belmont Abbey Coll. v. Sebelius*, No. 1:11–cv–01989 (D.C.D.C. filed Nov. 10, 2011).

⁷ CCIO & CMS, Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code 3-4 (Feb. 10, 2012).

⁸ Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 8,725 (Feb. 15, 2012) (to be codified at 45 C.F.R. pt. 147).

Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?”⁹

- **March 1, 2012:** HHS states that “[s]tudent health insurance coverage must include the preventive services specified under PHS Act section 2713 and the implementing regulations (45 CFR § 147.140).”¹⁰
- **March 15, 2012:** First for-profit entity files suit challenging contraceptive coverage rule in *O’Brien v. HHS*.¹¹
- **March 21, 2012:** Advanced Notice of Proposed Rulemaking for Certain Preventive Services Under the Affordable Care Act from the Department of the Treasury, Department of Labor, and Department of Health and Human Services (“ANPRM”) published in the Federal Register proposing “accommodations” for compliance with § 2713 of the PHS Act for certain religiously-affiliated non-profit organizations.¹² (63,184 comments received)
- **August 1, 2012:** Non-grandfathered plans and issuers required to cover certain women’s preventive health services without cost-sharing consistent with HRSA guidelines for plan or policy years beginning on or after August 1, 2012.¹³
- **August 15, 2012:** CCIO and CMS issue guidance to describe the temporary enforcement safe harbor (clarifying points first raised in February 10, 2012 bulletin).¹⁴

⁹ This was the first of several congressional hearings. The National Health Law Program submitted [testimony](#) to the Committee on Oversight & Government Reform, and other committees, supporting the contraceptive coverage requirement.

¹⁰ Student Health Insurance Coverage, 77 Fed. Reg. 16,453 (March 21, 2012) (to be codified at 45 C.F.R. pts. 144, 147, and 158).

¹¹ *O’Brien v. U.S. Dep’t of Health & Human Servs.*, No. 4:12-cv-00476 (E.D. Mo. filed March 15, 2012). The National Health Law Program filed [an amicus brief](#) in *O’Brien* and subsequent cases to highlight well-established evidenced-based standards of medical care that recognize that contraception is essential preventive care for women. The brief further addresses prevailing federal laws and policies pre-dating the ACA that recognize, and make available, contraceptive counseling, services, and supplies.

http://www.healthlaw.org/images/stories/NHeLP_Amics_Br._filed_stamped.pdf.

¹² Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501 (Mar. 21, 2012) (to be codified at 45 C.F.R. pt. 147).

¹³ U.S. Dep’t of Health & Human Servs., Health Res. & Servs. Admin., Women’s Preventive Services: Required Health Plan Coverage Guidelines, <http://www.hrsa.gov/womensguidelines>.

¹⁴ CCIO & CMS, Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code 3-4 (Aug. 15, 2012) (updating earlier guidance issued on Feb. 10, 2012).

- **February 6, 2013:** The Departments issue Notice of Proposed Rulemaking (“NPRM”) for Certain Preventive Services Under the Affordable Care Act. The NPRM seeks to implement the Departments’ exemption and accommodation, including by proposing to change the definition of “religious employer” for purpose of exemption and the definition of “eligible organization” for purpose of “accommodation.” (408,907 comments received)
- **February 20, 2013:** FAQs about ACA implementation, including implementation of the contraceptive coverage requirement.¹⁵
- **August 1, 2013:** Temporary safe harbor expires.
- [Status of lawsuits](#) filed against contraceptive coverage requirement:
 - 31 for-profit lawsuits filed
 - 19 injunctions granted
 - 7 injunctions denied
 - 5 cases no additional action
 - 30 non-profit lawsuits filed
 - 19 cases dismissed
 - 0 cases decided on merits

¹⁵ Dep’t of Labor, HHS, & Dep’t of the Treasury, *FAQs about Affordable Care Act Implementation XII* (Feb. 20, 2013), <http://www.dol.gov/ebsa/faqs/faq-aca12.html#5>.