DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

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From: Randy Pate, Director, Center for Consumer Information and Insurance Oversight

Subject: Notice by Issuer or Third Party Administrator for Employer/Plan Sponsor of Revocation of the Accommodation for Certain Preventive Services

Section 2713 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act and incorporated into Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code), requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services without cost sharing. By regulation, these preventive services include:

- Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force (Task Force) with respect to the individual involved.
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (Advisory Committee) with respect to the individual involved. A recommendation of the Advisory Committee is considered to be "in effect" after it has been adopted by the Director of the Centers for Disease Control and Prevention. A recommendation is considered to be for "routine use" if it appears on the Immunization Schedules of the Centers for Disease Control and Prevention.
- With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- With respect to women, to the extent not described by the Task Force recommendations discussed above, preventive care and screenings provided for in comprehensive guidelines supported by HRSA.

HRSA's Women's Preventive Services Guidelines[1] include all Food and Drug Administration (FDA)-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity, as prescribed by a health care provider (benefits including these services are referred to collectively as contraceptive benefits).

[1] See https://www.hrsa.gov/womens-guidelines/index.html and https://www.hrsa.gov/womens-guidelines-2016/index.html.

This bulletin addresses notice requirements in the recently published interim final rules addressing the religious and moral exemptions from the requirement to provide contraceptive benefits in group health plans and health insurance coverage.

I. Background and Purpose

On October 13, 2017, the Department of Health and Human Services (HHS) through CMS, along with the Department of Labor and the Department of the Treasury, contemporaneously published two interim final rules in the Federal Register related to exemptions from, and accommodations with, the contraceptive preventive services requirements. These interim final rules amended the previous final regulation (80 FR 41318, July 14, 2015), which had provided an exemption from the requirements for certain entities and an accommodation process for certain other entities. The first of the two interim final rules, *Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act* (82 FR 47792), expanded the exemption from the requirement to provide contraceptive benefits in health plans to all employers (except non-federal governmental employers) and health insurance issuers that have a sincerely held religious objection to providing some or all such benefits. The second interim final rule, *Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act* (*82 FR 47838*), provided the same exemption to nonprofit employers and for profit employers that are not publicly traded (except non-federal governmental employers), as well as health insurance issuers, that have a sincerely held moral objection to providing some or all contraceptive benefits in their health plan. In both regulations, administrators of student health insurance plans are treated as employers and can be exempt from providing contraceptive benefits in their student health plans if they have a sincerely held religious or moral objection to providing some or all such benefits. These interim final rules also provide entities with religious or moral objections access to the "accommodation" process, on a voluntary basis, in which the health insurance issuer or the third party administrator (TPA) maintaining the group health plan of the employer would directly provide the contraceptive benefits to the participants and beneficiaries outside of the group health plan.

II. Guidance

If an objecting entity has a sincerely held religious objection to providing some or all contraceptive benefits in its group health plan and, in accordance with the previous regulation, has used the accommodation, but under the new exemptions no longer wishes to use the accommodation process, the participants and beneficiaries in the group health plan must be notified of the entity's revocation of the accommodation. Similarly, if an objecting entity with a sincerely held religious or moral objection newly elects to provide the accommodation, but later wishes to revoke the accommodation, notice of the revocation of the accommodation must be provided to the participants and beneficiaries in the group health plan. The interim final rules at 45 CFR § 147.131(c)(4) state that as part of its revocation, the issuer of the eligible organization must provide participants and beneficiaries written notice of such revocation as specified in guidance issued by the Secretary of the Department of Health and Human Services. We consider

this requirement to be satisfied if the eligible organization itself, its group health plan, or its TPA provides the written notice instead of the issuer.

The interim final rule at 45 CFR §147.131(c)(4) states that the revocation of the accommodation will be effective on the first day of the first plan year that begins on or after 30 days after the date of the revocation to allow for the provision of notice to plan participants in cases where contraceptive benefits will no longer be provided. Alternatively, if the objecting entity's group health plan or issuer listed the contraceptive benefit in its Summary of Benefits of Coverage (SBC), the group health plan or issuer may give at least 60-days prior notice pursuant to section 2715(d)(4) of the PHS Act (incorporated into ERISA and the Code) and applicable regulations thereunder to revoke the accommodation.

Pursuant to this Guidance, if the objecting entity's group health plan or issuer did not list the contraceptive benefit in its SBC, but still wishes to use the 60-days advance notice method pursuant to section 2715(d)(4) of the PHS Act and 45 CFR §147.200(b) to revoke the accommodation as if those benefits had been listed in its SBC, it may do so if consistent with any other applicable law and contract provisions regarding modification of benefits.[2]

If an objecting entity cannot, or chooses not to, use the SBC notification process to notify the participants and beneficiaries in the group health plan of the revocation of the accommodation, and instructs that an issuer or TPA must not use the SBC notification process on its behalf, then the objecting entity itself, its group health plan, issuer, or TPA must send a separate written notice of the revocation to the participants and beneficiaries no later than 30 days before the first day of the first plan year in which the revocation will be effective.[3] Unlike the SBC notification process, which can effectuate a modification of benefits in the middle of a plan year provided it is allowed by State law and the contract of the policy, the 30 day notification process can only effectuate a benefit modification at the beginning of a plan year.

III. Where to get more information

If you have any questions regarding this guidance, please e-mail CCIIO at marketreform@cms.hhs.gov.

[2] With respect to the form of the notice, the regulation at 42 CFR §147.200(b) instructs that "[t]he notice of modification must be provided in a form that is consistent with the rules of paragraph (a)(4) of this section," and (a)(4) has detailed rules on when electronic notice is permitted.

[3] The burden of providing this notice was addressed in the Paperwork Reduction Act section of the October 13, 2017 interim final rule addressing the religious exemption (82 FR 47826).