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# Employee Benefits

## Guidelines for Women's Preventive Health Services Updated *Religious Employers' Plans Exempt From Providing Contraceptive Services*

The 2010 health care laws<sup>1</sup> require non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage to provide certain preventive health benefits from the first dollar of coverage, with no patient cost-sharing (copayments, coinsurance, deductibles, etc.), when those benefits are delivered in-network.<sup>2</sup>

This newsletter discusses recent guidance on women's preventive services.<sup>3</sup>

### PREVENTIVE HEALTH SERVICES FOR WOMEN - GUIDELINES UPDATED

Updated guidelines for preventive health services for women were released on August 1, 2011.<sup>4</sup> Under these guidelines, non-grandfathered plans and issuers must provide coverage in eight categories of women's preventive health services in plan years beginning on or after August 12, 2012:

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Well-woman visits	Well-woman preventive care visit annually for adult women to obtain the recommended preventive services that are age and developmentally appropriate, including preconception and prenatal care. This well-woman visit should, where appropriate, include other preventive services listed in this set of guidelines, as well as others referenced in PPACA section 2713.	Annual, although HHS recognizes that several visits may be needed to obtain all necessary recommended preventive services, depending on a woman's health status, health needs, and other risk factors.*  * Refer to recommendations listed in the July 2011 Institute of Medicine report entitled "Clinical Preventive Services for Women: Closing the Gaps" concerning individual preventive services that may be obtained during a well-woman preventive service visit. <sup>5</sup>

<sup>1</sup> The Patient Protection and Affordable Care Act, Pub. L. 111-148 (enacted March 23, 2010), as amended by the Health Care and Education Reconciliation Act, Pub. L. 111-152 (enacted March 30, 2010) (together, "PPACA").

<sup>2</sup> Section 2713 of the Public Health Service Act, as added by PPACA. Section 715(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and section 9815(a)(1) of the Internal Revenue Code of 1986, as amended (the "Code") incorporate certain PHSA provisions into ERISA and the Code. The HHS, DOL and IRS previously issued interim final regulations implementing the preventive health services mandate under PHSA § 2713, see 75 Federal Register 41726 (July 19, 2010), found at <http://edocket.access.gpo.gov/2010/pdf/2010-17242.pdf>. For a summary, see our 7.23.2010 newsletter at <http://www.bhfs.com/News/Publications?find=72865>.

<sup>3</sup> Amendments to the July 19, 2010 interim final regulations, 76 Federal Register 46621 (August 3, 2011), found at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-03/pdf/2011-19684.pdf>.

<sup>4</sup> See, <http://www.hrsa.gov/womensguidelines>.

<sup>5</sup> This report can be obtained at <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>.

Always There

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Screening for gestational diabetes	Screening for gestational diabetes.	In pregnant women between 24 and 28 weeks of gestation and at the first prenatal visit for pregnant women identified to be at high risk for diabetes.
HPV DNA testing	High-risk human papillomavirus DNA testing in women with normal cytology results.	Screening should begin at 30 years of age and should occur no more frequently than every 3 years.
Counseling for sexually transmitted infections (STIs)	Counseling on sexually transmitted infections for all sexually active women.	Annual.
HIV counseling and screening	Counseling and screening for human immune-deficiency virus (HIV) infection for all sexually active women.	Annual.
Contraceptive methods and counseling. <i>Certain religious employers exempted from this requirement - see discussion, below.</i>	All FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.	As prescribed.
Breastfeeding support, supplies, and counseling.	Comprehensive lactation support and counseling, by a trained provider during pregnancy and/or in the postpartum period, and costs for renting breastfeeding equipment.	In conjunction with each birth.
Screening and counseling for interpersonal and domestic violence.	Screening and counseling for interpersonal and domestic violence.	Annual.

### MEDICAL MANAGEMENT PERMITTED

In providing women’s preventive health services, a plan is allowed to use reasonable medical management techniques to help define the nature of the covered service. For example, a plan may impose patient cost-sharing for use of a brand-name prescription drug when a generic prescription drug, which has been found to be as effective and safe as the brand-name drug, is available.

In addition, a plan is allowed to impose cost-sharing (deductibles, copayments, coinsurance) when preventive health services are obtained from an out-of-network provider.

### RELIGIOUS ORGANIZATIONS ARE EXEMPT FROM PROVIDING CONTRACEPTIVE SERVICES

Religious organizations are not required to provide contraceptive services under their group health plans (whether self-insured or fully insured) if such coverage would be inconsistent with their religious beliefs. Instead, these religious organizations have the choice of buying or sponsoring contraceptive coverage.<sup>6</sup>

To be eligible for this exemption, the religious organization must be a “religious employer.” A “religious employer” is an organization that meets all four of the following criteria: (1) the organization’s purpose is the inculcation of religious values; (2) the organization primarily employs persons who share the religious tenets of the organization; (3) the organization serves primarily persons who share the religious tenets of

<sup>6</sup> The public has been invited to comment on this exemption. Comments are due by September 30, 2011.

the organization; and (4) the organization is a nonprofit organization that is a church, one of a church's integrated auxiliaries, conventions or associations of churches, or religious order.<sup>7</sup>

### SUGGESTED PLAN ADMINISTRATOR ACTIONS

**Communication.** Plan administrators should want to communicate the women's preventive services available under the plan, regardless whether the group health plan is self-insured or fully-insured, as spending a little money for prevention is expected to prevent large claims in the future.

**Implementation Timing.** While these women's preventive service guidelines are not effective until January 1, 2013 for a calendar year plan, a plan administrator may wish to implement these guidelines earlier. In the case of a fully insured plan, early implementation of these guidelines may require some negotiation with the health care insurer.

For plans that do not implement these women's preventive services earlier than required, plan administrators will need to confirm whether, as of the first day of the plan year beginning on or after August 1, 2012, (i) the plan provides coverage of the recommended women's preventive services and (ii) the plan does not require participants to share in the cost of such coverage when delivered on an in-network basis.

Also, while grandfathered plans are not subject to the preventive services mandate, plan administrators of these plans may nevertheless want to use these guidelines to assess their plan's preventive services.



The following Brownstein attorneys are ready to help you with your benefits issues, so please contact one of them with your questions:

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<sup>7</sup> 45 C.F.R. §147.130(a)(1)(iv)(B), 26 C.F.R. § 54.9815-2713T(a)(1)(iv) and 29 C.F.R. § 2590.715-2713(a)(1)(iv), found at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-03/pdf/2011-19684.pdf>. These organizations are defined in Code section 6033(a)(1) and section 6033(a)(3)(A)(i) and (iii).