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Revised Regulations Address Preventive Services for Women in Non-Grandfathered Health Plans

HHS, the Treasury and DOL have adopted the Institute of Medicine's recommendations regarding preventive health services for women, effective for the first plan year beginning on or after August 1, 2012.

Background

Section 2713 of the Public Health Services Act, as added by the Patient Protection and Affordable Care Act (PPACA), requires non-grandfathered plans to provide, at a minimum and without cost-sharing (e.g., copayments, coinsurance, or deductibles), coverage for various preventive care services including additional preventive care and screenings targeted to the unique needs of women as developed by the Health Resources Service Administration (HRSA).

In July 2010, the Departments of Health and Human Services (HHS), the Treasury, and Labor (collectively, the Departments) issued interim final regulations (IFR) relating to PPACA's preventive services coverage requirements. (See our July 20, 2010 [For Your Information](#).) In the preamble to the IFR, the Departments stated that they were working to develop guidelines for preventive care and screenings for women and that they expected the guidance to be issued by August 1, 2011. HHS charged the Institute of Medicine (IOM) with providing recommendations on specific preventive measures for women. On July 19, 2011, the IOM issued a report in which it recommended to HHS additional in-network services to be considered covered preventive health services for women under PPACA.

Amended Interim Final Rules

On August 3, 2011, the Departments issued an [amendment](#) to the IFR. Under the IFR, non-grandfathered health plans and issuers must cover, without cost sharing, preventive care and screening provided in the comprehensive health plan coverage guidelines supported by HRSA, which announced its support of the IOM coverage [recommendations](#). As a consequence, starting in the first plan year that begins on or after August 1, 2012, non-grandfathered plans must cover the following additional women's preventive services when furnished by an in-network provider:

- [Well-woman preventive care visits](#) – an annual well-woman preventive care visit for an adult woman to obtain preventive care services that are age and developmentally appropriate.

- Gestational diabetes screening – screenings for all pregnant women at least once during weeks 24 to 28 of the pregnancy and at the first prenatal visit for a woman at a high risk of developing gestational diabetes.
- Human Papillomavirus (HPV) DNA testing – HPV testing for women 30 years of age or older, every three years.
- Sexually-transmitted disease counseling – annual counseling and screening for human immune-deficiency virus (HIV) and other sexually-transmitted diseases.
- Contraceptive methods and counseling – all Food and Drug Administration-approved contraceptive methods and sterilization procedures along with patient education and counseling.
- Breastfeeding support, supplies, and counseling – lactation support and counseling from trained providers for pregnant and recently pregnant women with respect to each birth plus, the cost of renting any breastfeeding equipment.
- Interpersonal and domestic violence screening and counseling – annual screening and counseling.

BUCK COMMENT. *Although plans already cover many of these services, often they are subject to a copayment or deductible. Plan costs will increase as a result of the new rules requiring removal of cost sharing provisions. In addition, many plans do not typically cover items such as breastfeeding equipment today.*

Religious Exemption

The Departments amended the IFR to give HRSA the discretion to exempt religious employers and health insurance coverage provided in connection with group health plans established or maintained by religious employers from the requirement to cover contraceptive services. Under the amendment, a “religious employer” is one that:

- Has as its purpose the inculcation of religious values;
- Primarily employs individuals who share its religious beliefs;
- Primarily serves individuals who share its religious beliefs; and
- Is a non-profit organization under Internal Revenue Code Section 6033(a)(1), which refers to churches, their integrated auxiliaries, and conventions or associations of churches.

BUCK COMMENT. *In the preamble to the amendment to the IFR, the Departments note that this exemption is consistent with policies in states that require coverage of contraceptive services. Many religiously-affiliated institutions such as hospital systems or universities may not be able to rely on this exemption.*

Conclusion

The Departments invite public comment on the amended guidance. Comments are due by September 30, 2011. Plans that have recently lost grandfathered status or that are considering changes that will result in a loss of grandfathered status will want to be mindful of the additional coverage requirements detailed above.

Buck's consultants are available to assist you in understanding the amended IFR and its impact on your plans.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.