

ACA COMPLIANCE BULLETIN

Departments Highlight Contraceptive Mandate Compliance Concerns

On June 27, 2022, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) issued a [letter](#) directing group health plan sponsors and issuers to ensure their plans comply with the contraceptive mandate under the Affordable Care Act (ACA).

The ACA requires non-grandfathered health plans to cover certain women's preventive health services without cost sharing, including all FDA-approved contraceptives. Religious exemptions apply to certain churches, houses of worship, and other church-affiliated institutions, allowing them to choose not to contract, arrange, pay or refer for any contraceptive coverage.

The letter outlines a number of steps that plans and issuers should take to ensure compliance with these standards and avoid future enforcement actions.

Action Steps

The Departments reiterated that plans and issuers must meet their obligations to ensure access to contraception. They plan to convene a meeting with national leaders to secure commitments to promptly correct all areas of potential noncompliance and take specific actions to ensure that covered individuals have critical access to contraceptive services.

Plans and issuers should follow the Departments' compliance steps to avoid any future enforcement action regarding the contraceptive coverage requirement. Any questions on ensuring compliance with these requirements may be directed to HHS via email at Contraception.Complaints@cms.hhs.gov.

Highlights

- According to the Departments, they continue to receive reports of noncompliance with the ACA's contraceptive mandate.
- The Departments jointly issued a letter directing group health plan sponsors and issuers to ensure compliance with these rules.
- The letter outlines a number of steps that plans and issuers should take to ensure compliance with these standards and avoid future enforcement actions.

Important Dates

June 27, 2022

A letter directing plan sponsors and issuers to ensure compliance with the contraceptive mandate was issued.

Near Future

The Departments plan to convene a meeting with national leaders to correct areas of noncompliance and ensure access to contraceptive services.

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The Departments' Letter

According to the Departments, they continue to receive reports of noncompliance with the ACA's contraceptive coverage requirements. As a result, the letter directs group health plan sponsors and issuers to **remove impermissible barriers and ensure individuals in their plans have access to contraceptive coverage** as required under the law.

The Departments clarified that cost-control efforts by plans and issuers cannot outweigh the law protecting consumers' health and contraceptive needs, as determined by their provider. Notably, plans and issuers are required to cover, without cost sharing, at least one form of contraception in each contraceptive category as well as contraceptive services or Food and Drug Administration-approved, cleared or granted contraceptive products that are determined to be medically appropriate for the individual. Within each category, plans and issuers may utilize reasonable medical management techniques but may not apply medical management techniques across categories.

The Departments strongly encourage plans and issuers to immediately ensure they are in compliance with these standards to avoid future enforcement actions. Steps should include:

- Developing an easily accessible, transparent and sufficiently expedient exceptions process for contraceptive products that is not unduly burdensome to the individual or provider, if one is not already in place (that is, not requiring individuals to appeal an adverse benefit determination for a contraceptive using the plan's or issuer's internal claims and appeals process as the means to obtain an exception)
- Reviewing exceptions processes for contraceptive products to ensure that these processes are easily accessible, transparent, sufficiently expedient and not unduly burdensome on the individual or provider
- Developing and using a standard form and instructions for the exceptions process (plans and issuers can see the [Medicare Part D Coverage Determination Request Form](#) if a model for developing a standard exception form is needed)
- Ensuring that information regarding the availability of and the instructions for the exceptions process, including any standard form, are clearly described to individuals and their providers in plan documentation and online resources
- Deferring to a provider's recommendation regarding a contraceptive product based on a determination of medical necessity in consultation with their patient
- Eliminating overly burdensome, inappropriate and unreasonable medical management techniques