

Legal Update

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Departments Clarify Guidance on ACA Contraceptive Mandate

On July 28, 2022, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) jointly issued a new set of [frequently asked questions](#) (FAQs) regarding the contraceptive coverage mandate under the Affordable Care Act (ACA).

Background

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.

Overview of the FAQs

The Departments have recently been issuing new and clarifying guidance focusing on compliance with the contraceptive coverage mandate in light of continuing reports of noncompliance. This guidance includes 14 FAQs that are intended to:

- Clarify the application of the contraceptive coverage mandate to fertility awareness-based methods and emergency contraceptives; and
- Address federal preemption of state law.

These FAQs emphasize the enforcement actions that could apply for noncompliance, including penalties that may be imposed. They also provide steps that individuals can take if they have difficulty accessing contraceptive coverage through their health insurance.

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Highlights

The Departments have recently been issuing clarifying guidance on the contraceptive mandate in light of reports of noncompliance.

The FAQs clarify the application of the contraceptive mandate to fertility awareness-based methods and emergency contraceptives.

The FAQs also address federal preemption of state law in cases of state law restrictions on contraceptive coverage.

The FAQs emphasize the enforcement actions that could apply for noncompliance with the contraceptive mandate.