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Contraceptive Coverage Exemption Rules on Hold by Courts

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A federal district court in Pennsylvania has issued a nationwide injunction blocking revised rules set to be effective on January 14, 2019 regarding contraceptive services coverage in employer based health insurance. The revised rules would make it easier for private employers to refuse to provide coverage for contraceptive services as part of their health insurance plan for employees. Pending any appeal, the requirement to provide contraceptive services will remain in place for all entities that do not qualify for a religious objection exemption.

Background

Under the Affordable Care Act (“ACA”), all non-grandfathered health plans must cover certain preventive items and services without cost-sharing, including contraceptive services. Churches, religious non-profits, and closely held for-profit organizations with religious objections can qualify for an exemption.

In October 2017, the Departments of Health and Human Services, Labor, and the Treasury (collectively “the Departments”) released interim regulations permitting non-governmental employers, institutions of higher education, and individuals with religious or moral objections to cease providing coverage for some, or all, contraceptive services. Despite being effective immediately, these regulations were quickly put on hold by preliminary injunctions issued by two federal district courts. Appeals were filed in those cases.

In November 2018, the Departments issued revised final regulations set to go into effect on January 14, 2019, which largely mirrored the October 2017 interim regulations. It is unclear how the publication of the revised final regulations affects the pending lawsuits over the October 2017 interim regulations.

New Developments

Several states and the District of Columbia joined forces to challenge the November 2018 regulations in the same federal district courts in California and Pennsylvania that had issued injunctions against the October 2017 regulations because they were issued without a public comment period in violation of the rulemaking process. On January 13, 2019, the federal district court in California issued an injunction against the new rules, but limited that injunction to the specific states that had filed the lawsuit in that court. On January 14, 2019, the federal district court in Pennsylvania issued an injunction blocking the rules nationwide. The injunctions do not invalidate the regulations, but stop them from going into effect while the appeals process continues.

Employer Considerations

It is expected that the Departments will appeal these latest injunctions. Employers should use caution and consult with counsel before implementing any changes related to contraceptive services that rely on the November 2018 or the October 2017 rules. As always, we will continue to monitor the progress of this issue and provide additional information when available.