Health Reform WK-EDGE Wrap Up, CONTRACEPTION COVERAGE—FINAL RULES: New regulations provide opportunity for moral objection to contraceptive coverage, (Oct. 18, 2017)

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Two new HHS interim Final rules, effective October 6, 2017, have sliced through the Patient Protection and Affordable Care Act’s (ACA) (P.L. 111-148) contraception mandate by providing additional exemptions for objecting employers and insurers. In addition to religious organizations objecting on grounds of religious beliefs, non-religious groups may now decline to cover contraceptives based on "sincerely held moral convictions." The Health Resources & Services Administration (HRSA) retains discretion to continue to require coverage where no regulatory objections apply (Final rule, 82 FR 82 FR 47792, October 13, 2017, and Final rule, 82 FR 47838, October 13, 2017).

Exemption. The rules create 45 C.F.R. Sec 147.133, expanding the exemption previously located at Sec 147.131(a). The expanded exemption applies to group health plans, issuers, and sponsors, which will not face penalties after omitting contraceptive coverage from benefits to the extent the plan sponsor objects to such coverage. Issuers do not need to have their own objections to be exempt from penalties. The exemption applies to plan sponsors for for-profit entities with no publicly traded ownership interests.

Accommodation. Although the Administration does not believe that any entities holding moral convictions will seek to use the optional accommodation process available for religious organizations, the rule has inserted references to the new exemption for moral convictions into regulations where the accommodation process is codified. The expansion of accommodation eligibility is intended to provide an opportunity for entities objecting on moral grounds to provide contraceptive coverage.