NAVIGATING HEALTHCARE REFORM

July, 2014

ACA In The News: Contraceptive Mandate

On June 30, 2014, the U.S. Supreme Court issued its **ruling** in two related cases challenging the Affordable Care Act's (ACA) contraceptive coverage mandate. In these cases, three closely held for-profit corporations—Hobby Lobby Stores, Mardel and Conestoga Wood Specialties—argued that they should not be required to comply with the contraceptive mandate because covering certain types of contraceptives under their health plans violates their sincere religious beliefs.

In these cases, the Supreme Court was asked to decide whether a for-profit business organized as a corporation has the right to "exercise" religious beliefs under the Religious Freedom Restoration Act (RFRA) and, if so, to what extent is it protected from government interference. In a 5:4 ruling, the Supreme Court held that:

- The RFRA applies to the closely held corporations; and
- The contraceptive mandate violates the RFRA because there are less restrictive ways for the federal government to ensure that all women have cost-free access to FDA-approved contraceptives.

ACA's Required Contraceptive Coverage

The ACA requires non-grandfathered health plans to comply with certain preventive care guidelines for women, effective for plan years beginning on or after August 1, 2012. These guidelines, which were issued by the Department of Health and Human Services (HHS), require non-grandfathered health plans to cover women's preventive health services, including contraceptive methods, without charging a copayment, a deductible or coinsurance. Under the guidelines, plans must cover all FDA-approved contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity.

The owners of Hobby Lobby Stores, Mardel and Conestoga Wood Specialties objected to providing health coverage for four types of contraceptives that are inconsistent with their sincere Christian religious beliefs that life begins at conception.

Excise Tax

Under the ACA, employers with group health plans that violate the contraceptive mandate may be subject to an excise tax of $100 per individual per day of noncompliance.

Special Rules for Churches and Nonprofit Employers

Group health plans sponsored by churches, other houses of worship and their affiliated organizations are exempt from the requirement to cover contraceptive services.

HHS also provided a temporary safe harbor allowing nonprofit employers that do not provide contraceptive coverage to their employees because of religious beliefs to delay covering contraceptive services until the first plan year beginning on or after January 1, 2014. This extension covers church-affiliated organizations that do not qualify for the exemption for churches, such as schools, hospitals, charities and universities.

For plan years beginning on or after January 1, 2014, HHS created an accommodations approach for eligible nonprofit religious organizations that oppose providing coverage for some or all of the required contraceptive services based on religious objections. Under the accommodations, eligible organizations do not have to contract, arrange, pay or refer for any contraceptive coverage to which they object on religious grounds. However, separate payments for contraceptive services are provided to female employees by an independent third party, such as an insurance company or third-party administrator (TPA), directly and free of charge.

For-profit employers that object to providing contraceptive coverage on religious grounds are not eligible for the exemption, the delayed effective date or the accommodations approach that apply to churches and nonprofit religious organizations.

Companies Involved in the Cases

Conestoga Wood Specialties is a closely held corporation owned and operated by the Hahn family, devout members of the Mennonite Church. The Hahns believe that they are required to run their woodworking business in accordance with their Christian religious beliefs. This is reflected in their corporate vision and mission statements. Thus, the Hahns have excluded from the group health insurance plan they offer to their employees certain contraceptive methods that they believe to terminate the life of an embryo.

Hobby Lobby Stores and Mardel are two closely held corporations owned and operated by the Green family, devout members of the Christian faith. Each member of the Green family has signed a pledge to run the businesses in accordance with the family's religious beliefs and to use the family assets to support Christian ministries. In accordance with those commitments, Hobby Lobby and Mardel stores close on Sundays, even though the Greens calculate that they lose millions in sales annually by doing so. Like the Hahns, the Greens believe that life begins at conception, and object to providing coverage for certain contraceptive methods that they consider to terminate the life of an embryo.

Supreme Court Ruling

The RFRA prohibits the federal government from substantially burdening a person's exercise of religion, even if the burden comes from a rule of general applicability. If the federal government substantially burdens a person's exercise of religion, the RFRA entitles the person to an exemption from the rule, unless the government can show that the rule furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

In its ruling, the Supreme Court noted that the RFRA provides very broad protection for religious liberty. According to the Court, the RFRA protects individuals who wish to run their businesses as for-profit corporations in a manner that is consistent with their religious beliefs. Thus, **the Court held that the closely-held for-profit corporations involved in these cases have the right to exercise their religious beliefs under the RFRA**.

In addition, **the Court ruled that HHS' contraceptive coverage guidelines substantially burden the companies' exercise of religion**. According to the Court, the companies' owners have a sincere religious belief that life begins at conception. Thus, they object on religious grounds to providing health insurance that covers methods of birth control that may result in the destruction of an embryo. By requiring the owners to arrange for this coverage, HHS' guidelines force them to engage in conduct that seriously violates their religious beliefs. In addition, if the owners and their companies do not comply with the mandate, heavy excise taxes will apply.

Although the Court assumed that the contraceptive mandate serves a compelling government interest, it ruled that the mandate is not the least restrictive means of serving that interest. According to the Court, there are other ways Congress or HHS could equally ensure that women have access to contraceptives on a cost-free basis. For example, the federal government could assume the cost of providing contraceptive coverage to women who are unable to obtain coverage due to their employers' religious objections. Also, the Court noted that HHS could extend the accommodations approach that applies to nonprofit religious organizations to for-profit corporations with religious objections.

Impact of Ruling on Contraceptive Coverage Mandate

The Supreme Court's ruling creates a narrow exception to the ACA's contraceptive mandate for closely held businesses that object to providing coverage for certain types of contraceptives based on their sincere religious beliefs. **For all other for-profit employers, the contraceptive coverage mandate will continue to apply**. HHS will likely issue guidance in the future to address how the Court's ruling should be implemented.

In addition, the Court cautioned that its decision only applies to the ACA's contraceptive mandate. Other insurance coverage requirements, such as immunizations, may be supported by different interests (for example, the need to combat the spread of infectious diseases) and may involve different arguments about the least restrictive means of providing them.

The Court also warned that its decision does not provide a shield for employers that try to cloak illegal discrimination (for example, discrimination in hiring on the basis of race) as a religious practice to escape legal sanction. According to the Court, the federal government has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal.