

Agencies Withdraw Proposed Regulations That Would Have Required Coverage of OTC Contraceptives

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Withdrawal of Notice of Proposed Rulemaking: Enhancing Coverage of Preventive Services Under the Affordable Care Act, 29 CFR Part 2590; 45 CFR Part 147, 90 Fed. Reg. 3728 (Jan. 15, 2025)

Available at <https://www.govinfo.gov/content/pkg/FR-2025-01-15/pdf/2025-00774.pdf>

The IRS, DOL, and HHS have withdrawn proposed regulations that addressed the coverage of over-the-counter (OTC) contraceptives and the use of reasonable medical management techniques for preventive health services. The proposed rules would have required plans and insurers to cover certain recommended OTC contraceptive items without a prescription and without cost-sharing. In addition, plans and insurers would have been required to include certain disclosures pertaining to coverage and cost-sharing for recommended OTC items in their internet-based self-service tools. If using reasonable medical management techniques for preventive health services, plans and insurers would have been required to provide an exceptions process that allowed individuals to receive coverage according to the recommendations of their attending providers, even if not generally covered by the plan.

The agencies have withdrawn the proposed regulations, effective January 15, 2025, citing the need to focus on other matters and the desire to utilize up-to-date facts and information for future proposals. They note that the withdrawal does not affect the ongoing application of existing statutory and regulatory requirements for the coverage of preventive health services.

EBIA Comment: The agencies have now withdrawn two sets of proposed regulations relating to the contraceptive coverage mandate, avoiding potential nullification of the regulations under the Congressional Review Act and preserving the agencies' ability to propose similar or identical rules in the future. For more information, see EBIA's Health Care Reform manual at Sections XII.C ("Coverage of Preventive Health Services") and XXXVII.D ("Transparency in Coverage Cost-Sharing Disclosures"). See also EBIA's Group Health Plan Mandates manual at Section XIV.C ("Required Preventive Health Services Coverage") and EBIA's Self-Insured Health Plans manual at Section XIII.C.1 ("Preventive Health Services").

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