

## Instructions for Certification Forms for Religious Employer Exemption and Temporary Enforcement Safe Harbor

The Patient Protection and Affordable Care Act (the Act) requires non-grandfathered plans to cover contraceptive services for women beginning in the first plan year commencing on or after August 1, 2012. There are two exceptions to the Act's contraceptive coverage requirement: (1) a Religious Employer Exemption (REE) for certain religious employers, and (2) a Temporary Enforcement Safe Harbor (TESH) for non-profit organizations that do not cover contraceptives for religious reasons, but are not exempt as a "religious employer."

Organizations that seek to exclude contraceptive coverage and that qualify for either the Religious Employer Exemption or the Temporary Enforcement Safe Harbor must submit the required certification forms with their renewal forms no less than 30 days before the next renewal day (or with their application for new plans). The certification forms are posted on the Connect to Market Health Reform site and the United for Reform Resource Center:

- UnitedHealthcare Fully Insured Religious Employer Exemption Certification
- UnitedHealthcare Self-funded Religious Employer Exemption Certification
- HHS Bulletin and Certification Form and Notice to Plan Participants (accompanies TESH Certification forms only)
- UnitedHealthcare Fully Insured Temporary Enforcement Safe Harbor Certification Form
- UnitedHealthcare Self-Funded Temporary Enforcement Safe Harbor Certification Form

**NOTE:** UnitedHealthcare is not in a position to evaluate whether any organization or plan meets the federal or state definition of a religious employer or otherwise qualifies for the REE or TESH. Organizations are solely responsible for their own compliance with federal and state law regarding exemptions from contraceptive coverage requirements. Non-grandfathered plans that fail to submit the required certification forms will have contraceptive services included in their health plans.

### Religious Employer Exemption

The REE allows a "religious employer" to remain exempt from the Act's requirement to cover contraceptives if it meets all of the following requirements:

1. Has the inculcation of religious values as its purpose,
2. Primarily employs persons who share its religious tenets,
3. Primarily serves persons who share its religious tenets, and
4. Is a non-profit organization under Internal Revenue Code section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii).

An organization that satisfies the definition of a "religious employer" (and any applicable state law requirements) must submit the appropriate UnitedHealthcare REE Certification with its renewal



forms to UnitedHealthcare no less than 30 days before the next renewal date (or with its application if it is a new plan), and make any necessary modifications to its Plan documents, if it wants to exclude coverage of contraceptives from its group health plan.

### **Temporary Enforcement Safe Harbor**

The TESH provides certain organizations an exemption to the Act's contraceptive coverage requirement for one year only. Guidance from the Department of Health and Human Services (HHS) provides that the TESH is available to non-grandfathered group health plans and student health plans established or maintained by organizations that do not meet the REE, but satisfy all of the following requirements:

1. The organization must be organized and operated as a non-profit entity,
2. From Feb. 10, 2012 onward, the group health plan (or student health plan) established or maintained by the organization must not have provided contraceptive coverage at any point, consistent with applicable State law, because of the religious beliefs of the organization,
3. The organization must provide to participants of the plan notice stating that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after Aug. 1, 2012, and
4. The organization must self-certify that it satisfies items 1-3 above, and must document its self-certification in accordance with the procedures outlined in the HHS Bulletin, dated Feb. 10, 2012, which provides guidance on the TESH.

Organizations that qualify for the TESH and that wish to continue excluding contraceptive coverage from their health benefit plans for their first plan year that begins on or after Aug. 1, 2012 must submit the appropriate UnitedHealthcare TESH Certification and the HHS Certification to UnitedHealthcare no less than 30 days before their next renewal date (or with its application if it is a new plan).

### **REE and TESH Not Available for Fully Insured Clients in all States**

In addition to the Act, several states require coverage of contraceptive services. However, only some states permit a religious employer exemption, and the scope of the exemptions varies among states. This means the federal REE and/or TESH are not available in all states for all plans.

Generally, state laws that provide greater consumer protections than the federal law will continue to apply. For example, in those states where all insured plans are required to cover contraceptives, even those sponsored by religious organizations, the federal REE and TESH will not be available. Conversely, in those states that allow more organizations to exclude contraceptive coverage than permitted under the federal REE, only those organizations satisfying the federal REE may exclude coverage under the Act, although the TESH may be available.

The REE and TESH will not be available for fully insured plans as follows:

- Neither the REE nor the TESH are available for fully insured plans in the following states: CO, GA, IL, IA, MT, NV, NH, TX, VT, VA, WA, and WI.
- The TESH is not available for fully insured plans in CA, NY and OR.

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