CATHOLIC BENEFITS ASSOCIATION

WHITE PAPER: THE MECHANICS AND EFFECTS OF THE "ACCOMMODATION" TO THE HHS CASC MANDATE FOR NON-EXEMPT CATHOLIC EMPLOYERS WITH SELF-FUNDED PLANS

For Catholic Benefits Association Members and Prospective Members

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EXECUTIVE SUMMARY

Under Affordable Care Act regulations, almost all group health plans must provide coverage for all FDA approved **c**ontraceptive methods, **a**bortion-inducing drugs and devices, **s**terilization, and related **c**ounseling ("CASC services"). HHS has exempted churches, religious institutes, and their auxiliaries from this obligation. However, this exemption does not apply to other religious nonprofits like Catholic hospitals, colleges, separately incorporated schools, and other ministries. The "accommodation" and the "augmented accommodation" to this requirement purport to permit "eligible"[1] employers with self-insured health plans to "opt out" of providing CASC services by sending Form 700 to their third party administrators ("TPAs") or a notice to HHS. Under the HHS accommodation regulations, the employer's TPA will thereafter provide CASC services to the beneficiaries of the employer's health plan.

When the employer sends in Form 700, the TPA becomes legally obligated to pay for, or arrange payment for, CASC services used by employees. The delivery of Form 700 triggers the requirement that TPAs arrange payments for participants and beneficiaries in the plan.

This memorandum addresses the legal and moral implications of such an employer deciding to participate in the accommodation, either by sending a notice to its TPA (under the original accommodation) or by sending a notice to the Secretary of HHS (under the augmented accommodation).

Question 1: When a self-insured eligible employer invokes the accommodation and sends Form 700 to its TPA, or invokes the augmented accommodation and sends Form 700 to HHS, does the employer thereby amend its health plan and cause the TPA to pay for employees' use of CASC services?

> Yes. The government claims that the CASC services provided under the accommodation are "independent" of the employer and its plan, but they are not. When the employer sends in Form 700, the TPA becomes legally obligated to pay for, or arrange payment for, CASC services used by employees. The delivery of Form 700 triggers the requirement that TPAs arrange payments "for participants and beneficiaries **in the plan.**" Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 39,870, 39,880 (July 2, 2013).[2] Employees still receive CASC services "**under . . . the [employer's] plan.**" *Id.* at 39,879.

Question 2: When a self-insured eligible employer invokes the accommodation and sends Form 700 to its TPA, or invokes the augmented accommodation and sends Form 700 to HHS, does this action effectively require the employer's TPA to serve as plan administrator and provide a second

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[1] "Eligible employer" is essentially a non-exempt ministry. It is defined in more detail below on p. 5.
[2] All statements in bold font within this memorandum are emphases.

binder of CASC services?

Yes. Form 700 is a plan amendment masquerading as a permission slip. *See* Exhibit 1. This is why the last sentence states, "**This certification is an instrument under which the plan is operated.**" When the employer sends in Form 700, the TPA becomes obligated to ensure CASC services are provided directly to the plan's beneficiaries. The TPA can provide these services *only* if it has been appointed as an administrator of the employer's plan. And under federal law, only the *employer* can designate a plan administrator; the government cannot. Therefore, by sending in Form 700, the employer formally appoints the TPA as the party legally responsible for providing CASC services to plan beneficiaries.

INTRODUCTION AND GENERAL OVERVIEW

When an employer sends in Form 700, it has cascading effects. First, the accommodation hijacks the employer's plan. Second, the employer's delivery of Form 700 triggers the TPA's legal obligation to pay or arrange payment for CASC services.

Under the original accommodation, an eligible employer with a self-funded insurance plan is required to execute EBSA Form 700 and deliver the form to its TPA. The form is not a mere opt-out notice. Rather, its execution and delivery have immediate effects that are freighted with moral and legal significance. Form 700 does the following:

- It amends the employer's plan, creating a second binder of CASC coverage;
- It makes the TPA the plan and claims administrator for CASC services;
- It requires the TPA to pay for, or arrange payment for, CASC services;
- It requires the TPA to give employees notice of the availability of free CASC services;
- It subjects the TPA to penalties, fines, and damages if it fails to fulfill its obligations; and
- It gives rise to scandal because the employer acts contrary to the Catholic values it espouses.

These cascading effects create two distinct moral problems for Catholic employers. First, the accommodation **hijacks** the employer's plan. Under the accommodation, the plan—which is established and maintained solely by the employer—serves as the government's conduit for the delivery of CASC services to employees. Employees and their families can access CASC services precisely because they are enrolled in the employer's plan, and they can continue to access CASC services only so long as they participate in the plan. There is no separation between the CASC services employees receive and the health plan the employer sponsors.

Second, the employer's delivery of Form 700 **triggers** the TPA's legal obligation to pay or arrange payment for CASC services. **Before** delivery of the form, the TPA has no obligations with respect to CASC services. **After** delivery of the form, the TPA becomes the plan and claims administrator for

these services. Then, and only then, do the TPA's obligations attach. The TPA becomes obligated to pay or arrange payment for CASC services for plan beneficiaries, and if the TPA fails to do so, it is subject to civil lawsuits and civil and criminal penalties.

The augmented accommodation is no better than the original. To take advantage of the augmented accommodation, the employer, rather than sending Form 700 to its TPA, sends a formal notice to HHS. But the effects of this notice are precisely the same as Form 700. The notice formally amends the employer's plan and obligates the employer's TPA to pay or arrange payment for CASC services for plan beneficiaries. The TPA may learn of its obligations in a more indirect fashion—the notice goes first to HHS, who then notifies the Department of Labor, who then notifies the employer's TPA—but **for the employer** there is no moral significance to these additional steps. Under the augmented accommodation, the employer's plan is still the conduit for delivery of CASC services, and the employer's act (here, notice to HHS) is still the trigger that obligates the TPA to pay or arrange payment for CASC services.

Suppose the government requires you, to supply a gun to a person who intends to kill his dog. You object on religious grounds, so the government offers an "accommodation" allowing you, instead, to push a button that, in turn, obligates a third party to supply a gun to the person who intends to kill his dog.

A few analogies may bring these issues into sharper relief.

1. Suppose the government mandates that all delis across the United States serve pork. Kosher and halal delis object, claiming that their religious beliefs prevent them from serving or handling pork. In response, the government offers an "accommodation." The government says that objecting delis may execute and deliver a form to a third party butcher ("TPB"). Upon receipt of the form, the TPB is obligated to enter the deli, set up a case of meats containing only pork, and sell pork to deli customers out of the case—all at no cost to the deli owners. Deli owners continue to object, arguing that the accommodation still involves them and their delis too closely in the serving and handling of pork. Further, the owners point out, customers will not distinguish between the deli as such and the unrelated TPB offering non-kosher or non-halal products within the same space.

2. Suppose the government requires you, upon request, to supply a gun to a person who intends to kill his dog without justification. You object on religious or moral grounds, so the government offers an "accommodation." The government will allow you, instead of supplying the gun directly, to push a button. Pushing the button in turn obligates a third party to supply a gun to the person who intends to kill his dog without justification. You still object, claiming that the accommodation does not resolve the moral problem. In your view, supplying the gun, and pushing a button that forces another person to supply the gun, are morally equivalent acts. In your view, both involve you too closely in the unjustified taking of life.

3. It is wartime, and the government requires that all woodmaking operations devote 10% of their resources and materials to the production of rifle stocks for the war effort. Jehovah's Witness woodmakers object, asserting that they are pacifists and that their faith prohibits them from manufacturing implements of war. In response, the government offers an "accommodation." The government says that objecting woodmakers may execute and deliver a form to a third party woodmaker ("TPW"). Upon receipt of the form, the TPW is obligated to enter the factory, set up a rifle-stock machine in a corner of the factory floor, and manufacture rifle stocks there—all without charging the objecting woodmaker or using its resources. Jehovah's Witness woodmakers continue to object, arguing that the accommodation still involves them and their factories too closely in the war effort. Further, the woodmakers point out, anyone observing the factory's operation will not distinguish between the factory as such and the unrelated TPW's manufacture of rifle stocks. See *Thomas v. Review Bd.*, 450 U.S. 707 (1981).

Many Catholic employers and Church authorities, including the CBA Ethics Committee, have discerned that neither the original accommodation nor the changes made to the accommodation in August 2014 solve the moral dilemma presented by the CASC mandate.

Many Catholic employers and Church authorities have discerned that neither the original accommodation nor the changes made to the accommodation in August 2014 solve the moral dilemma presented by the CASC mandate. For example, on September 12, 2014, the Catholic Benefits Association Ethics Committee—comprised of Archbishop Lori, Archbishop Chaput, Archbishop Coakley, and Archbishop Sartain—adopted this resolution:

> A Catholic employer . . . cannot, consistent with Catholic values, comply with the government's CASC mandate, with the "accommodation" provided to "eligible employers," or with the "augmented accommodation"—unless such an employer has exhausted all alternatives that do not effect a greater evil and unless such an employer has taken reasonable steps to avoid giving scandal.[3]

Joining the Catholic Benefits Association ("CBA") is the best alternative that does "not effect a greater evil." Every CBA member is exempt from the CASC mandate because the two CBA lawsuits acquired preliminary injunctions that restrain the government from enforcing the CASC mandate against CBA members, their group insurers, and their TPAs. See www.catholicbenefitsassociation.com.

LEGAL AND MORAL ANALYSIS OF THE ACCOMODATION

The balance of this memorandum explains in greater detail the accommodation—in both its original and its augmented forms—and why it presents a moral problem for Catholic employers. Part I below provides factual and legal background on the CASC mandate and the accommodation.

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[3] Catholic Benefits Association, *Frequently Asked Questions*, http://www.catholicbenefitsassociation.com/en/faq.html (last visited June 9, 2015).

Part II addresses the questions outlined above and shows that the accommodation forces a self-insured Catholic employer to (1) authorize and empower the government to hijack its health care plan and use it as the means of delivering CASC services to employees; and (2) trigger its TPA's legal duty to provide employees and their dependents with free CASC services. This is the case whether an employer uses the original or the augmented accommodation.

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I. Factual Background

A. The Mandate and "Religious Employer" Exemption

Under the Affordable Care Act, group health plans must provide coverage for certain "preventive care and screenings" for women. 42 U.S.C. § 300gg-13(a)(4). This "preventive care" includes "[a]ll FDA approved contraceptive methods, abortion-inducing drugs and devices, sterilization, and related counseling."[4]

After some controversy, the administration created an exemption for certain "religious employers," but the government limited this term to "churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order." 78 Fed. Reg. at 39,874 (citing 26 U.S.C. § 6033(a)(3)(A)(i) and (iii)).

B. The Accommodation

When it became clear that the narrow "religious employer" exemption had not stemmed the public outcry, the government promised to create a regulation that would "protect [non-exempt] religious organizations from having to *contract*, *arrange*, or pay for contraceptive coverage" as part of their health plans. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501, 16,503 (Mar. 21, 2012). It also promised that such coverage would be provided "**independent** of the objecting religious organization that sponsors the plan." *Id.* The government broke these promises, except for the one regarding payment.[5]

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[4] Health Res. Servs. Admin., Women's Preventive Services Guidelines, http://www.hrsa.gov/womensguidelines/ (last visited June 9, 2015).

[5] Under the "accommodation," the self-funded employer does not pay for the cost of CASC services. Its TPA does. The reimbursement of its TPA or providing CASC services is accomplished through a Rube Goldberg scheme. The complexity of this scheme appears to be little more than an attempt to hide the fact that government funds reimburse the TPA after they are funneled through an unrelated insurer functioning as a conduit for government funds. See Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 39,880 (July 2, 2013). Here is how it works. Patty Participant buys Ella from the store. Her employer's TPA reimburses her. Insurance, Inc., that participates in the Federally Funded Exchange ("FFE"), (and that may be wholly unrelated to the employer's TPA or stop loss carrier) reimburses the TPA. The FFE then reimburses Insurance, Inc. The FFE is funded by taxpayer dollars and by fees from a host of insurers, including fees from Insurance, Inc. Under this scenario, Insurance, Inc. functions exclusively as a conduit for FFE funds.

What the government provided was a so-called accommodation, published in July 2013. It is available to non-profit, non-exempt ministries. To be an "eligible employer," an employer must (1) oppose providing CASC coverage on religious grounds, (2) be a nonprofit, (3) "hold itself out as a religious organization," and (4) "self-certif[y], in a form and manner specified by the Secretary, that it satisfies the [previous three] criteria." 26 C.F.R. 54.9815-2713A(a).

The final sentence of Form 700 is important. It states: "This certification is an instrument under which the plan is operated" and, thereby, amends the employer's plan.

This last requirement, self-certification, is fulfilled when the organization executes and delivers Form 700 to its TPA. See Exhibit 1. The first page of the form is fairly straightforward, requiring the employer to state that it meets the definition of an "eligible employer" and to provide contact information.

The second page states that an employer with a self-insured health plan must provide a copy of this form to the plan's TPA. Id. The final sentence is important. It states: "This certification is an instrument under which the plan is operated" and, thereby, amends the employer's plan. The penultimate sentence references regulations spelling out the legal implications for TPAs:

- By the act of sending Form 700 to the TPA, the Catholic employer has made the TPA both the plan administrator and the claims administrator for the new contraceptive services portion of the employer's plan. 29 C.F.R. 2510.3-16(b)(attached as Exhibit 4) (**"[T]he self-certification provided by the eligible organization to a [TPA] . . . shall be treated as a designation of the [TPA] as the plan administrator . . . responsible for [t]he plan's compliance . . . with respect to coverage of contraceptive services[.]"**)
- Because the TPA is now a plan administrator, it must "provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan without cost sharing." 78 Fed. Reg. at 39,880; 29 C.F.R. 2510.3-16(c) (attached as Exhibit 4).
- Because the TPA is now a plan administrator, it is now exposed to criminal penalties, 29 U.S.C. § 1131, civil penalties, 29 U.S.C. § 1132(l), and civil lawsuits from plan participants, 29 U.S.C. § 1132(a), if it fails to provide CASC coverage.

C. The Augmented Accommodation

In August 2014, having lost two Supreme Court cases on the CASC mandate earlier in the summer,[6] the government "augment[ed]" the "accommodation." Coverage of Certain Preventive Services Under the Af-

[6] *Burwell v. Hobby Lobby,* 134 S. Ct. 2751 (2014); *Wheaton College v. Burwell*, 134 S. Ct. 2806 (2014).

fordable Care Act, 79 Fed. Reg. 51,092, 51,092 (Aug. 27, 2014). The augmentation left the original accommodation in place and merely created a second way for employers to invoke the accommodation. Now, instead of sending Form 700 to one's TPA, an employer had the option of sending a notice directly to HHS. This notice had to include not only the employer's own information, but also the name and type of its plan, and—for the first time—"the name and contact information for any of the plan's [TPAs]." 26 C.F.R. 54.9815-2713AT(b)(1)(ii)(B) (attached as Exhibit 5).

The accommodation does not fulfill the government's promise to protect non-exempt religious organizations from having to "contract, arrange, or pay for contraceptive coverage" nor its promise that any coverage provided would be "independent of the objecting religious organization that sponsors the plan."

If an employer sends this notice to HHS, the Department of Labor will then send a notice to the TPA that informs the TPA of its legal obligations, just like the second page of Form 700. Id. "Regardless of whether the eligible organization self certifies in accordance with the July 2013 final rules [using Form 700], or provides notice to HHS in accordance with the [augmented accommodation], the obligations of insurers and/or TPAs . . . are the **same**."[7]

II. Moral and Legal Analysis

Having reviewed the background facts, this section explains why Catholic bishops have found both the "accommodation" and the "augmented accommodation" to be morally unacceptable for Catholic employers. It also explains why the accommodation does not fulfill the government's promise to "protect [non-exempt] religious organizations from having to *contract*, *arrange*, or pay for contraceptive coverage" nor its promise that any coverage provided would be "independent of the objecting religious organization that sponsors the plan."

There are two main faults with the "accommodation." First, it forces a Catholic employer to authorize the government to hijack its health care plan and use it as the means of delivering CASC services to its employees. Second, it forces a Catholic employer to amend its health care contract to make its TPA a plan administrator and, thereby, trigger its TPA's legal duty to provide its employees and their dependents with free CASC services. This is true under both the original and the augmented notice provisions. Finally, this remains the case even for employers with church plans.

A. The original accommodation hijacks a Catholic employer's health plan.

Under the original accommodation, the government continues to use the Catholic employer's health care contract as the means of delivering CASC services to its employees. This is clearly the case for employers that

[7] Ctr. for Consumer Info. & Ins. Oversight, Fact Sheet, http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womens-preven-02012013.html (last visited June 9, 2015).

have self-funded plans. In such a case, the "accommodation" forces the employer to create a second binder of CASC coverage.

There is no separation between the CASC services employees receive and the health plan the organization sponsors. Employees and their families receive CASC services precisely because they are enrolled in a Catholic employer's plan, and they will continue to receive CASC services only so long as they participate in the plan. See, e.g., 78 Fed. Reg. at 39,880 (TPA must arrange separate payments "for participants and beneficiaries **in the plan**"). When an employee's employment relationship ends, the employee will cease receiving CASC services (at the end of his or her COBRA period).

Former Secretary of HHS, Kathleen Sebelius, admitted the true effect of the "accommodation" when she told a Harvard audience that, under the "accommodation," "Catholic hospitals, Catholic universities, and other religious entities will be providing coverage to their employees."

Because the government uses the Catholic employer's plan as a vehicle to deliver CASC services to its employees, the "accommodation" does not, as promised, relieve religious objectors of the requirement to "contract" or "arrange" for CASC coverage for their employees. Nor is coverage of CASC services "independent" of the organization or its plan. To the contrary, the government acknowledges that employees receive CASC services "**under . . . the [employer's] plan.**" 78 Fed. Reg. at 39,879.

The former Secretary of HHS, Kathleen Sebelius, admitted the true effect of the "accommodation" when she told an audience at Harvard University that, under the "accommodation," "Catholic hospitals, Catholic universities, [and] other religious entities **will be providing coverage to their employees.**"[8]

In order to appreciate how the "accommodation" hijacks an objecting employer's plan, it is helpful to compare the "accommodation" to other ways the government could have made CASC services available. The government could: (1) directly provide coverage of CASC services;[9] (2) reimburse those who pay out of pocket for CASC services through a combination of direct subsidies, tax deductions, and tax credits; (3) facilitate greater access to CASC services through the health insurance exchanges; or (4) work with other, willing organizations to expand access to CASC services. Each option would advance the government's goals but without using a Catholic employer's own private contract as the means of doing so. Instead, the government chose to fashion its so-called accommodation that uses the employer's health care contract as the means of delivering CASC

[8] Kathleen Sebelius, *Remarks at The Forum at Harvard School of Public Health* (Apr. 8, 2013), available at http://theforum.sph.harvard.edu/events/conversationkathleen-sebelius/ (last visited March 2, 2014).

[9] Public expenditures for family planning services totaled $2.37 billion in FY 2010, 75% which was from Medicaid and 10% from Title X. *Fact Sheet: Facts on Publicly Funded Contraceptive Services in the United States*, Guttmacher Institute (Aug. 2014), http://www.guttmacher.org/pubs/fb_contraceptive_serv.html (last visited June 9, 2015).

services to its employees.

B. The original accommodation triggers the TPA's duty to provide free CASC services.

The "accommodation" also forces self-insured Catholic employers to trigger the delivery of CASC services to their employees. Signing and delivering the self-certification to its TPA or a notice to HHS is not only a "but for" cause of its employees receiving CASC services, this very document actually creates the TPA's legal obligation to deliver them.

Even Justice Sotomayor and other dissenters in Wheaton College admit that Wheaton's TPA bears the legal obligation to provide contraceptive coverage "only upon receipt of" Form 700.

First, the government is incorrect when it claims that a TPA is "required by federal law to provide full contraceptive coverage regardless whether the applicant completes EBSA Form 700." *Wheaton College v. Burwell*, 134 S. Ct. 2806, 2807 (2014) (summarizing government's argument). The statutory requirement to provide CASC services applies only to "a group health plan [i.e. the plan sponsor] and a health insurance issuer," not to a third party administrator. 42 U.S.C. § 300gg–13. The government can only burden a TPA with the employer's legal obligation to provide CASC services if that TPA has been made a plan administrator. The government's regulations admit it is not just any TPA that is responsible for providing CASC services but only "a third party administrator that becomes a plan administrator pursuant to" 29 C.F.R. 2510.3-16; 29 C.F.R. 2510.3-16(c) (attached as Exhibit 4).

Supreme Court justices and other federal judges have rejected the government's claim that a TPA's duty to deliver CASC services follows directly from the law. Even the dissenters in Wheaton College acknowledge that "Wheaton's third-party administrator bears the legal obligation to provide contraceptive coverage **only upon receipt of a valid self-certification**." *Wheaton College*, 124 S. Ct. at 2814 n.6 (Sotomayor, J., dissenting). Judge Pryor of the Eleventh Circuit called the government's arguments "rubbish": "[W]hy *must* [EWTN] provide Form 700 to its administrator? Because without the form, the administrator has no legal authority to step into the shoes of the Network and provide contraceptive coverage to the employees and beneficiaries of the Network." *Eternal Word Television Network, Inc. v. Sec'y, U.S. Dep't of Health & Human Servs.*, 756 F.3d 1339, 1347 (11th Cir. 2014) (Pryor, J., specially concurring). Judge Flaum of the Seventh Circuit likewise emphasized that "[w]hen Notre Dame invoked the accommodation, its relationship" with its TPA "changed." *Univ. of Notre Dame v. Burwell*, 786 F.3d 606, 626 (7th Cir. 2015) (Flaum, J., dissenting). "Meritain, its third-party administrator, became both authorized and required to offer contraceptive coverage to Notre Dame's employees." *Id.*

Second, federal law is equally clear that the government does not have the authority to make a TPA into a plan administrator. The "accom-

modation" requires that a TPA be designated "an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries." 78 Fed. Reg. 39,879. The government claims it "has legal authority to require the [TPA] to become" an ERISA section 3(16) plan administrator. 78 Fed. Reg. at 39,880. However, ERISA section 3(16) states plainly that, except for orphaned plans, a plan administrator is either the "plan sponsor" (i.e. the employer) or "**the person specifically so designated by the terms of the instrument under which the plan is operated.**" 29 U.S.C. § 1002(16) (attached as Exhibit 3). Under ERISA, *only the employer* has authority to "create the basic terms and conditions of the plan, execute a written instrument containing those terms and conditions, and provide in that instrument 'a procedure' for making amendments."[10] Because the government cannot create ERISA plan documents, the government does not have the power to designate a TPA as a plan administrator.

ERISA states that only the employer can designate the plan administrator and it must do so "by the terms of the instrument under which the plan is operated." The bottom line is that, if a Catholic employer's TPA has become a plan administrator, it is because the employer—not a federal statute, and not a government agency—has made it so.

The government's self-certification form confirms the employer's central role in designating its TPA as a plan administrator. The original Form 700 states that "**[t]his certification is an instrument under which the plan is operated.**" Exhibit 1 at 2; *see also* Exhibit 2 at 2 (rev. Aug. 2014) (same). This simple sentence converts what the government calls an "opt-out" form into a plan document that, under ERISA section 3(16), makes the TPA into a plan administrator for purposes of delivering CASC services.

The bottom line is that, despite the government's protestations to the contrary, if a Catholic employer's TPA has become a plan administrator, it is because the employer—not a federal statute, and not a government agency—has made it so. The form a Catholic employer sends its TPA is not a mere "opt-out" but a legal document by which a Catholic employer designates its TPA as a plan administrator that is legally obligated, under penalty of enormous government fines, to provide its employees with free CASC services.

C. The augmented accommodation hijacks a Catholic employer's health plan.

As described above, in the summer of 2014, the government "augmented" the "accommodation" by giving employers the opportunity to send a notice to the Secretary of HHS instead of sending Form 700 directly to its TPA. No court and, to our knowledge, no Catholic employer has found that there is a significant moral or legal difference between these two options. In our own CBA lawsuit, the court held, "[t]he August 2014 augmented reg-

[10] *CIGNA Corp. v. Amara,* 131 S. Ct. 1866, 1877 (2011) (quoting 29 U.S.C. § 1102)); see *Kaufmann v. Prudential Ins. Co. of Am.*, 840 F. Supp. 2d 495, 498 (D.N.H. 2012) ("Only the plan sponsor can set the terms of the plan and it must do so in the written instrument establishing the plan.").

ulations . . . do not remove the substantial burden placed on CBA members by the notification requirement. There remains a substantial burden on the religious beliefs of CBA members . . . ." *Catholic Benefits Ass'n LCA v. Burwell*, 2014 WL 7399195, *5 (W.D. Okla. Dec. 29, 2014).

The "augmented accommodation's" new notice provision leaves the original accommodation's *mechanism, goal, and effect* in place. The *mechanism* in each instance requires the employer to amend its insurance contract and designate its TPA as a plan administrator responsible for providing CASC benefits. *See* Exhibit 2, Form 700 (rev. Aug. 2014) at 2 ("**This form or a notice to the Secretary is an instrument under which the plan is operated.**"). The *goal* remains the same: "preserving participants' and beneficiaries' . . . access" to CASC services. 79 Fed. Reg. at 51,092. The "augmented accommodation" also has the same *effect*: "Regardless of whether the eligible organization self-certifies in accordance with the July 2013 final rules [using Form 700], or provides notice to HHS in accordance with the August 2014 [Interim Final Rules], the obligations of insurers and/or TPAs . . . are the **same.**"[11]

The augmented accommodation, like the original version, works by hijacking an employer's plan and using that plan to deliver CASC services to its employees.

The "augmented accommodation," like the original version, works by hijacking an employer's plan and using it to deliver CASC services to its employees. That is why an employer's notice to HHS "must" include the name and type of its plan and "the name and contact information for any of the plan's [TPAs]." 26 C.F.R. 54.9815-2713AT(b)(1)(ii)(B) (attached as Exhibit 5). The government would not need this information if, as it promised, the "accommodation" resulted in CASC services being provided "independent of the objecting religious organization that sponsors the plan." This information is necessary only because the employer is, by participating in the "accommodation," creating a CASC services addendum to its present plan.

D. The augmented accommodation triggers the TPA's duty to provide CASC services.

Similarly, the "augmented accommodation" still requires the employer to trigger its TPA's legal obligation to provide CASC services. The "augmented accommodation," like the original accommodation, works by transferring the legal obligation to provide CASC services from the employer to its TPA. However, the underlying law is still the same: the government does not have the authority to rewrite a private insurance contract and make a TPA a plan administrator.

Because ERISA section 3(16) states that only a "plan sponsor" has

[11] Ctr. for Consumer Info. & Ins. Oversight, http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womens-preven-02012013.html (last visited Oct. 2, 2014) ("CCIO Fact Sheet").

the authority to designate a plan administrator, 29 U.S.C. § 1002(16) (attached as Exhibit 3), the "augmented accommodation" can work only if the employer amends its plan to give its TPA these new responsibilities. And indeed that is the case. The government's revised Form 700 informs employers that "**a notice to the Secretary [of HHS] is an instrument under which the plan is operated.**" Exhibit 2, Form 700 at 2 (rev. Aug. 2014). Under ERISA section 3(16), it must be the employer's notice to HHS and not the Department of Labor's notice to the TPA, that triggers the TPA's duty to provide CASC services.

The CBA Ethics Committee found that both accommodations are "contrary to Catholic values" and that it would be immoral to comply "unless such an employer has exhausted all alternatives that do not effect a greater evil." The Catholic Benefits Association is one such prime alternative.

CONCLUSION

The "accommodation" to the CASC mandate requires Catholic employers to violate Catholic moral teaching by providing their employees with free access to CASC services. The "accommodation" forces Catholic employers to allow the government to hijack its benefit plan and its own TPA and use the plan and the TPA to provide its employees with CASC services. The "augmented accommodation" creates a new way for an employer to invoke the "accommodation" by permitting the employer to deliver a notice to HHS instead of a form to the TPA. This is a difference without distinction because the employer remains the cause, and the effect--as the government admits--remains the same.

For these reasons, the CBA Ethics Committee found that both the "accommodation" and the "augmented accommodation" are "contrary to Catholic values" and that it would be immoral to comply "unless such an employer has exhausted all alternatives that do not effect a greater evil and unless such an employer has taken reasonable steps to avoid giving scandal." The CBA is one such prime alternative. CBA membership is available to Catholic employers that satisfy membership criteria and that have not, as a named party, suffered an adverse court ruling in a lawsuit seeking exemption from the CASC mandate.

EXHIBIT 1

EBSA FORM 700-- CERTIFICATION
(To be used for plan years beginning on or after January 1, 2014)

This form is to be used to certify that the health coverage established or maintained or arranged by the organization listed below qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing, pursuant to 26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, and 45 CFR 147.131.

Please fill out this form completely. This form must be completed by each eligible organization by the first day of the first plan year beginning on or after January 1, 2014, with respect to which the accommodation is to apply, and be made available for examination upon request. This form must be maintained on file for at least 6 years following the end of the last applicable plan year.

Name of the objecting organization	
Name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization	
Mailing and email addresses and phone number for the individual listed above	

I certify that, on account of religious objections, the organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered; the organization is organized and operates as a nonprofit entity; and the organization holds itself out as a religious organization.

Note: An organization that offers coverage through the same group health plan as a religious employer (as defined in 45 CFR 147.131(a)) and/or an eligible organization (as defined in 26 CFR 54.9815-2713A(a); 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)), and that is part of the same controlled group of corporations as, or under common control with, such employer and/or organization (within the meaning of section 52(a) or (b) of the Internal Revenue Code), may certify that it holds itself out as a religious organization.

I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.

_____
Signature of the individual listed above

_____
Date

The organization or its plan must provide a copy of this certification to the plan's health insurance issuer (for insured health plans) or a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement.

Notice to Third Party Administrators of Self-Insured Health Plans

In the case of a group health plan that provides benefits on a self-insured basis, the provision of this certification to a third party administrator for the plan that will process claims for contraceptive coverage required under 26 CFR 54.9815-2713(a)(1)(iv) or 29 CFR 2590.715-2713(a)(1)(iv) constitutes notice to the third party administrator that the eligible organization:

(1) Will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services; and

(2) The obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A.

This certification is an instrument under which the plan is operated.

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1210-0150. Each organizations that seeks to be recognized as an eligible organization that qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing is required to complete this self-certification from pursuant to 26 CFR 54.9815-2713A(a)(4) in order to obtain or retain the benefit of the exemption from covering certain contraceptive services. The self-certification must be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be retained for six years. The time required to complete this information collection is estimated to average 50 minutes per response, including the time to review instructions, gather the necessary data, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Labor, Employee Benefits Security Administration, Office of Policy and Research, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebsa.opr@dol.gov and reference the OMB Control Number 1210-0150.

EXHIBIT 2

EBSA FORM 700-- CERTIFICATION
(revised August 2014)

This form may be used to certify that the health coverage established or maintained or arranged by the organization listed below qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing, pursuant to 26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, and 45 CFR 147.131. Alternatively, an eligible organization may also provide notice to the Secretary of Health and Human Services.

Please fill out this form completely. This form should be made available for examination upon request and maintained on file for at least 6 years following the end of the last applicable plan year.

Name of the objecting organization	
Name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization	
Mailing and email addresses and phone number for the individual listed above	

I certify the organization is an eligible organization (as described in 26 CFR 54.9815-2713A(a), 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)) that has a religious objection to providing coverage for some or all of any contraceptive services that would otherwise be required to be covered.

Note: An organization that offers coverage through the same group health plan as a religious employer (as defined in 45 CFR 147.131(a)) and/or an eligible organization (as defined in 26 CFR 54.9815-2713A(a); 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)), and that is part of the same controlled group of corporations as, or under common control with, such employer and/or organization (within the meaning of section 52(a) or (b) of the Internal Revenue Code), is considered to meet the requirements of 26 CFR 54.9815-2713A(a)(3), 29 CFR 2590.715-2713A(a)(3), and 45 CFR 147.131(b)(3).

I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.

_____
Signature of the individual listed above

_____
Date

The organization or its plan using this form must provide a copy of this certification to the plan's health insurance issuer (for insured health plans) or a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement.

Notice to Third Party Administrators of Self-Insured Health Plans

In the case of a group health plan that provides benefits on a self-insured basis, the provision of this certification to a third party administrator for the plan that will process claims for contraceptive coverage required under 26 CFR 54.9815-2713(a)(1)(iv) or 29 CFR 2590.715-2713(a)(1)(iv) constitutes notice to the third party administrator that the eligible organization:

(1) Will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services; and

(2) The obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A.

As an alternative to using this form, an eligible organization may provide notice to the Secretary of Health and Human Services that the eligible organization has a religious objection to providing coverage for all or a subset of contraceptive services, pursuant to 26 CFR 54.9815-2713A(b)(1)(ii)(B) and (c)(1)(ii), 29 CFR 2590.715-2713A(b)(1)(ii)(B) and (c)(1)(ii), and 45 CFR 147.131(c)(1)(ii). A model notice is available at: http://www.cms.gov/cciio/resources/Regulations-and-Guidance/index.html#Prevention.

This form or a notice to the Secretary is an instrument under which the plan is operated.

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1210-0150. An organization that seeks to be recognized as an eligible organization that qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing may complete this self-certification form, or provide notice to the Secretary of Health and Human Services, in order to obtain or retain the benefit of the exemption from covering certain contraceptive services. The self-certification form or notice to the Secretary of Health and Human Services must be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be retained for six years. The time required to complete this information collection is estimated to average 50 minutes per response, including the time to review instructions, gather the necessary data, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Labor, Employee Benefits Security Administration, Office of Policy and Research, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebsa.opr@dol.gov and reference the OMB Control Number 1210-0150.

EXHIBIT 3

United States Code Annotated
Title 29. Labor
Chapter 18. Employee Retirement Income Security Program (Refs & Annos)
Subchapter I. Protection of Employee Benefit Rights (Refs & Annos)
Subtitle A. General Provisions

29 U.S.C.A. § 1002

§ 1002. Definitions

Currentness

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program--

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this chapter providing one or more exempt categories under which--

(i) severance pay arrangements, and

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account. Any person who is a party in interest with respect to a plan to which a trust described in section 501(c)(22) of Title 26 is permitted to make payments under section 1403 of this title shall be treated as a party in interest with respect to such trust.

(15) The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16)(A) The term "administrator" means--

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

EXHIBIT 4

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of June 4, 2015

Title 29 → Subtitle B → Chapter XXV → Subchapter B → Part 2510 → §2510.3-16

Title 29: Labor
PART 2510—DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

§2510.3-16 Definition of "plan administrator."

(a) *In general.* The term "plan administrator" or "administrator" means the person specifically so designated by the terms of the instrument under which the plan is operated. If an administrator is not so designated, the plan administrator is the plan sponsor, as defined in section 3(16)(B) of ERISA.

(b) In the case of a self-insured group health plan established or maintained by an eligible organization, as defined in §2590.715-2713A(a) of this chapter, if the eligible organization provides a copy of the self-certification of its objection to administering or funding any contraceptive benefits in accordance with §2590.715-2713A(b)(1)(ii) of this chapter to a third party administrator, the self-certification shall be an instrument under which the plan is operated, shall be treated as a designation of the third party administrator as the plan administrator under section 3(16) of ERISA for any contraceptive services required to be covered under §2590.715-2713(a)(1)(iv) of this chapter to which the eligible organization objects on religious grounds, and shall supersede any earlier designation. If, instead, the eligible organization notifies the Secretary of Health and Human Services of its objection to administering or funding any contraceptive benefits in accordance with §2590.715-2713A(b)(1)(ii) of this chapter, the Department of Labor, working with the Department of Health and Human Services, shall separately provide notification to each third party administrator that such third party administrator shall be the plan administrator under section 3(16) of ERISA for any contraceptive services required to be covered under §2590.715-2713(a)(1)(iv) of this chapter to which the eligible organization objects on religious grounds, with respect to benefits for contraceptive services that the third party administrator would otherwise manage. Such notification from the Department of Labor shall be an instrument under which the plan is operated and shall supersede any earlier designation.

(c) A third party administrator that becomes a plan administrator pursuant to this section shall be responsible for—

(1) Complying with section 2713 of the Public Health Service Act (42 U.S.C. 300gg-13) (as incorporated into section 715 of ERISA) and §2590.715-2713 of this chapter with respect to coverage of contraceptive services. To the extent the plan contracts with different third party administrators for different classifications of benefits (such as prescription drug benefits versus inpatient and outpatient benefits), each third party administrator is responsible for providing contraceptive coverage that complies with section 2713 of the Public Health Service Act (as incorporated into section 715 of ERISA) and §2590.715-2713 of this chapter with respect to the classification or classifications of benefits subject to its contract.

(2) Establishing and operating a procedure for determining such claims for contraceptive services in accordance with §2560.503-1 of this chapter.

(3) Complying with disclosure and other requirements applicable to group health plans under Title I of ERISA with respect to such benefits.

[78 FR 39894, July 2, 2013, as amended at 79 FR 51099, Aug. 27, 2014]

Need assistance?

EXHIBIT 5

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of June 4, 2015

Title 26 → Chapter I → Subchapter D → Part 54 → §54.9815-2713at

Title 26: Internal Revenue
PART 54—PENSION EXCISE TAXES

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§54.9815-2713AT Accommodations in connection with coverage of preventive health services (temporary).

(a) [Reserved]. For further guidance, see §54.9815-2713A(a).

(b) *Contraceptive coverage—self-insured group health plans.* (1) A group health plan established or maintained by an eligible organization that provides benefits on a self-insured basis complies for one or more plan years with any requirement under §54.9815-2713(a)(1)(iv) to provide contraceptive coverage if all of the requirements of this paragraph (b)(1) are satisfied:

(i) The eligible organization or its plan contracts with one or more third party administrators.

(ii) The eligible organization provides either a copy of the self-certification to each third party administrator or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its religious objection to coverage of all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to a third party administrator, such self-certification must include notice that obligations of the third party administrator are set forth in 29 CFR 2510.3-16 and this section and under §54.9815-2713A.

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation; its objection based on sincerely held religious beliefs to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the name and contact information for any of the plan's third party administrators and health insurance issuers. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to the Secretary of Health and Human Services. The Department of Labor (working with the Department of Health and Human Services), will send a separate notification to each of the plan's third party administrators informing the third party administrator that the Secretary of Health and Human Services has received a notice under paragraph (b)(1)(ii) of this section and describing the obligations of the third party administrator under 29 CFR 2510.3-16 and this section and under §54.9815-2713A.

(2) If a third party administrator receives a copy of the self-certification from an eligible organization or a notification from the Department of Labor, as described in paragraph (b)(1)(ii) of this section, and agrees to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, the third party administrator shall provide or arrange payments for contraceptive services using one of the following methods—

(i) Provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries; or

(ii) Arrange for an issuer or other entity to provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries.

(3) If a third party administrator provides or arranges payments for contraceptive services in accordance with either paragraph (b)(2)(i) or (ii) of this section, the costs of providing or arranging such payments may be reimbursed through an adjustment to the Federally-facilitated Exchange user fee for a participating issuer pursuant to 45 CFR 156.50(d).

(4) A third party administrator may not require any documentation other than a copy of the self-certification from the eligible organization or notification from the Department of Labor described in paragraph (b)(1)(ii) of this section.

(c) *Contraceptive coverage—insured group health plans*—(1) *General rule.* A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies for one or more plan years with any requirement under §54.9815-2713(a)(1)(iv) to provide contraceptive coverage if the eligible organization or group health plan provides either a copy of the self-certification to each issuer providing coverage in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its religious objection to coverage for all or a subset of contraceptive services.

(i) When a copy of the self-certification is provided directly to an issuer, the issuer has sole responsibility for providing such coverage in accordance with §54.9815-2713. An issuer may not require any further documentation from the eligible organization regarding its status as such.

(ii) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation; its objection based on its sincerely held religious beliefs to coverage of some or all contraceptive services, as applicable (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the name and contact information for any of the plan's third party administrators and health insurance issuers. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to the Secretary of Health and Human Services. The Department of Health and Human Services will send a separate notification to each of the plan's health insurance issuers informing the issuer that the Secretary of Health and Human Services has received a notice under paragraph (c)(1) of this section and describing the obligations of the issuer under this section and under §54.9815-2713A.

(2) *Payments for contraceptive services.* (i) A group health insurance issuer that receives a copy of the self-certification or notification described in paragraph (b)(1)(ii) of this section with respect to a group health plan established or maintained by an eligible organization in connection with which the issuer would otherwise provide contraceptive coverage under §54.9815-2713(a)(1)(iv) must—

(ii) [Reserved]. For further guidance, see §54.9815-2713A(c)(2)(ii).

(d) [Reserved]. For further guidance, see §54.9815-2713A(d).

(e) [Reserved]. For further guidance, see §54.9815-2713A(e).

(f) *Expiration date.* This section expires on August 22, 2017 or on such earlier date as may be provided in final regulations or other action published in the FEDERAL REGISTER.

[T.D. 9690, 79 FR 51098, Aug. 27, 2014]

Need assistance?