



TaxNewsFlash

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IRS request for information on requiring health insurance coverage of over-the-counter preventive items under Affordable Care Act

The U.S. Treasury Department and IRS—along with the Department of Labor (DOL) and the Department of Health and Human Services (HHS)—today released for publication in the Federal Register a [request for information](#) [PDF 307 KB] on the application of the preventive services requirements under section 2713 of the Public Health Service Act (PHS Act) to over-the-counter (OTC) preventive items and services available without a prescription by a health care provider (in particular, oral contraceptives).

Specifically, information is sought regarding:

- The potential benefits and costs of requiring non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to cover OTC preventive items and services without cost sharing and without a prescription by a health care provider
- Any potential challenges associated with providing such coverage
- Whether and how providing such coverage would benefit consumers
- Any potential burden that plans and issuers would face if required to provide such coverage

Comments are due by 5 p.m. ET on December 4, 2023.

Background

Section 2713 of the PHS Act, as added by section 1001 of the Affordable Care Act (ACA) and incorporated into ERISA and the Code, requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage without imposing any cost-sharing requirements for certain preventive items and services. While most recommended preventive services require a health care provider to either provide a prescription for an item or service, or to directly furnish a service, several preventive products are available to consumers without the involvement of a provider (OTC preventive products).

The Food and Drug Administration (FDA) recently approved a progestin-only oral contraceptive as the first daily oral contraceptive available without a prescription by a health care provider. The departments

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are of the view that requiring plans and issuers to cover, without cost sharing, OTC preventive products without a prescription by a health care provider under section 2713 of the PHS Act is an important option to consider for expanding access to contraceptive care. However, the departments recognize that most plans and issuers currently do not cover OTC preventive products without a prescription by a health care provider. Therefore, the departments are requesting information that will improve the departments' understanding of the issues related to consumer access to OTC preventive products without cost sharing and without a prescription by a health care provider.

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