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Additional Guidance Addresses ACA Preventive Care Mandate

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As part of FAQ 51, the Departments of Labor, Health and Human Services, and the Treasury (together, the “Departments”) issued guidance clarifying several Affordable Care Act (“ACA”) preventive care coverage issues applicable to non-grandfathered group health plans.

As background, non-grandfathered group health plans must cover certain in-network preventive care items and services without cost-sharing.

FAQ 51 addresses preventive care requirements that relate to colonoscopies and coverage for female contraceptives as follows:

- **Colonoscopy coverage.** For plan years that begin on or after May 31, 2022, a group health plan (or carrier) must cover without any cost-sharing a follow-up colonoscopy conducted after a positive non-invasive stool-based screening test or direct visualization test (e.g., sigmoidoscopy, CT colonography).
- **Contraceptives.** The Departments have received a number of complaints and reports that covered individuals are being denied otherwise mandated contraceptive coverage. Examples include: denying brand name contraceptives when the provider determines the product is medically necessary for the

individual, imposing onerous fail-first requirements before the plan will cover a medically necessary contraceptive product, and failing to provide an easily accessible, transparent and expedient exception process that is not unduly burdensome.

The Departments are reminding plans to comply with the contraceptive services coverage requirements. This includes the requirement that, if an individual and their attending provider determine that a particular service or FDA-approved, cleared, or granted contraceptive product is medically appropriate for the individual (whether or not the item or service is identified in the current FDA Birth Control Guide), the plan or issuer must cover that service or product without cost sharing.

The Departments are actively investigating complaints and may initiate enforcement or other corrective measures.

Employer Action

Employers should ensure their plans will comply with the additional coverage requirements for colonoscopies effective for plan years that begin on or after June 1, 2022. Plans should also review coverage of contraceptive services considering the Departments latest FAQ.