

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DOBOSZENSKI & SONS, INC. and
DOUGLAS DOBOSZENSKI,

Plaintiffs,

vs

KATHLEEN SEBELIUS, in her official capacity
as Secretary of the United States Department of
Health and Human Services and her successor;
and the UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;

SETH D. HARRIS, in his official capacity as
Acting Secretary of the United States Department
of Labor and his successor; and the UNITED
STATES DEPARTMENT OF LABOR;

JACOB LEW, in his official capacity as U.S.
Secretary of the Treasury and his successor; and
the UNITED STATES DEPARTMENT OF THE
TREASURY, and

DANIEL I. WERFEL, in this official capacity as
Acting Commissioner of Internal Revenue and
his successor; and the INTERNAL REVENUE
SERVICE,

Defendants.

Civil No. 13-3148 (JNE/FLN)

PRELIMINARY INJUNCTION

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Plaintiffs have filed a motion for preliminary injunction and stay in the above-referenced case. (Dkt. No. 7) The Plaintiffs have filed a Local Rule 7.1 meet-and-confer statement indicating an agreement between the parties on the Plaintiffs' proposed order. (Dkt. No. 9) Defendants have filed a document indicating the same. (Dkt. No. 12)

Based on these filings, Defendants are preliminarily enjoined until thirty days after the mandate issues from the Eighth Circuit in *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357, or *Annex Medical, Inc. v. Sebelius*, No. 13-1118, or until the Supreme Court issues a ruling in a substantially similar case, whichever occurs first, from enforcing the contraceptive coverage requirement under 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations¹ against plaintiffs, its employees or any health insurance issuer when offering any group health insurance coverage to Doboszenski & Sons, Inc. without coverage for "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," as prescribed by a health care provider. *See* HRSA, Women's Preventive Services: Required Health Plan Coverage Guidelines, *available at* <http://www.hrsa.gov/womensguidelines> (August 1, 2011), attached as Exhibit A hereto.²

¹ 75 Fed. Reg. 41,726, 41,728 (July 19, 2010) (interim final rules with request for comments); 76 Fed. Reg. 46,621, 46,621-26 (Aug. 3, 2011) (interim final rules with request for comments); 77 Fed. Reg. 8725, 8725-30 (Feb. 15, 2012) (final rules).

² The U.S. Food and Drug Administration has approved currently the following contraceptive methods and sterilization procedures for women: female condom; diaphragm with spermicide; sponge with spermicide; cervical cap with spermicide; spermicide alone; oral contraceptives (combined pill) ("the Pill"); oral contraceptives (Progestin-only) ("the Mini Pill"); oral contraceptives (extended/continued use) ("the

Further, if Doboszenski & Sons, Inc. adopts a self-insured plan under the Employee Retirement Income Security Act of 1974 (ERISA), which must also comply with the requirements of 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations, Defendants are preliminarily enjoined until thirty days after the mandate issues from the Eighth Circuit in *O'Brien* or *Annex Medical*, whichever occurs first, from enforcing the contraceptive coverage requirement under 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations against plaintiffs, its employees or any third party administrator when administering any self-insured plan for Doboszenski & Sons, Inc. without coverage for “All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity,” as prescribed by a health care provider. Ex. A.³

All proceedings in this case are stayed pending resolution of the appeal in either *O'Brien* or *Annex Medical*, or until the Supreme Court issues a ruling in a substantial similar case, whichever occurs first.

IT IS SO ORDERED.

Date: November 27, 2013

s/Joan N. Ericksen
 JOAN N. ERICKSEN
 United States District Judge

Pill”); patch; vaginal contraceptive ring; shot/injection; Plan B, Plan B One-Step and Next Choice; Ella; Copper IUD; IUD with progestin; implantable rod; sterilization surgery for women and sterilization implant for women. *See* U.S. FDA Birth Control Guide, *available at* <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf> (updated August 2012), attached as Exhibit B hereto.

³ *See* Note 2, *supra*.