

Fertility Benefits Proposed as New Category of Excepted Benefits

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Last month the DOL, HHS, and Treasury proposed a [Rule](#) that would create a new category of limited excepted benefits. The proposed rule would treat standalone fertility benefits in the same excepted manner as limited scope dental and/or vision coverage and various types of voluntary benefits.

Background

Certain categories of coverage are not subject to HIPAA's portability rules or certain ACA mandates including the preventive services coverage mandate and the prohibition on lifetime and annual limits for essential health benefits (EHBs), the Mental Health Parity and Addiction Equity Act (MHPAEA), and the transparency requirements that apply to group health plans.

There is more than one type of excepted benefit including benefits subject to a blanket exclusion and others that require the benefit to be designed in a specific way to meet the excepted benefit standard and avoid the compliance requirements of various federal mandates. (If you are interested in a fuller background on excepted benefits, check out our [Excepted Benefits Guide](#).)

Proposed Rule

The proposed Rule follows an Executive Order directing the administration to develop policy recommendations to protect and increase access to in vitro fertilization (IVF) services and to reduce the cost of IVF treatments. The proposed Rule would treat standalone fertility benefits in the same excepted manner as limited scope dental and/or vision coverage and would permit group health plans to provide a new benefit for the diagnosis, mitigation, or treatment of infertility or related reproductive health conditions, on either a self-insured or fully insured basis.

The benefits would need to be: (1) provided under a separate policy, certificate, or contract of insurance; or (2) otherwise not an integral part of the employer's group health plan.

The proposed Rule sets out some main requirements for the benefits.

- Substantially all of the benefits must be for diagnosis, mitigation, or treatment of infertility or related reproductive health conditions.
- Benefits are capped at a combined lifetime maximum of up to \$120,000 for the participant and their beneficiaries, indexed for inflation for plan years starting after 2028.
- Employers must provide a notice that clearly describes the coverage and meets other specified requirements.

Considerations

Because an excepted benefit is not integrated with the group health plan, an employer could offer an excepted fertility benefit to employees who are ineligible for or waived enrollment in the employer's major medical plan. Additionally, because an excepted fertility benefit would not be integrated with the major medical plan, to the extent the major medical plan covers any such

benefits there will be overlapping coverage but note that nothing in the proposed Rule would prevent plans from coordinating benefits in accordance with applicable state and federal law.

Next Steps

There is a public comment period running through July 13, 2026. If the proposed Rule is finalized, the new limited category of excepted benefit will be available for plan years beginning on or after January 1, 2027.

The intent of this article is to provide general information on employee benefit issues. It should not be construed as legal advice and, as with any interpretation of law, plan sponsors should seek proper legal advice for application of these rules to their plans.