

LEGAL UPDATE

Federal Agencies Issue Proposed Rules on Offering Fertility Benefits



On May 10, 2026, the U.S. Departments of Labor, Health and Human Services, and the Treasury (the Departments) jointly issued [proposed rules](#) that would create a new category of limited excepted benefits that employers can use to offer fertility benefits.

The proposed rules build on [Executive Order 14216](#) and the Departments' October 2025 guidance, which clarified that employers could offer fertility benefits through three existing excepted benefit pathways: (1) a fully insured independent, noncoordinated excepted benefit policy; (2) an excepted benefit HRA; and (3) an employee assistance program offering coaching and navigator services.

Key Highlights

The proposed rule would **establish a new category of limited excepted benefits**. Excepted benefits are certain types of employee benefits that are not subject to HIPAA's portability rules (like special enrollment rights and nondiscrimination rules), the ACA's market reforms (such as annual limit bans and preventive care mandates), and certain other federal health care coverage laws.

The new category would apply limiting principles similar to those already in place for other limited excepted benefits, with the following main requirements:

- **Substantially all** benefits must be for the diagnosis, mitigation or treatment of infertility or related reproductive health conditions;
- Benefits are **capped at a combined lifetime maximum of \$120,000** for the participant and their beneficiaries, indexed for inflation for plan years beginning after 2028;
- The benefits would be required to be provided under a **separate policy or otherwise not be an integral part of the plan** maintained by the same plan sponsor; and
- The plan or issuer **must provide a written notice to participants and beneficiaries** that clearly describes the coverage, including its benefits and limitations, how to access in-network providers and how to submit claims. This notice must be written in a manner understandable to the average participant and must be provided at the first opportunity to enroll, annually thereafter, and upon request.

Applicability

- The proposal to create an excepted fertility benefit as a new category of limited excepted benefits would apply to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after Jan. 1, 2027.
- The Departments are seeking comments on whether the proposed rules, if finalized, should instead be applicable upon the effective date of the final rules to allow plan sponsors and issuers flexibility to offer this new benefit immediately, if desired.
- Comments are due 60 days after the proposed rules are published in the Federal Register.

Employer Takeaway

The proposed rules would give employers a new option to offer fertility benefits as a limited excepted benefit. Employers that choose to offer fertility benefits under this new category would have flexibility in plan design, subject to the requirements above. While no action is required at this time, employers interested in offering fertility benefits should monitor the rulemaking closely and work with benefits counsel to evaluate their options.

More information can be found on the DOL's Excepted Fertility Benefits webpage.

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