

LEGAL UPDATE

Federal Agencies Issue New Guidance on Offering Fertility Benefits



On Oct. 16, 2025, the U.S. Departments of Labor, Health and Human Services, and the Treasury (the Departments) jointly issued [guidance](#) that clarifies existing categories of excepted benefits that employers can use to offer fertility benefits.

The guidance follows [Executive Order 14216](#), which directed the Domestic Policy Council (DPC) to submit a list of policy recommendations to protect in vitro fertilization (IVF) access and reduce out-of-pocket and health plan costs for IVF treatment. As part of those policy recommendations the DPC recommended issuing regulations or guidance that would allow employers to expand access to coverage for fertility through the provision of an excepted benefit.

Key Highlights

The new guidance provides that employers may offer:

- **Fertility benefits as an independent, non-coordinated excepted benefit**, if the applicable conditions are met. Individuals enrolled in such coverage may also contribute to a health savings account. A policy covering benefits related to infertility could qualify if it:
 - Is provided under a separate policy, certificate or contract of insurance (thus, the coverage cannot be offered as a self-funded arrangement);
 - Does not contain any coordination between the provision of the benefits and an exclusion of benefits under any group health plan maintained by the same plan sponsor; and
 - Pays benefits regardless of coverage under other plans.
- **An excepted benefit health reimbursement arrangement (HRA) that reimburses an employee's out-of-pocket costs with respect to fertility benefits**, as long as the HRA meets the applicable regulatory requirements.
- **Benefits for coaching and navigator services to help employees and their dependents understand their fertility options under an employee assistance program (EAP) that qualifies as a limited excepted benefit.** To qualify as a limited excepted benefit, the EAP cannot be coordinated with benefits under another group health plan, no employee premiums or contributions can be required as a condition of participation, and there must be no cost sharing under the EAP. The EAP would not constitute a limited excepted benefit if it offers any fertility benefits that are significant benefits for medical care.

Future Rulemaking

In the guidance, the Departments stated that they intend to propose rulemaking aimed at providing additional ways for certain fertility benefits to be offered as a limited excepted benefit. They are also considering whether to modify the standards under which supplemental health insurance coverage provided by a group health plan, including a supplemental benefit for fertility coverage, will be considered to satisfy the conditions for being an excepted benefit.

Provided by National Insurance Services

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