



Compliance Update - 11/25/14:

Final Rules for Excepted Benefits

This is an update to our [Compliance Alert](#) from February 2014. The Agencies have finalized the proposed regulations for dental and vision benefits and Employee Assistance Plans (EAPs) that outline the definitive excepted benefit rules for these types of coverages. Final regulations to address limited wraparound coverage, sketched out in the proposed regulations, will be issued in the future.

Background

Health Flexible Spending Accounts (FSAs) must be excepted benefits to be offered to employees and Health Reimbursement Arrangements (HRAs) must be integrated, a retiree-only plan, a limited-scope HRA that provides only dental and vision expense reimbursement, or a spend-down account in order to continue to be offered by employers. Maintaining excepted benefit status for certain benefits relieves employers and plan sponsors from added requirements under the Health Insurance Portability and Accountability Act (HIPAA) and healthcare reform.

Health FSAs, HRAs and long-term care benefits

Limited-scope vision and dental benefits do not have to be offered in connection with a separate offer of major or "primary" group health coverage under the plan in order to meet the statutory criteria that such benefits are "otherwise not an integral part of the plan." To meet this criterion, limited-scope vision and dental benefits may be offered without connections to a primary group health plan or may be the only plan offered by the employer.

Effective for plan years starting on or after January 1, 2015, limited-scope vision and dental benefits will be treated as excepted benefits if provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of a group health plan, which means:

- Participants may decline coverage, or
- Claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan.

Long-term care benefits are also subject to the "not an integral part of a group health plan" standard in order to be classified as excepted benefits.

Employee Assistance Programs

Employee Assistance Programs (EAPs) are programs offered by employers that typically provide very limited benefits to address circumstances that might otherwise adversely affect employees' work and health. Unfortunately, some EAPs that provide a few benefits beyond the scope of very limited benefits might be enough to disqualify employees from obtaining premium assistance at the Marketplace.

The DOL final guidance provides that, starting in 2015, EAPs will be excepted benefits if the program:

- Does not provide significant benefits in the nature of medical care. For this purpose, the amount, scope and duration of covered services are taken into account;
- Is not coordinated with benefits under another group health plan;
 1. Participants in the other group health plan must not be required to use and exhaust benefits under the EAP before eligibility for benefits under the other group health plan; and
 2. Participant eligibility under the EAP must not be dependent on participation in another group health plan;
- Does not require any employee premiums or contributions to participate; and
- Does not impose any employee cost sharing.

these guidelines were not included in the final regulations.

The Agencies may, through guidance, provide additional clarification in the future regarding when a program provides significant benefits in the nature of medical care.

[2014-23323 Final Excepted Benefits](#)

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Thank you,
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