

December 3, 2025

# Federal Agencies Clarify Pathways for Fertility Benefits Offered by Employers



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On October 16, 2025, the Departments of Treasury, Labor, and Health and Human Services (the “Departments”) [issued FAQs](#) clarifying ways employers can offer fertility benefits in compliance with existing excepted benefits rules under federal law.

### Background

The Departments issued the FAQs in response to a February 2025 Presidential Executive Order (EO 14216), which directs the Assistant to the President for the Domestic Policy Council to submit policy recommendations to protect access to in vitro fertilization (IVF) and aggressively reduce out-of-pocket and health plan costs for IVF treatment.

The FAQs describe how fertility coverage can be provided under existing “excepted benefit” regulations. Excepted benefits are benefits that are exempt from HIPAA and many Affordable Care Act patient protections (such as annual and lifetime dollar limits and preventive services mandates).

### Three Compliant Pathways for Fertility Benefits

The FAQs describe three pathways for employers to offer fertility benefits as excepted benefits under existing guidance: (1) independent, non-coordinated insurance policies covering fertility benefits; (2) excepted benefit HRAs reimbursing out-of-pocket costs for fertility benefits; and (3) EAPs providing non-medical services related to fertility care.

#### 1. Independent, Non-Coordinated Policies

The FAQs provide that employers may provide fertility benefit coverage through independent, non-coordinated insurance policies, e.g., a specified disease policy or hospital/fixed indemnity policy covering fertility benefits. To qualify as an excepted benefit, the policy must meet specific requirements:

- Coverage must be provided under a separate insurance policy, i.e., the benefit cannot be self-insured by the employer;
- There can be no coordination between the fertility benefit and any coverage exclusion under the employer-sponsored group health plan; and
- Benefits under the policy must be paid regardless of whether the benefits are covered by the employer's group health plan or an individual policy provided by the same insurer that covers the employee.

The FAQs also clarify that fertility coverage provided as an independent, non-coordinated excepted benefit does not restrict the employee's ability to contribute to a health savings account (HSA), assuming the employee is otherwise eligible for an HSA, e.g., the employee is covered under a qualifying high-deductible health plan.

Finally, the FAQs state that employers cannot provide such a fertility benefit on a self-funded basis. However, the Departments indicated that they intend to undertake future rulemaking to provide additional ways for employers to sponsor coverage for fertility benefits, including on a self-funded basis.

## **2. Excepted Benefit Health Reimbursement Arrangements**

The FAQs provide that employers can also sponsor excepted benefit health reimbursement arrangements (HRAs) that reimburse out-of-pocket fertility expenses. Excepted benefit HRAs were first approved for use in 2019 under guidance issued by the Departments.

To qualify as an excepted benefit, an HRA must satisfy the following conditions:

- The employer must make other group health plan coverage that is not limited to excepted benefits and not an HRA or other account-based coverage available to employees (though employees do not need to enroll in it);
- Amounts newly made available for each plan year under the HRA cannot exceed the annual limit, as adjusted annually (\$2,150 for plan years beginning in 2025; \$2,200 for 2026);
- The HRA cannot reimburse most group or individual insurance premiums (except for continuation coverage like COBRA or other excepted benefit premiums); and
- The HRA must be offered on uniform terms to similarly situated employees, regardless of any health factor.

An excepted benefit HRA could be designed to cover only out-of-pocket fertility expenses or all qualifying out-of-pocket medical (including fertility) expenses.

## **3. Employee Assistance Programs Coverage**

Employee Assistance Programs (EAP) qualify as excepted benefits if they do not provide significant benefits in the nature of medical care (and satisfy other requirements). The FAQs provide that an EAP will not be considered to provide benefits that are significant in the nature of medical care solely because it offers coaching and navigator services to help individuals understand their fertility options.

To maintain their qualification as excepted benefits, under the existing regulations, EAPs also cannot:

- Coordinate benefits with a group health plan;
- Require participants to exhaust benefits under the EAP before group health plan benefits become available;
- Condition EAP benefit eligibility on participation in a group health plan; or
- Require employee cost-sharing (including employee premiums or contributions) as a condition of participation in the EAP.

## **Get Help Navigating Fertility Benefits Rules**

Employers interested in adding or expanding fertility benefits, particularly as a result of these FAQs, should work closely with their insurers, service providers and benefits counsel. Fertility benefit offerings will need to be carefully structured and documented to ensure they take advantage of available exemptions (like the excepted benefit rules) and avoid compliance surprises.

If you have questions about employer-offered fertility benefits, [contact Hrish Shah](#), Chair of our Employee Benefits & Executive Compensation Practice.