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Proposed regulations: Certain fertility benefits to qualify as new category of limited excepted benefits

The U.S. Treasury Department and IRS—along with the Department of Labor, Centers for Medicare & Medicaid Services and Department of Health and Human Services—today released [proposed regulations](#) (REG-118484-25) that would amend the regulations regarding excepted benefits under the Code, the Employee Retirement Income Security Act (ERISA) of 1974, and the Public Health Service Act, to establish certain fertility benefits as a new category of limited excepted benefits.

Excepted benefits are generally exempt from the market requirements that were added to those laws by the Health Insurance Portability and Accountability Act, the Patient Protection and Affordable Care Act, the No Surprises Act, and certain other federal laws specifically related to group health plans and group and individual health insurance coverage.

- The proposed regulations provide that fertility benefits would be recognized as a new type of limited excepted benefits if they are provided under a separate policy, certificate, or contract of insurance, or otherwise are not an integral part of the plan, and if coverage is limited to benefits substantially all of which are for the diagnosis, mitigation, or treatment of infertility or infertility-related reproductive health conditions and substantially all of which are provided by medical professionals authorized to practice under applicable law.
- In addition, the proposed regulations would establish a \$120,000 lifetime dollar limit per participant (together with their beneficiaries) for the proposed excepted fertility benefits, which would be indexed for inflation.

The proposed regulations are proposed to apply to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2027.

Comments on the proposed regulations are due by July 13, 2026.

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