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Employee Benefits Management Newsletter

Employee Benefits Management Directions

EMPLOYEE BENEFITS MANAGEMENT DIRECTIONS HEADLINES, Report No. 802, June 2, 2026

Departments propose fertility benefits as new category of limited excepted benefits

The Departments of Labor, Treasury, and Health and Human Services (Departments) have issued proposed rules that would establish fertility benefits as a new category of limited excepted benefits. The proposal would apply to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2027.

The Departments indicate that the proposal responds to declining U.S. fertility rates, high costs of infertility treatment (particularly IVF), uneven coverage across employer plans, and executive directives to expand access while reducing regulatory burden. Fertility benefits are often carved out from major medical coverage or administered by specialty vendors; the agencies aim to align regulation with that market reality.

Excepted benefits. Excepted benefits are forms of coverage that, when they meet specific criteria, are not subject to group health plan requirements under statutes including HIPAA and the Affordable Care Act. The proposed rule would expand these categories by adding fertility benefits alongside existing limited excepted benefits such as dental, vision, and certain reimbursement arrangements.

Benefits covered. The proposed rules provide that 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, which may include medically appropriate items or services targeted to address such conditions.

Coverage may include diagnostics, medications, procedures (including IVF), counseling, and treatments addressing underlying causes of infertility.

Lifetime dollar limit. The Departments are also proposing to establish a lifetime dollar limit for the proposed excepted fertility benefits. The total lifetime benefit per participant, together with their beneficiaries (if such beneficiaries are eligible for the excepted fertility benefit), would not exceed \$120,000. This proposed maximum lifetime dollar limit would be indexed for medical inflation to keep up with the rising cost of medical items and services.

Not an integral part of the plan. The fertility benefit must be offered either under a separate policy/contract or, if self funded, only alongside access to a traditional group health plan that participants may decline. Enrollment in major medical coverage cannot be required.

Notice requirements. Under the proposed rules, plans and issuers must provide written notice to plan participants and beneficiaries in accordance with 26 CFR § 54.9831-1(c)(3)(ix)(D) and 29 CFR § 2590.732(c)(3)(ix)(D) for fertility benefits to qualify as limited excepted benefits.

The notice must include a description of the coverage, including a summary of benefits and limitations of the coverage, how to identify and utilize a network provider, if applicable, as well as procedures for claims reimbursement, including whether the benefit utilizes the same claim procedures as for the sponsor's other group health plans.

If a single notice is provided to a participant and any beneficiaries at the participant's last known address, the requirement to provide the notice to the participant and any beneficiaries is generally satisfied. However, if a beneficiary's last known address is different than the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

SOURCE: [91 Fed. Reg. 27140](#), May 14, 2026.