

10/21/25 Alert 2025-03

Employee Benefits Compliance

FAQ Guidance Clarifies Excepted Benefit Options for Providing Fertility Coverage

Overview

On October 16, 2025, the Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments) released [Frequently Asked Questions \(FAQs\) Part 72](#) addressing employer-provided coverage for fertility care. As you may recall, fertility care—and in vitro fertilization (IVF) in particular—became a hot button issue in the last Presidential election. Shortly after taking office, the Administration issued [Executive Order 14216](#), which directed agencies to protect access to IVF treatment and generally reduce out of pocket costs for fertility care. This new FAQ guidance does not create new vehicles or plan designs for employers to offer fertility care but rather clarifies how employers can use certain existing excepted benefits arrangements to provide access to fertility care.

Providing Fertility Care Through Excepted Benefits

The provision of fertility care has been a challenge for employer plan sponsors for some time, from both a cost and administrative perspective. While this coverage can be offered through a major medical plan in some circumstances, many employers offer this coverage through a health reimbursement arrangement (HRA), administered by a third-party vendor. In that situation, the employer can choose what contribution to make toward fertility care, generally on a tax advantageous basis, where that care is provided to overcome medical infertility. HRAs, because they are group health plans, are subject to many of the Affordable Care Act (ACA) market reform rules and requirements. To comply with the ACA's market reform provisions, such as the prohibition on annual dollar limits and the requirement to provide preventive services without cost sharing, an HRA generally must be integrated with a group health plan that meets these requirements. Stand-alone HRAs that are not integrated typically fail to satisfy these ACA mandates unless a specific exception applies (e.g., retiree-only or excepted benefits HRAs discussed more below).

While group health plans, including HRAs, are generally subject to the ACA market reform mandates, certain excepted benefits are not subject to these same requirements so long as they are designed a

certain way (see [Alert 2019-03](#)). This new FAQ guidance reminds employer plans that they can offer fertility care through certain excepted benefits, if those designs follow the established rules.

Reinforcing Which Excepted Benefits Can Provide Fertility Care

While prior ACA-related guidance establishes four categories of excepted benefits that are excluded from ACA market-reform mandates (discussed more fully in our [Alert 2019-03](#)), this most recent FAQ focuses on two categories of excepted benefits that can provide fertility care: (1) those insurance policies that provide coverage for a specified disease or illness, and hospital indemnity or other fixed indemnity insurance, and (2) excepted benefits HRAs (EBHRAs).

With respect to the first category, a policy limited to infertility treatment could qualify as an excepted benefit so long as: (1) the benefits are provided under a separate insurance policy, (2) there is no coordination between the provision of those benefits and an exclusion of benefits under the same plan sponsor's group health plan, and (3) the benefits are paid regardless of whether benefits are provided under any group health plan maintained by the same plan sponsor. The guidance further clarifies that this benefit would not disqualify individuals from contributing to a health savings account (HSA), and an employer can offer this excepted benefits arrangement to employees who are not offered group health plan coverage. Note that employers are not permitted to self-fund this type of a benefit.

With respect to the second option, the FAQs also clarify that EBHRAs can reimburse fertility expenses if they meet the following conditions established in previous guidance: (1) the EBHRA is offered alongside a traditional group health plan, (2) annual contributions are limited (\$2,150 per participant for 2025), (3) it does not reimburse premiums for group or individual health insurance coverage (other than COBRA continuation coverage or coverage that consists solely of excepted benefits), and (4) it is made available under the same terms to all similarly situated individuals, regardless of any health factor.

Key Takeaways

This new guidance is intended to facilitate the provision of fertility care by employer plan sponsors and largely functions as a reminder that excepted benefits are an option for that, including a reiteration of the parameters under which those benefits can be offered. For employers to take advantage of the disease-specific or indemnity insurance options, the insurance market would likely have to develop, or more fully develop, these options which we will monitor. As noted above, while EBHRAs are indeed an option, their annual contribution limits and other parameters may make this approach less attractive for certain employers. At this point, traditional self-funded HRAs that are

integrated with an employer's medical plan seem to remain the most practical approach for offering substantial fertility benefits.

Employers offering or seeking to offer fertility benefits should also remember key tax and compliance implications. Fertility procedures qualify for tax-favored reimbursement only when performed to overcome medical infertility under Internal Revenue Code (IRC) §213. Domestic partners who are not tax dependents, business owners, and other non-employees cannot receive tax-favored benefits. Additionally, fertility HRAs trigger compliance with HIPAA, COBRA, and ERISA, and may include a PCORI fee.

For additional information on fertility HRAs, please listen to our [Compliant with Alliant Podcast: Designing a Compliant Fertility HRA](#) or see our Compliance Insight: [Health Reimbursement Arrangement Rules and Issues](#).

Disclaimer: This material is provided for informational purposes only based on our understanding of applicable guidance in effect at the time and without any express or implied warranty as to its accuracy or any responsibility to provide updates based on subsequent developments. This material should not be construed as legal or tax advice or as establishing a privileged attorney-client relationship. Clients should consult with and rely on their own independent legal, tax, and other advisors regarding their particular situations before taking action. These materials and related content are also proprietary and cannot be further used, disclosed or disseminated without express permission.