



National Compliance Update

USI EMPLOYEE BENEFITS

May 21, 2026

Guidance Addresses Fertility Benefits

On May 13, 2026, the Departments of Labor, Health and Human Services, and the Treasury (collectively, “the Departments”) published proposed regulations to create a new category of excepted benefits for fertility services. The Trump administration has made access to infertility services a priority, particularly in vitro fertilization (“IVF”). This proposed rule follows FAQs issued in October 2025 which provided guidance on how employers can offer fertility services as excepted benefits.¹

In addition, on May 11, 2026, President Trump issued an Executive Order (“EO”) announcing new initiatives to lower costs and expand access to fertility care. Among other things, the EO expands access to IVF and fertility care by lowering costs of key treatments available through the TrumpRx.gov platform.²

Additional details on the proposed rule to create a new category of excepted benefits for fertility follow.

BACKGROUND

Under the Affordable Care Act (“ACA”), group health plans (“GHPs”) offered to employees must satisfy various market reform provisions.³ There are four categories of benefits that are not subject to the ACA market reforms if they meet stringent requirements to qualify as excepted benefits. They are:

1. Benefits that are generally not health coverage – e.g., automobile insurance, liability insurance, and workers’ compensation insurance.
2. Limited excepted benefits – e.g., limited scope dental and vision insurance, long term care, and nursing home care.

¹ For more information on the FAQs, please see USI’s Compliance Update, [Fertility Services as Excepted Benefits](#) (October 23, 2025).

² For a copy of the EO, visit [President Trump Honors America’s Moms with New Support for Families – The White House](#)

³ <https://www.cms.gov/marketplace/health-plans-issuers/insurance-market-reforms>

- Pursuant to subsequent rule making, the following benefits may qualify as limited excepted benefits: health flexible spending accounts (“health FSA”), certain employee assistance programs (“EAPs”), and excepted benefit health reimbursement arrangements (“EBHRAs”).
- 3. Independent, non-coordinated excepted benefits – e.g., coverage for a specified disease or illness, hospital indemnity, and other fixed indemnity insurance.
- 4. Supplemental excepted benefits – e.g., Medigap, CHAMPVA, or similar coverage that is supplemental to GHP coverage.

The proposed regulations create a pathway for certain fertility services and benefits to qualify as a new category of limited excepted benefits.⁴

NEW CATEGORY OF LIMITED EXCEPTED BENEFITS

Under the proposed rule, fertility benefits will qualify as an excepted benefit when:

- The coverage:
 - Is limited in scope and benefits covered,
 - Has a lifetime dollar limit,
 - Is provided under a separate policy, contract, or certificate of insurance or not an integral part of the plan,⁵ and
- The carrier or plan sponsor provides participants notice of the availability of benefits.

Limited Scope

The coverage must consist of targeted, limited scope benefits specifically for providing infertility-related services and be:

- Substantially for the diagnosis (e.g., lab tests, imaging, and diagnostic procedures), mitigation (e.g., lifestyle or health assessments, education, and pre-conception care), or treatment of infertility or infertility-related reproductive health conditions (e.g., IVF, medication, and surgical procedures),⁶ and
- Provided by medical professionals authorized to practice under applicable law.

Lifetime Dollar Limit

To qualify as an excepted benefit the coverage is subject to a maximum lifetime dollar limit on benefits of \$120,000, which will be indexed for inflation.⁷ This lifetime benefits limitation would be applicable to fertility benefits provided by the plan or insurance issuer.

Separate Policy or Not an Integral Part of the Plan

The benefit either must be:

⁴ The regulations currently recognize limited scope dental and vision, long-term care, health flexible spending accounts, certain employee assistance programs, and EBHRAs as categories of limited excepted benefits.

⁵ This means that coverage can be either fully insured or self-funded and still qualify as a limited excepted benefit.

⁶ This can include items and services to address underlying medical causes of the infertility.

⁷ This benefit limit applies per participant, together with their fertility benefit-eligible beneficiaries.

- Provided under a separate policy, certificate or contract of insurance (i.e., fully insured only); or
- Not an integral part of the plan.

Both self-funded and fully insured coverage may qualify as “not an integral part of the plan.”

To be considered not an integral part of the plan, the plan sponsor must also offer a traditional major medical plan in addition to the limited fertility benefit. Any employee eligible for the limited fertility benefit coverage must also be eligible for the major medical plan. An eligible employee can decline to enroll in the major medical plan while still participating in the limited fertility benefit.

Under the proposed rule, participants can be charged a premium for enrolling in the limited fertility coverage and cost-sharing is permitted. However, the Departments are seeking comments on whether plans should have the flexibility to charge premiums or impose cost-sharing for this type of benefit.

Nothing in the proposed regulations prohibits the major medical plan from also providing fertility benefits and these benefits can be coordinated with the limited fertility benefit coverage.

Notice

Finally, participants must be provided with written notice of the availability of fertility benefits and the scope of the coverage. This notice is separate and in addition to other statutorily required plan disclosures (e.g., summary plan descriptions) and sent to a participant and any beneficiary’s last known address.⁸ The content of the notice must include:

- A description of the coverage, including a summary of benefits and limitations of coverage (such as the maximum lifetime dollar limit on benefits),
- How to identify and utilize a network provider, and how to submit a claim for reimbursement, and
- Whether the fertility benefit utilizes the same claims procedure as the plan sponsor’s other group health plans.

The notice must be provided to a participant no later than the first date on which the participant is eligible to enroll in coverage, and annually thereafter, and upon the request of a participant or beneficiary.

Effective Date

The proposed regulations, if finalized “as is,” would apply to group health plans and insurance issuers effective for plan years beginning on or after January 1, 2027.

EMPLOYER NEXT STEPS

The proposed regulations are in a comment period through July 13, 2026, and there are no specific employer action items.

⁸ The notice can be provided to a participant or beneficiary’s electronic address if applicable electronic delivery requirements are met.

Importantly, if finalized “as is,” the rules do not require an employer to adopt an excepted benefit fertility benefit. Rather, for employers who want to offer such coverage, it provides a pathway to do so without the burden of satisfying ACA market reforms.

The proposed rules include some area of uncertainty that hopefully would be clarified in a final version, including:

- Is the lifetime dollar limit established at the plan level or does it follow the individual? In other words, if an employee exhausted their lifetime excepted benefit fertility benefits at one employer, could they receive a full new benefit when later hired by a separate, unrelated employer?
- Can the excepted benefit fertility benefit be provided first dollar without disqualifying an individual from contributing to a Health Savings Account (“HSA”) or will the individual need to meet the minimum required deductible before the benefit can be provided?

For now, employers should:

- Await further guidance.
- Consider whether to offer fertility benefits through an excepted benefit fertility benefit program.
- If already providing fertility benefits, continue to comply with existing regulations and guidance related to fertility benefits, including FAQ Part 72. Communicate and coordinate with fertility benefits vendors.

RESOURCES

For the proposed regulations, please visit <https://www.govinfo.gov/content/pkg/FR-2026-05-13/pdf/2026-09479.pdf>

USI [usi.com/locations](https://www.usi.com/locations)

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