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New Proposed Regulations Released on Excepted Benefits

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The Departments of Labor, Health and Human Services, and Treasury proposed rules that would adjust regulations under the Health Insurance Portability and Accountability Act of 1996 regarding excepted benefits to include employee assistance programs (EAPs). The proposed rules would also provide added options for employees and employers in connection with the Affordable Care Act.

"This proposal would give employers and workers more options for their health-care coverage while staying true to the consumer protections put in place by the Affordable Care Act," said Assistant Secretary of Labor for Employee Benefits Security Phyllis C. Borzi. "This is another example of federal agencies listening to public concerns and responding with solutions."

Under the HIPAA, excepted benefits are exempt from certain health reform requirements, including some requirements added by the Affordable Care Act. Since the passage of the Affordable Care Act, employers, employees and other stakeholders expressed concerns that past HIPAA definitions should be updated in light of new Affordable Care Act standards.

The proposed rules would amend current regulations to treat certain EAPs as excepted benefits, effective immediately. EAPs are typically free programs offered by employers that can provide wide-ranging benefits to address circumstances that might otherwise adversely affect employees' work and health. Benefits may include short-term substance abuse or mental health counseling or referral services, as well as financial counseling and legal services. Under the proposed rules, EAPs would be considered excepted benefits if the program is free to employees and does not provide significant benefits in the nature of medical care or treatment. As excepted benefits, EAPs would be exempt from private insurance market reforms, and EAP coverage would not make individuals ineligible for a premium tax credit for enrolling in qualified health plans through the Health Insurance Marketplace.

Similarly, under the proposed regulations, vision and dental benefits provided by employers on a self-insured basis would be able to qualify as excepted benefits effective immediately, even if they do not require contributions from employees. Insured vision and dental benefits, as well as self-insured vision and dental coverage that requires employee contributions, already qualify as excepted benefits.

Effective for plan years starting in 2015, the proposed rules also would treat as excepted benefits certain limited coverage provided by plan sponsors that "wraps around" an individual market policy. The "wraparound" coverage would be available to employees for whom the plan sponsor's primary group health coverage is not affordable and who instead get coverage through a nongrandfathered individual market policy. The wraparound coverage would provide extra benefits or broader networks, and may also reduce cost sharing. The proposal would not allow the wraparound coverage to substitute for employment-based coverage. The value of the wraparound coverage could not exceed 15 percent of the value of the primary coverage offered by the plan sponsor, which must be affordable for at least the majority of employees.

The proposed rules were published in the Dec. 24, 2013, edition of the Federal Register and can be viewed at <https://federalregister.gov/a/2013-30553>.

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