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Expanded Categories of Excepted Benefits

The Departments of Health and Human Services, Labor and Treasury (the “Departments”) recently issued proposed regulations expanding the definition of “excepted benefits,” which are generally exempt from the health care reform requirements. Importantly, employees covered under an excepted benefit are still eligible for premium tax credits for enrolling in coverage through an Exchange.

Limited-Scope Dental and Vision Benefits – Earlier Regulations. Under HIPAA and the Departments’ earlier regulations, in order for limited-scope dental and vision benefits to be excepted benefits, the benefits must either:

- Be provided under a separate policy, certificate or contract of insurance (which only applies to insured benefits); or
- Participants must elect the coverage separately from other coverage **and** pay a contribution.

Under the existing regulations, self-funded, limited-scope dental or vision benefits paid entirely by the employer would not qualify as excepted benefits.

New Rules for Limited-Scope Dental and Vision Benefits. The proposed rules eliminate the participant contribution requirement. Thus, separately elected, employer-paid, limited-scope dental or vision benefits would qualify as excepted benefits, and employees receiving these benefits would still be eligible for premium tax credits.

Limited Wraparound Coverage. The Departments propose to expand the definition of “excepted benefits” for “wraparound” coverage, which is employer-sponsored coverage intended to supplement individual policies (such as those employees obtain through an Exchange or the private individual market) and to make them comparable in the aggregate to group coverage. Employers who wish to offer wraparound coverage must offer a primary health plan that meets minimum value and is affordable for the majority of eligible employees. Additionally, to satisfy these rules, the wraparound coverage must:

- Wraparound non-grandfathered, individual policies that do not consist solely of excepted benefits;
- Cover benefits or providers not covered by the individual coverage;
- Only be available for employees eligible for the employer’s primary health plan;
- Not exceed 15% of the cost of coverage under primary health plan; and
- Satisfy various nondiscrimination requirements.

Significantly, under the expanded definitions, employers could offer this wraparound coverage to employees who elect exchange coverage.

Employee Assistance Programs (EAPs). Under the proposed regulations, EAPs that meet the following requirements would qualify as excepted benefits:

- The EAP does not provide significant benefits in the nature of medical care;
- The benefits provided under the EAP are not coordinated with another group health plan (EAP participants are not required to exhaust benefits from the other plan, participation in the other plan is not required to be eligible for the EAP, and benefits received under the EAP are not paid through another

- plan);
- Employee premiums are not required; and
 - There is no employee cost sharing.

Under the proposed regulations, employers may offer EAP coverage that meets these requirements to their part-time employees and not disqualify these employees from receiving premium tax credits for exchange coverage.

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