



CLIENT ACTION Bulletin

Employee Benefits

Final Rule Issued on “Excepted” Benefits under the ACA

SUMMARY Employee assistance programs (EAPs) and dental, vision, and long-term care benefits that satisfy newly relaxed requirements under a recent final rule are exempt from the Affordable Care Act’s (ACA) health insurance market reforms, starting with plan years that begin on or after Jan. 1, 2015. With the exemption, these programs and “limited scope” benefits will not have to satisfy the ACA’s requirements on preexisting condition exclusions, prohibition on discrimination based on health status, and guaranteed renewability, among other standards. In addition, the final rule from the Departments of Treasury, Labor, and Health and Human Services will not preclude an individual from receiving federal subsidies to purchase coverage in a health insurance exchange if he or she is eligible for these excepted benefits, thereby removing the penalties a group health plan sponsor could face under the ACA’s employer mandate.

DISCUSSION **Dental and Vision Care Benefits, Long-Term Care Benefits**

In general, limited-scope dental and vision care benefits are those that provide treatment of the mouth or eyes, respectively, and are provided under a separate policy or insurance contract (insured plans only), or otherwise not an integral part of a group health plan (insured or uninsured), under 2004 rules issued under the Health Insurance Portability and Accountability Act (HIPAA). The benefits are not considered an integral part of a group health plan if participants may decline the coverage or must pay an additional premium contribution for the benefit.

The new final rule:

- retains a 2013 proposed rule provision removing the requirement of an additional premium or contribution, thereby qualifying dental and vision care benefits as excepted benefits even if they do not require participants to pay a separate premium or contribution;
- clarifies that the dental or vision care benefits need not be offered separately from the major medical or primary group health coverage to satisfy the non-integral requirement; and
- requires dental or vision care benefits – as a condition of qualifying as excepted benefits – to satisfy one of two criteria: participants must be allowed to decline the benefits; or the claims for the benefits must be administered under a separate contract from claims administration for any other benefits under the plan.

The final rule indicates that a program providing long-term care benefits may qualify as an excepted benefit if it can comply with the requirements for dental and vision care benefits.

Employee Assistance Programs

EAPs are programs that provide benefits – such as short-term mental health counseling, financial counseling, or legal services – to address issues that might otherwise adversely affect employees’ work and health. For EAPs, the final rule generally retains the 2013 proposed rule’s excepted benefits criteria, qualifying for the excepted benefits category if an EAP does not:

- provide significant benefits in the nature of medical care, taking into account the amount, scope, and duration of covered services;
- provide benefits that are coordinated with another group health plan, thereby prohibiting the use or exhaustion of benefits under the EAP before participants are eligible for group health plan benefits, and eligibility for EAP benefits must not be dependent on participation in the group health plan;

- require employee premiums or contributions as a condition of participation; and
- impose any cost-sharing requirements.

The final rule eliminates the proposed rule's requirement that EAPs not be financed by another group health plan in order to qualify as excepted benefits. In addition, the final rule did not adopt some commenters' suggestions on the proposed rule that EAPs be allowed to provide wellness and disease management programs that do not provide significant medical care. The agencies said that doing so would circumvent the ACA's consumer protections for wellness programs.

Effective and Applicability Dates

The final rule is effective beginning Dec. 1, 2014, and applies to group health plans and group health insurance issuers for plan years beginning on or after Jan. 1, 2015. Until then, group health plan sponsors and insurance issuers may rely on either the 2013 proposed rule or the new final rule.

ACTION Employers that offer dental, vision, and long-term care benefits or EAPs should review the final rule and determine if their programs satisfy the excepted benefits requirements. In most cases, sponsors of such programs will welcome the relaxation of the requirements. For example, employers need not collect a nominal contribution from participants for limited-scope dental benefits and put in place the burdensome administrative systems to collect the payments, and employers that self-fund their programs will not face inconsistencies between insured and self-insured arrangements (e.g., an insured vision care plan qualified under the former requirements for excepted benefits treatment). Similarly, most EAP sponsors will welcome the final rule, which also considered – but did not adopt – a numerical limit on visits to an EAP provider in order to qualify as an excepted benefit.

Plan sponsors that modify their programs to satisfy the excepted benefits requirements also should review communications materials to ensure that they accurately reflect any changes.

Plan sponsors also should be mindful that the agencies indicate that they may provide future guidance in some areas, such as about “significant” medical benefits for EAPs, and on limited “wraparound” coverage that some employers offer to employees who purchase insurance on the exchanges because their employers' plans are considered unaffordable under the ACA as excepted benefits.

For more information about the final rules on excepted benefits, please contact your Milliman consultant.