

Final Excepted Benefits Regulations Issued

On October 1, 2014, the IRS, DOL and HHS (the “Departments”) issued final regulations on “excepted benefits,” which are generally exempt from HIPAA’s portability rules and Health Care Reform’s benefit mandates.¹ Like the proposed regulations, the final regulations make it easier for dental and vision coverage to qualify as excepted benefits, and create a new class of excepted benefits for certain employee assistance programs (“EAPs”).² The final regulations are effective for plan years beginning on and after January 1, 2015.³

Dental, Vision, and Long-Term Care Benefits. Under the final regulations, limited-scope dental/vision benefits and long-term care benefits are excepted benefits if they are:

1. Insured benefits issued under a separate policy, or
2. Insured or self-funded benefits that are not integral to the employer’s medical plan. Limited-scope dental/vision benefits and long-term care benefits are not “integral” to the medical plan if either:
 - a. Employees have the right to opt-out of the benefits; or
 - b. Dental/vision claims are administered under contracts separate from claims administration for any other benefits under the plan.⁴

Employee Assistance Programs. EAPs are typically employer offered programs that provide employees a variety of benefits, such as referral services, mental health counseling, or legal services. The final EAP regulations state that an EAP is an excepted benefit if:

1. It does not provide “significant benefits in the nature of medical care”⁵;
2. It is not coordinated with benefits under another group health plan⁶;
3. No employee premiums or contributions are required as a condition of participation; and
4. No cost-sharing requirements are imposed.

The preamble to the final regulations clarifies that wellness and disease management programs are not excepted benefits when included in an EAP.

Not Intended As Legal Advice.

¹ 79 FR 59130, available at: <https://www.federalregister.gov/articles/2014/10/01/2014-23323/amendments-to-excepted-benefits>. These regulations were published in proposed form in December 2013. For more information about the proposed regulations, see our December 2013 bulletin at <http://www.songmondress.com/Articles/>.

² The proposed regulations would also have created another class of excepted benefits for supplemental Exchange coverage (called “limited wraparound coverage”). In general terms, limited wraparound coverage is employer-

provided coverage that supplements an individual insurance policy. The final regulations do not address wraparound coverage; however since the final regulations were published the Departments have issued new proposed wraparound coverage regulations. 79 FR 76931 (December 23, 2014).

³ Until the effective date of the final regulations, the Departments will consider dental, vision, and EAP benefits meeting the conditions of the 2013 proposed regulations *or* these final regulations to qualify as excepted benefits.

⁴ The final excepted benefit regulations generally mirror the December 2013 proposed regulations, except that the final regulations allow the “not an integral part” requirement to be satisfied by having claims for these excepted benefits administered under contracts separate from claims administration for any other plan benefits.

⁵ The final regulations note that “the amount, scope, and duration of covered services” are taken into account in determining whether or not an EAP provides “significant benefits in the nature of medical care,” and the preamble indicates that future guidance may be issued to further clarify the meaning of that term.

⁶ The final EAP regulations generally mirror the proposed regulations, with the exception that unlike the proposed regulations, the final regulations do not restrict EAP benefits from being financed by another group health plan.