Final Rules Released on Excepted Benefits

Issued date: 10/15/14

The Departments of Labor, the Treasury, and Health and Human Services ("the Departments") previously issued a proposed rule that provides helpful guidance with respect to certain excepted benefits (i.e., benefits that do not need to comply with certain mandated benefit requirements under the Affordable Care Act (ACA) and do not qualify as minimum essential coverage), including vision benefits, dental benefits, employee assistance programs (EAPs), and certain wraparound programs.

On September 26, 2014, the Departments issued a final rule that adopts provisions contained in the proposed rules with respect to dental, vision and EAP coverage with limited modification. However, final rules do not address wraparound plans but we expect guidance to be forthcoming.

Briefly:

1. **Limited Scope Dental and Vision Coverage.** Consistent with the proposed rule, the previous requirement that participants pay an additional premium or contribution for limited scope dental or vision benefits to qualify as an excepted benefit has been removed. Limited scope is described as benefits, substantially all of which are for treatment of the eyes or mouth, respectively. In addition, the final rule adds that dental or vision coverage is an excepted benefit if claims for the dental or vision benefits are administered under a contract separate from claims administration for any other benefits under the plan.
2. **EAPs.** The final rule generally adopts the approach under the proposed rule for an EAP to qualify as an excepted benefit. Notably, the guidance does not clarify the definition of "significant benefits in the nature of medical care." However, the final rule provides two examples that offer some insight into this definition.

These final regulations apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2015. Until this applicability date, the Departments will consider dental, vision and EAP benefits that meet the requirements of the proposed rule or these final regulations to qualify as an excepted benefit. Additional details on the final rules can be found below.

Limited Scope Dental & Vision Benefits

Limited scope dental and limited scope vision benefits are excepted benefits if:

1. the benefits are provided under a separate policy, certificate, or contract of insurance (applicable to insured benefits only); or
2. a participant may decline the coverage (meaning the participant may opt-out of the coverage upon request) (insured or self-insured); or
3. claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan (insured or self-insured).

Employee Assistance Programs

An EAP will satisfy the definition of an excepted benefit if all of the following requirements are met:

1. **The program does not provide significant benefits in the nature of medical care.** For this purpose the amount, scope and duration of covered services are taken into account. The preamble to the final regulations provides examples of an EAP that does not provide significant benefits in the nature of medical care and an EAP that does provide such benefits:

    a. An EAP that provides only limited, short-term outpatient counseling for substance use disorder services (without covering inpatient, residential or intensive outpatient care) with no prior authorization or review for medical necessity **does not** provide significant benefits in the nature of medical care.

    b. A program that provides disease management services (e.g., lab testing, counseling, prescription drugs) for individuals with chronic conditions such as diabetes **does** provide significant benefits in the nature of medical care.

2. **Benefits under the EAP are not coordinated with benefits under another group health plan, as follows:**

    a. Participants in the other group health plan must not be required to use and exhaust EAP benefits before the participant becomes eligible for the other group health plan (no "EAP gatekeeper"); and

    b. Eligibility for the EAP is not dependent on participation in another group health plan.

3. **No employee premiums or contributions are required toward the cost of the EAP.**

4. **No cost sharing under the EAP.**

The requirement that the EAP not be financed by another group health plan, previously included under the coordination of benefits condition (#2 above), has been removed.

Why Does Excepted Benefit Status Matter?

Group health plans are subject to various requirements, including new mandates under the ACA. However, many of the ACA provisions do not apply to excepted benefits, including:

- coverage of children up to age 26;
- no preexisting condition exclusions;
- no annual or lifetime dollar limits on essential health benefits (EHBs);
- compliance with out-of-pocket limitations (non-grandfathered plans only);
- W-2 reporting (if applicable); and
- compliance with SBC disclosure rules.

Prior to issuance of the proposed and final rules, many dental and vision benefits and EAPs were considered group health plans subject to various requirements under the ACA. The revised definition makes it easier for many of the arrangements to avoid the ACA mandates.

Excepted benefits do not qualify as minimum essential coverage for individual mandate and employer penalty purposes.

Employer Action

- Review existing limited scope dental and vision programs to determine excepted benefit status under the final rules.
- Review EAP offering to determine excepted benefit status under the final rule.
- Await further guidance regarding limited wraparound plans.