

## Final Regulations Address Limited-Scope Vision and Dental Benefits and EAPs

The Departments issued final regulations addressing limited-scope vision and dental, long-term care benefits, and EAPs as HIPAA-excepted benefits. Based on comments regarding the proposed regulations, these final regulations make minor but significant changes. The regulations provide guidance and relief for employers sponsoring these affected benefits and should be carefully reviewed for implementation in 2015. Guidance discussing “wraparound” benefits, introduced in the proposed regulations, will be issued at a future date.

### Background

Excepted benefits — benefits that are considered limited or ancillary to comprehensive group health coverage — are exempt from HIPAA’s portability and nondiscrimination requirements as well as other mandates like mental health parity and the Affordable Care Act’s (ACA) marketplace mandates and insurance reforms. To address concerns that a specific subset of commonly offered supplemental benefits would unintentionally be subject to ACA market mandates and/or prevent individuals from eligibility for premium tax credits for coverage purchased in the marketplaces, the Departments issued proposed regulations, modifying portions of the 2004 HIPAA excepted benefit regulations to address certain limited-scope vision and dental, long-term care benefits (LTC), and employee assistance programs (EAPs). (See our [December 24, 2013 For Your Information](#).)

The 2013 proposed regulations eliminate the 2004 regulations’ requirement that participants pay a separate premium or contribution for limited-scope vision and dental benefits to be considered excepted benefits. Additionally, the proposed regulations also address the status of EAPs, providing that such programs be treated as excepted benefits if they satisfy the following requirements:

- Do not provide significant benefits in the nature of medical care
- Are not coordinated with benefits offered under another group health plan as follows:
  - Participants not required to use or exhaust EAP benefits before being eligible for benefits under the primary medical plan

#### 2004 HIPAA Excepted Benefit Regulations

Under the 2004 regulations, vision and dental benefits are excepted benefits if they are limited to the treatment of the eyes or mouth (i.e., limited scope) and are either provided under a separate policy or otherwise not an integral part of a group health plan. Benefits are not considered an integral part of a group health plan if (1) participants may opt out of the coverage, or (2) participants who choose to receive the benefit must pay an additional contribution for that benefit.

- Eligibility for EAP benefits not conditioned on participation in another group health plan
- EAP not financed by another group health plan
- Do not require participants to pay a premium to receive EAP benefits
- Do not require cost-sharing

The Departments provided some examples, but also requested comments on what constitutes “significant” for purposes of defining “significant benefits in the nature of medical care.”

The Departments have now issued [final regulations](#) addressing limited-scope vision and dental benefits and EAPs.

## Vision and Dental Benefits

The final regulations retain the rule that limited-scope vision or dental benefits are excepted benefits if they are offered under a separate policy or insurance contract or are otherwise not an integral part of a group health plan. The final regulations clarify that these benefits will not be considered an integral part of the plan if either (1) participants have the opportunity to opt-out of the coverage, or (2) claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan.

**Comment.** Thus, these final regulations do not require limited-scope vision or dental benefits to be offered in connection with (but with a separate election from) major medical group health plan coverage to avoid being considered an “integral part of the group health plan.” This clears up some uncertainty. Stand-alone, limited-scope vision or dental plans — whether insured or self-insured — can be excepted benefits even when the employer maintains no other medical plan coverage.



Further, consistent with the proposed regulations, participants are not required to pay an added premium or contribution for limited-scope vision or dental benefits. Requiring an independent premium can be administratively burdensome for employers, so this is welcome relief.

**Comment.** If a self-funded, limited-scope vision or dental benefit is offered, participants must have an opportunity to opt out of that coverage or the claims for the benefit must be administered under a contract separate from claims administration for any other benefit under the plan. So long as claims

for these benefits are administered under a separate contract, limited-scope vision and/or dental coverage can be bundled (free from charge and without an opt-out) with an election for major medical coverage.

## EAPs

Consistent with the proposed regulations, the final regulations provide that an EAP is an excepted benefit if it meets the following four requirements:

### Scope of this FYI

Note, the final regulations relate to limited-scope vision, limited-scope dental, or LTC benefits in addition to EAPs; however, this publication generally focuses on issues associated with vision, dental, and EAP benefits.

- The EAP does not provide significant benefits in the nature of medical care when taking into account the amount, scope, and duration of covered services. The Departments provide two examples in the preamble to the final regulations and suggest that they might provide more in future guidance:
  - An EAP that provides only limited, short-term outpatient counseling for substance use disorder services without prior authorization for medical necessity (and without covering inpatient, residential, partial residential, or intensive outpatient care) would not provide significant benefits in the nature of medical care
  - An EAP that provides disease management services such as laboratory testing, counseling, and prescription drugs for individuals with chronic conditions such as diabetes would provide significant benefits in the nature of medical care

**Comment.** The Departments received, but did not adopt, commenters' suggestions that EAPs be allowed to provide wellness and disease management programs that do not provide significant benefits in the nature of medical care. The Departments reasoned that to treat wellness programs as excepted benefits by including them in an EAP would circumvent the consumer protections provided by the ACA's wellness rules. (See our [July 16, 2013 For Your Information](#).)

- The EAP's benefits cannot be coordinated with benefits offered under another group health plan. This requirement is met if:
  - Participants are not required to use and exhaust EAP benefits before being eligible for benefits under another group health plan.
  - Eligibility for the EAP is not dependent on participation in another group health plan.

**Comment.** In response to comments, the Departments eliminated the third criteria from the proposed regulations that, to constitute excepted benefits, EAP benefits cannot be financed by another group health plan.

- Participants do not have to pay a premium to participate in the EAP.
- The EAP does not impose any cost-sharing.

## Applicability Date

The final regulations apply to group health plans for plan years beginning on or after January 1, 2015. Until then, benefits meeting the requirements of the proposed regulations will be treated as excepted benefits.

## In Closing

Employers offering limited-scope vision or dental or EAP benefits will need to review the final regulations carefully to ensure that benefits have been properly designed and are being appropriately administered by service providers. Failure to meet those requirements will trigger additional compliance measures under HIPAA as well as other mandates such as mental health parity and the ACA and could result in penalties for noncompliance. While these regulations provide helpful guidance, some questions remain. Employers can look forward to future guidance more

specifically defining “significant benefits” for purposes of allowable medical care provided under EAPs and “wraparound benefits.”

**Authors**

Kimberley Mitchell, JD

Sharon Cohen, JD

**Produced by the Knowledge Resource Center of Buck Consultants at Xerox**

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email [fyi@xerox.com](mailto:fyi@xerox.com).

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.