

What Employers Need to Know About the Proposed Rules to Expand Access to Fertility Benefits

On Sunday, May 10, 2026, the Department of Labor's Employee Benefits Security Administration issued a [News Release](#) touting [proposed rules](#) aimed at expanding access to fertility benefits. These proposed rules should be of particular interest to employers who already offer fertility benefits to employees, and those who are considering adopting fertility benefits to attract and retain top-tier talent.

The number of employers offering fertility benefits (e.g., fertility medication, in vitro fertilization, genetic testing, etc.) has steadily increased since 2020. Employers with fully insured health plans may be currently required to cover certain types of fertility benefits based on state law mandates. These requirements do not typically apply to employers with self-insured group health plans, but self-insured employers are also increasingly offering fertility benefits to attract and retain employees. Self-insured employers often offer fertility benefits separate from their primary group health plan (i.e., the employer's major medical coverage).

The proposed rules expressly recognize fertility benefits as a new type of limited excepted benefit. Specifically, this new category of limited excepted benefit will provide "coverage for items and services to diagnose, mitigate, or treat infertility or infertility-related reproductive health conditions." The proposed rules build on [Executive Order 14216](#), which focused on expanding access to in vitro fertilization, and the Departments of Treasury, Health and Human Services, and Labor's (collectively, "Departments") [FAQs about Affordable Care Act Implementation Part 72](#) issued in October 2025 (discussed in our prior [article](#)).

According to the Department of Labor, the proposed rules represent [five key benefits](#) for employers:

1. [Increased Flexibility](#). The proposed rules would allow fertility benefits to be offered outside of the employer's non-exempt group health plan (i.e., major medical plan) just like a limited-scope dental or vision plan. The new category of limited excepted benefits is proposed to apply to plan years beginning on or after January 1, 2027, and will apply to "fertility benefits" offered under a separate policy, certificate, or contract of insurance, or generally not otherwise an integral part of the employer's other group health plan(s).
2. [Fewer Regulatory Burdens](#). By offering fertility benefits as a limited excepted benefit, they generally will not be subject to the Affordable Care Act ("ACA"), the Health Insurance Portability and Accountability Act ("HIPAA"), or the No Surprises Act.

3. Increased Accessibility for Employees. As a limited excepted benefit, employees will be able to opt into an employer's fertility benefits—even if they do not participate in the employer's medical plan.
4. Flexible Plan Design. For purposes of the proposed rules, the term “fertility benefits” is defined as “the diagnosis, mitigation, or treatment of infertility or infertility-related reproductive health conditions and substantially all of which are provided by medical professionals authorized to practice under applicable law, which may include medically appropriate items or services targeted to address such conditions.” This definition is intended to provide employers with the latitude to design their plans to cover the benefits which best fit the needs of their employees. The proposed rules do, however, place a lifetime limit of \$120,000 (indexed for inflation in plan years beginning on or after January 1, 2028) on such fertility benefits.
5. Competitive Advantages in the Workforce. The proposed rules are a recognition of the role benefits play when employees are weighing their options in the workforce. Benefits packages can both attract new, highly qualified applicants and retain valuable members of an employer's team. Employers offering benefits that allow access to fertility services that might otherwise be financially burdensome or out of reach for employees have a competitive edge over those who do not.

Comments on the proposed rules are due July 13, 2026. We will continue to monitor developments related to the proposed rules. In the meantime, if you have questions about how to improve the fertility related benefits currently offered to your employees or how to implement new types of fertility benefits, please contact your Boutwell Fay attorney.