

Joint Proposed Regulations Regarding Fixed Indemnity Excepted Benefits

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PRACTICES Employee Benefits and Executive Compensation

The Departments of Labor, Treasury, and Health and Human Services recently published proposed rules (“**Proposed Rules**”) that, if adopted, will significantly impact the type of fixed indemnity benefits coverage that would qualify as “excepted benefits” coverage in group health plans. While the Proposed Rules are not yet effective, employers should consider their possible impact on any fixed indemnity policies that they offer to employees so they can act quickly in the event that the Proposed Rules are finalized.

The Proposed Rules require that fixed indemnity insurance benefits be paid as a fixed amount on a per-period basis (e.g., \$100/day), regardless of the amount of “actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered participant or beneficiary, or any other characteristic particular to a course of treatment received by a covered participant or beneficiary.” Furthermore, the Proposed Rules would prohibit the practice of offering fixed indemnity “excepted benefits” coverage in coordination with other limited coverage products (e.g., a Minimum Essential Coverage only plans). These proposals are intended to clearly differentiate fixed indemnity “excepted benefits” health plans from comprehensive health coverage in order to avoid consumer confusion.

To further effectuate a clear distinction between fixed indemnity excepted benefits coverage and comprehensive health coverage, the Proposed Rules also include specific notice requirements for group market-fixed indemnity excepted benefits policies. The proposed notice makes clear that such fixed indemnity coverage is not comprehensive health insurance and thus, is not required to include most federal consumer protections.

Finally, the Proposed Rules clarify that any employer-provided fixed indemnity excepted benefits are taxable as gross income to the employee receiving the fixed benefit. The Proposed Rules also include changes to short-term limited duration medical insurance and fixed-indemnity plans on the individual market.

While employers do not need to make any changes to their plans now, it is important for employers to identify any fixed indemnity coverage provisions that would not qualify as an excepted benefit under the Proposed Rules. Employers should also understand any new payroll tax implications that may result.

The Proposed Rules are available [here](#).