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Healthcare Reform FAQ: Which Benefits Are Not Governed by PPACA?

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Life Health Pro

Q: What benefits are not governed by PPACA, the 2010 health reform law?

A: The law does not apply to “excepted benefits” and retiree-only health plans.

The IRS, Labor Department and Public Health Service Act regulations identically define excepted benefits.^[1]

Excepted benefits are:

(1) Accident, or **disability income insurance**, or any combination thereof; a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers’ compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; or other similar insurance coverage, specified in regulations;^[2]

(2) Benefits not subject to requirements if offered separately and not part of a health plan:

- limited scope dental or vision benefits;
- **long-term care**, nursing home care, home healthcare, community-based care, or any combination thereof; and
- similar benefits specified in regulations;^[3]

(3) Benefits not subject to requirements if offered as independent, noncoordinated benefits. (Coverage only for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance;^[4]

(4) Medicare supplemental health insurance (so-called “**Medigap insurance**”) offered by a separate policy.^[5]

PPACA inadvertently removed the exemption for retiree-only plans and “excepted benefits” from the PHS Act, but left those exemptions intact in the Internal Revenue Code and ERISA. The preamble to the interim final grandfathered plan regulations clarifies the issue by stating that the exemption for retiree-only plans and excepted benefit plans still applies for those plans subject to the Code and ERISA. Thus, with respect to retiree-only and excepted benefits, the regulators have decided that they will read the PHS Act as if an exemption for retiree-only and excepted benefit plans is still in effect, and they have encouraged state insurance regulators to do the same.

A retiree-only plan that is exempt from PPACA’s mandates for a particular plan year is defined as any group health plan (and group health insurance coverage offered in connection with a group health plan) with less than two participants who are current employees. Exempt retiree plans covering dependents need not follow the adult child to age twenty-six rule but they must follow any applicable state rule unless the plan is self-insured, in which case state insurance law does not apply.

[1]. Treas. Reg. 26 CFR §54.9831–1(c), Labor Reg. 29 CFR §2590.732(c), PHS Act Reg. 45 CFR §146.145(c).

[2]. IRC Sec. 9832(c)(1).

[3]. IRC Sec. 9832(c)(2).

[4]. IRC Sec. 9832(c)(3).

[5]. IRC Sec. 9832(c)(4).

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