



# CHEIRON HEALTH ALERT

## Agencies Proposed Amendments Include Limited Wraparound Coverage as “Excepted Benefits”

January 13, 2015

The Internal Revenue Service, Department of Labor, and Health and Human Services (HHS) published proposed regulations that would allow plan sponsors to offer limited wraparound coverage to certain employees who enroll in an individual insured plan (e.g., Exchange plan), and that define the requirements for such wraparound coverage to be considered “excepted benefits.”

“Excepted Benefits” are generally exempt from the requirements of both the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA). Also, Excepted Benefits are not considered health coverage, and therefore an individual could still get a subsidy on the Insurance Exchange Market. An example of how a plan sponsors could use wraparound coverage is in designing benefits for part time and/or retired employees.

**Action Needed:** Plan sponsors need to decide whether wraparound coverage is of interest and if they want to comment on the proposed rules. Comments are due by January 22, 2015.

### Limited Wraparound Coverage

The proposed regulations provide the ability to offer limited wraparound coverage if their benefits wrap around either:

1. “Eligible individual health insurance” plan ( e.g., a plan purchased through an exchange),  
or
2. A Multi-State Plan (i.e., a specific type of plan offered in the Exchange).

These two mutually exclusive options on the use of wraparound coverage are outlined in Table A below, with the requirements to be an “excepted benefit” listed in Table B (in the next section).

Table A Limited Wraparound Coverage Meeting Requirements of Limited Excepted Benefits (See Table B)	
<p><b>Option 1 – Offer wraparound coverage around “eligible individual health insurance” for “not full- time employees” or for retirees</b></p>	<p><b>Eligible participants:</b> Plan sponsors can offer the limited wraparound coverage to employees who are not full-time employees (and their dependents) or who are retirees (and their dependents).</p> <p><b>Eligibility Requirements:</b> Plan sponsor offers:</p> <ol style="list-style-type: none"> <li>a) “other” health plan coverage (that provides other than “excepted benefits”) and</li> <li>b) also offers a limited excepted benefit (through a group health plan) that wraps around “eligible individual health insurance,” for those electing an individual plan (e.g., an Exchange plan) rather than the “other” health plan.</li> </ol> <p>Importantly, the plan sponsor must also offer full-time employees coverage meeting ACA requirements including minimum value and affordability.</p>

<p><b>Option 2- Offer wraparound coverage in conjunction with Multi-State Plan coverage</b></p>	<p><b>Eligible participants:</b> Unlike Option 1, the proposed regulations do not appear to limit the use of wraparound coverage with Multi-State plans to certain employees.</p> <p><b>Eligibility Requirements:</b> The limited wraparound coverage must be approved by OPM and in accordance with the definitions of Multi-State Plan coverage under section 1334 of the Affordable Care Act. Additional requirements regarding the coverage provided for 2014 apply, and the employer contributions must be at least the level made in 2014 (a maintenance of effort provision).</p>
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The first option enables employers with part-timers or retirees to consider wraparound coverage for them in its benefits offerings. The second option allows employers the option to offer both full- and part-time employees enrollment in the Exchange, access a subsidy (at defined lower income levels), and have a wraparound plan from the employer; however, employers with 50 or more full-time equivalent employees would be exposed to penalties for full-time employees who obtain subsidies from the Exchanges. In addition, the program offered by the employer must pass the regular nondiscrimination rules.

**Requirements of Limited Wraparound Benefits to Be “Excepted Benefits”**

Under the proposed rules, limited wraparound benefits would be considered limited “Excepted Benefits” if all of the following conditions are met.

<p><b>Table B: Requirements for Wraparound Coverage to be an “Excepted Benefit”</b></p>
<p><b>1. Covers additional benefits:</b> The wraparound coverage must provide meaningful benefits beyond cost-sharing relief. The wraparound coverage must not merely be an account-based reimbursement arrangement. The regulations suggest covering out-of-network benefits or other benefits not covered by an Exchange plan.</p>
<p><b>2. Provide benefits Limited in Amount:</b> The annual cost per employee (including covered dependents) under the limited wraparound coverage cannot exceed the health FSA limit, or \$2,550 for 2015. For this purpose, the cost is determined in the same manner as COBRA premiums are calculated.</p> <p><i>Cheiron Comment: Whether composite rates can be developed and whether a separate COBRA methodology could be used for the wraparound coverage are not clear in the regulations and could be an area for commentary.</i></p>
<p><b>3. Satisfies all of the following Nondiscrimination Rules:</b></p> <ul style="list-style-type: none"> <li>a. Does not impose any preexisting condition exclusion;</li> <li>b. Does not discriminate against individuals in eligibility, benefits, or premiums based on any health factor of an individual (or dependent of the individual); and</li> <li>c. Does not discriminate in favor of highly compensated individuals in the wraparound coverage nor in any other group health plan coverage offered by the plan sponsor.</li> </ul>
<p><b>4. Satisfies Plan Eligibility Requirements:</b> Individuals eligible for the wraparound coverage cannot be enrolled in a health FSA.</p>
<p><b>5. Satisfies Maintenance of Effort Provisions (for Option 2):</b> the employer’s combined annual contributions for primary and wraparound coverage are substantially the same (currently suggested at 80 or 90%, but seeking comments) as the contributions for coverage offered to full-time employees in 2014.</p>
<p><b>6. Completes Required Reporting:</b> Reports must be submitted to both HHS or Office of Personal Management (OPM) as applicable.</p>

**Timing** – It appears that a wraparound coverage cannot be offered as an “excepted benefit” until after the final regulations are issued. The proposed rules imply a pilot program for limited

wraparound coverage that is offered by December 31, 2017, and that ends on the later of (1) the date three years after the date wraparound coverage is first offered; or (2) the date on which the last collective bargaining agreement relating to the plan terminates after the date wraparound coverage is first offered.

*Cheiron Observations: There seem to be many open issues such as: When can wraparound coverage first be offered? What “other health plan” coverage must be offered to part time or retirees under the first option? What are the maintenance of effort requirements with a changing or new entity under the second option? What employer costs are counted for maintenance of effort? If the wraparound coverage is fully insured, do the non-discrimination rules under Section 105(h) apply?*

The text of the proposed regulations is found at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-23/pdf/2014-30010.pdf>. Comments can be submitted on-line at <http://www.regulations.gov> or mailed/delivered to Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210 Attention: Excepted Benefits.

*Cheiron health consultants can assist plan sponsors with the review and consideration of the impact of the proposed regulations.*

*Cheiron is an actuarial consulting firm that provides actuarial and consulting advice. However, we are neither attorneys nor accountants. Accordingly, we do not provide legal services or tax advice.*

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