

Federal Agencies Propose Rules on Offering Fertility Benefits

On May 13, 2026, the U.S. Departments of Labor, Health and Human Services, and the Treasury (the Departments) issued a [proposed rule](#) that would create a new category of limited excepted benefits that employers can use to offer fertility benefits. The proposed rule builds on [Executive Order 14216](#) and the Departments' October 2025 [guidance](#), which clarified that employers may offer fertility benefits through three existing excepted benefit pathways: a fully insured independent, noncoordinated excepted benefit policy; an excepted benefit HRA; and an employee assistance program offering coaching and navigator services.

The proposed rule would establish a **new category of limited excepted benefits for fertility benefits**. The new category would apply restrictions like those already in place for other limited excepted benefits, with the following main requirements:

- Substantially all benefits must be for the diagnosis, mitigation or treatment of infertility or related reproductive health conditions;

- Benefits are capped at a combined lifetime maximum of \$120,000 for the participant and their beneficiaries, indexed for inflation for plan years beginning after 2027;
- The benefits must be provided under a separate policy or otherwise not be an integral part of the plan maintained by the same plan sponsor; and
- The plan or insurance issuer must provide a written notice to participants and beneficiaries that clearly describes the coverage, including its benefits and limitations, how to access in-network providers and how to submit claims. This notice must be provided at the first opportunity to enroll, annually thereafter, and upon request.

If finalized, the proposed changes would apply for plan years beginning on or after **Jan. 1, 2027**. However, the Departments have asked for feedback on whether the proposed changes should be applicable sooner to allow plan sponsors and issuers flexibility to offer this benefit immediately after the changes are finalized.

IRS Releases Pay-or-Play Penalties for 2027

On May 4, 2026, the IRS [released](#) updated penalty amounts for 2027 related to the employer shared responsibility ("pay-or-play") rules under the Affordable Care Act (ACA). The ACA requires applicable large employers (ALEs) to offer affordable, minimum-value (MV) health coverage to their full-time employees (FTEs) or potentially pay a penalty to the IRS.

Depending on the circumstances, one of two penalties may apply under the pay-or-play rules, the 4980H(a) penalty or the 4980H(b) penalty, as follows:

1. Under Section 4980H(a), an ALE will be subject to a penalty if it does not offer coverage to substantially all FTEs and any one of its FTEs receives a subsidy for purchasing individual health coverage through an Exchange. This monthly penalty is equal to the ALE's number of FTEs (minus 30) multiplied by one-

twelfth of \$2,000 (as adjusted) for any applicable month. For 2027, the penalty increases to **\$3,780** (up from \$3,340 for 2026); and

2. Under Section 4980H(b), ALEs that offer coverage to substantially all FTEs may still be subject to a penalty if at least one FTE obtains a subsidy through an Exchange because the ALE did not offer coverage to all FTEs, or the ALE's coverage is unaffordable or does not provide MV. The monthly penalty assessed on an ALE for each FTE who receives a subsidy is one-twelfth of \$3,000 (as adjusted) for any applicable month. For 2027, the penalty increases to **\$5,670** (up from \$5,010 for 2026). However, the total penalty for an ALE is limited to the 4980H(a) penalty amount.