

# What are “Excepted” Benefits?

Lisa Klinger, J.D.

[www.HealthReformUpdates.com](http://www.HealthReformUpdates.com)

## What are “Excepted” Benefits” and Why Does it Matter?

“Excepted” benefits are exempt from numerous provisions in the Affordable Care Act (ACA), including its market reforms (e.g., restrictions on annual limits, age 26 rule, first-dollar preventive care), the research effectiveness (PCORI) fee, the requirement to provide a Uniform Summary of Benefits and Coverage (SBC), and the requirement to report the cost of the benefits on the employee’s W-2. Additionally, “excepted” benefits are exempt from the HIPAA portability rules and from many provisions of ERISA. Thus, it’s important to understand which benefit plans are “excepted” and which are not (but might at first glance appear to be). See the list below of ACA provisions that do not apply to excepted benefits.

There are several types of “excepted” benefits defined at ERISA section 733(c). This article focuses on three in particular.

- “Limited scope” dental and vision benefits
- Certain Health Flexible Spending Accounts (HFSA’s)
- Fixed indemnity policies or coverage for a specific disease or illness

## Dental and Vision Benefits

Dental and vision benefits are “excepted” benefits in either of the following two circumstances:

- 1) If the benefits are insured, the dental and/or vision benefits are provided under a separate contract, certificate or policy from the medical benefits.
- 2) Whether the benefits are insured or self-funded, they are not an “integral” part of the medical plan. This means that:
  - a. Participants can elect not to enroll in dental or vision even if they do enroll in medical, and
  - b. Participants who elect to enroll in dental or vision must pay an additional amount for coverage (even if the employee contribution is only “nominal,” per (ACA FAQs Part 2, Q/A 6).

Does this mean that if dental and vision benefits are “bundled” with medical (i.e., offered as a package), they are not excepted benefits? Not necessarily. If the benefits are *insured* and the dental and vision benefits are under a separate policy from the medical benefits, the dental and vision benefits are excepted benefits even if there is no additional employee contribution for them, and even if employees automatically get dental and vision when they enroll in medical coverage.

If the benefits are *self-insured*, however, (or insured but under a separate policy from the medical policy) they are excepted benefits only if participants can elect to enroll only in medical and not in dental and/or vision, and if they would have to pay an additional amount if they do enroll in dental and/or vision.

## Health Flexible Spending Account Plan (HFSA)

An “excepted” HFSA plan is one that meets the IRC section 106(c)(2) definition and in which:

- 1) The maximum annual benefit payable to any participant is less than the greater of:
  - a. two times the participant’s annual salary reduction amount, or,
  - b. the participant’s salary reduction amount for the year plus \$500; and
- 2) Participants also are eligible for coverage under another non-excepted group health plan that is a regular medical plan (e.g., major medical coverage).

One example of an excepted HFSA plan is one offered by an employer that offers both a regular medical plan and the HFSA, and the only source of funding for the HFSA is the employee pre-tax contribution. Another example of an HFSA that will meet the definition of "excepted" benefit is one where the employer contribution is \$500 or less, regardless of the employee pre-tax contribution amount. Still another example is an HFSA where the employer provides a 100% match to the employee pre-tax contribution.

### **Fixed Indemnity Policies or Coverage for a Specific Disease or Illness**

These types of excepted health insurance coverage are voluntary benefits usually sold as individual policies. An example of a fixed indemnity policy would be one that pays \$100 per day for each day the insured is hospitalized. The money can be used for whatever purpose the individual wants, it does not have to be used for medical expenses. An example of an insurance policy that covers a specific disease or illness would be a cancer policy, such as the type sold by AFLAC.