

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 54**

[REG-120399-10]

RIN 1545-BJ57

**Requirements for Group Health Plans and Health Insurance Issuers Under the Patient Protection and Affordable Care Act Relating to Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** Elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations under the Patient Protection and Affordable Care Act (the Affordable Care Act) relating to preexisting condition exclusions, lifetime and annual limits, rescissions, and patient protections. Those temporary regulations are being issued at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Office of Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers, group health plans, and health insurance issuers providing group health insurance coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by September 27, 2010.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-120399-10), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG-120399-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-120399-10).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the regulations, Karen Levin at 202-622-6080; concerning submissions of comments, Oluwafunmilayo Taylor at 202-622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 27, 2010. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the proposed collection of information (*see* the preamble to the temporary regulations published elsewhere in this issue of the **Federal Register**);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information are in § 54.9815-2711T(e)(2), § 54.9815-2712T(a)(1), and § 54.9815-2719AT(a)(4) (*see* the temporary regulations published elsewhere in this issue of the **Federal Register**). The temporary regulations require that group health plans and group health insurance issuers: (1) Notify individuals otherwise eligible for coverage who have previously reached a lifetime limit that the lifetime limit no longer applies and of the right to enroll in the coverage; (2) notify any individual whose coverage the plan or issuer intends to rescind 30

days in advance of the rescission; and (3) for plans or health insurance coverage that require or provide for covered individuals to designate a primary care provider, notify individuals of their rights regarding such designation under section 2719A of the Public Health Service Act (which is incorporated by reference into section 9815 of the Code) and of the right to obtain obstetrical and gynecological services without a referral. The likely respondents are business or other for-profit institutions, and nonprofit institutions. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

The temporary regulations published elsewhere in this issue of the **Federal Register** add §§ 54.9815-2704T, 54.9815-2711T, 54.9815-2712T, and 54.9815-2719AT to the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains those temporary regulations and these proposed regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation. It is hereby certified that the collections of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Section 54.9815–2711T(e) of the temporary regulations requires both group health insurance issuers and group health plans to notify individuals otherwise eligible for coverage who have previously reached a lifetime limit that the lifetime limit no longer applies and of the right to enroll in the coverage. Under the temporary regulations, if a health insurance issuer satisfies this notice obligation, it is satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will satisfy this notice obligation for both the plan and the issuer in almost all cases. For this reason, this information collection requirement will not impose a significant impact on a substantial number of small entities.

Section 54.9815–2712T(a)(1) of the temporary regulations requires group health plans and group health insurance issuers to provide 30 days advance notice to any individual whose coverage would be affected before the plan or issuer can rescind the coverage. If a health insurance issuer satisfies this notice obligation, it is satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will satisfy this notice obligation for both the plan and the issuer in almost all cases. For this reason, this information collection requirement will not impose a significant impact on a substantial number of small entities.

Under § 54.9815–2719AT(a)(4) of the temporary regulations, a group health plan or health insurance coverage that requires or provides for covered individuals to designate a primary care provider must notify individuals covered under the plan of their rights to choose any primary care provider in the plan's network who is available to accept the individual, to designate a pediatrician in the network for a child, and to obtain obstetrical and gynecological services without a referral. If a health insurance issuer satisfies this notice obligation, it is satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small

entities, it is anticipated that the health insurance issuer will satisfy this notice obligation for both the plan and the issuer in almost all cases. For this reason, this information collection requirement will not impose a significant impact on a substantial number of small entities.

For further information and for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these proposed regulations is Karen Levin, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

#### List of Subjects in 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

#### PART 54—PENSION EXCISE TAXES

**Paragraph 1.** The authority citation for part 54 is amended by adding entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 54.9815–2704 also issued under 26 U.S.C. 9833.

Section 54.9815–2711 also issued under 26 U.S.C. 9833.

Section 54.9815–2712 also issued under 26 U.S.C. 9833. \* \* \*

Section 54.9815–2719A also issued under 26 U.S.C. 9833. \* \* \*

**Par. 2.** Section 54.9815–2704 is added to read as follows:

#### § 54.9815–2704 Prohibition of preexisting condition exclusions.

[The text of proposed § 54.9815–2704 is the same as the text of § 54.9815–2704T published elsewhere in this issue of the **Federal Register**].

**Par. 3.** Section 54.9815–2711 is added to read as follows:

#### § 54.9815–2711 No lifetime or annual limits.

[The text of proposed § 54.9815–2711 is the same as the text of § 54.9815–2711T published elsewhere in this issue of the **Federal Register**].

**Par. 4.** Section 54.9815–2712 is added to read as follows:

#### § 54.9815–2712 Rules regarding rescissions.

[The text of proposed § 54.9815–2712 is the same as the text of § 54.9815–2712T published elsewhere in this issue of the **Federal Register**].

**Par. 5.** Section 54.9815–2719A is added to read as follows:

#### § 54.9815–2719A Patient protections.

[The text of proposed § 54.9815–2719A is the same as the text of § 54.9815–2719AT published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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