

(3) The rules of this section are illustrated by the following example:

*Example 2.* (i) *Facts.* Employer Y maintains a group health plan that has an enrollment period for late enrollees every November 1 through November 30 with coverage effective the following January 1. On October 18, Individual B loses coverage under another group health plan and satisfies the requirements of paragraphs (a)(2), (3), and (4) of this section. B submits a completed application for coverage on November 2.

(ii) *Conclusion.* In this *Example*, B is a special enrollee. Therefore, even though B's request for enrollment coincides with an open enrollment period, B's coverage is required to be made effective no later than December 1 (rather than the plan's January 1 effective date for late enrollees).

[T.D. 9166, 69 FR 78746, Dec. 30, 2004]

**§ 54.9802-1 Prohibiting discrimination against participants and beneficiaries based on a health factor.**

(a) *Health factors.* (1) The term *health factor* means, in relation to an individual, any of the following health status-related factors:

- (i) Health status;
- (ii) Medical condition (including both physical and mental illnesses);
- (iii) Claims experience;
- (iv) Receipt of health care;
- (v) Medical history;
- (vi) Genetic information;
- (vii) Evidence of insurability; or
- (viii) Disability.

(2) Evidence of insurability includes—

(i) Conditions arising out of acts of domestic violence; and

(ii) [Reserved]. For further guidance, see § 54.9802-1T(a)(2)(ii).

(b) *Prohibited discrimination in rules for eligibility*—(1) *In general.* (i) A group health plan may not establish any rule for eligibility (including continued eligibility) of any individual to enroll for benefits under the terms of the plan that discriminates based on any health factor that relates to that individual or a dependent of that individual. This rule is subject to the provisions of paragraph (b)(2) of this section (explaining how this rule applies to benefits), paragraph (b)(3) of this section (allowing plans to impose certain pre-existing condition exclusions), paragraph (d) of this section (containing rules for establishing groups of simi-

larly situated individuals), paragraph (e) of this section (relating to non-confinement, actively-at-work, and other service requirements), paragraph (f) of this section (relating to bona fide wellness programs), and paragraph (g) of this section (permitting favorable treatment of individuals with adverse health factors).

(ii) [Reserved]. For further guidance, see § 54.9802-1T(b)(1)(ii).

(iii) The rules of this paragraph (b)(1) are illustrated by the following examples:

*Example 1.* (i) *Facts.* An employer sponsors a group health plan that is available to all employees who enroll within the first 30 days of their employment. However, employees who do not enroll within the first 30 days cannot enroll later unless they pass a physical examination.

(ii) *Conclusion.* In this *Example 1*, the requirement to pass a physical examination in order to enroll in the plan is a rule for eligibility that discriminates based on one or more health factors and thus violates this paragraph (b)(1).

*Example 2.* [Reserved]

(2) *Application to benefits*—(i) *General rule.* (A) Under this section, a group health plan is not required to provide coverage for any particular benefit to any group of similarly situated individuals.

(B) [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(i)(B).

(C) [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(i)(C).

(D) [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(i)(D).

(ii) *Cost-sharing mechanisms and wellness programs.* A group health plan with a cost-sharing mechanism (such as a deductible, copayment, or coinsurance) that requires a higher payment from an individual, based on a health factor of that individual or a dependent of that individual, than for a similarly situated individual under the plan (and thus does not apply uniformly to all similarly situated individuals) does not violate the requirements of this paragraph (b)(2) if the payment differential is based on whether an individual has complied with the requirements of a bona fide wellness program.

(iii) *Specific rule relating to source-of-injury exclusions.* [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(iii).

(3) *Relationship to section 9801(a), (b), and (d).* [Reserved]. For further guidance, see § 54.9802-1T(b)(3).

(c) *Prohibited discrimination in premiums or contributions—(1) In general.* (i) A group health plan may not require an individual, as a condition of enrollment or continued enrollment under the plan, to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual (described in paragraph (d) of this section) enrolled in the plan based on any health factor that relates to the individual or a dependent of the individual.

(ii) [Reserved]. For further guidance, see § 54.9802-1T(c)(1)(ii).

(2) *Rules relating to premium rates—(i) Group rating based on health factors not restricted under this section.* Nothing in this section restricts the aggregate amount that an employer may be charged for coverage under a group health plan.

(ii) *List billing based on a health factor prohibited.* [Reserved]. For further guidance, see § 54.9802-1T(c)(2)(ii).

(3) *Exception for bona fide wellness programs.* Notwithstanding paragraphs (c)(1) and (2) of this section, a plan may establish a premium or contribution differential based on whether an individual has complied with the requirements of a bona fide wellness program.

(d) *Similarly situated individuals.* [Reserved]. For further guidance, see § 54.9802-1T(d).

(e) *Nonconfinement and actively-at-work provisions.* [Reserved]. For further guidance, see § 54.9802-1T(e).

(f) *Bona fide wellness programs.* [Reserved]

(g) *Benign discrimination permitted.* [Reserved]. For further guidance, see § 54.9802-1T(g).

(h) *No effect on other laws.* [Reserved]. For further guidance, see § 54.9802-1T(h).

(i) *Effective dates.* (1) Final rules apply May 8, 2001. This section applies May 8, 2001.

(2) *Cross-reference to temporary rules applicable for plan years beginning on or after July 1, 2001.* See § 54.9802-1T(i)(2), which makes the rules of that section applicable for plan years beginning on or after July 1, 2001.

(3) *Cross-reference to temporary transitional rules for individuals previously denied coverage based on a health factor.* See § 54.9802-1T(i)(3) for transitional rules that apply with respect to individuals previously denied coverage under a group health plan based on a health factor.

[T.D. 8931, 66 FR 1396, Jan. 8, 2001, as amended at 66 FR 14077, Mar. 9, 2001]

**§ 54.9802-1T Prohibiting discrimination against participants and beneficiaries based on a health factor (temporary).**

(a) *Health factors.* (1) [Reserved]. For further guidance, see § 54.9802-1(a).

(2) Evidence of insurability includes—

(i) [Reserved]. For further guidance, see § 54.9802-1(a)(2)(i).

(ii) Participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing, and other similar activities.

(3) The decision whether health coverage is elected for an individual (including the time chosen to enroll, such as under special enrollment or late enrollment) is not, itself, within the scope of any health factor. (However, under section 9801(f) a plan must treat special enrollees the same as similarly situated individuals who are enrolled when first eligible.)

(b) *Prohibited discrimination in rules for eligibility—(1) In general.* (i) [Reserved]. For further guidance, see § 54.9802-1(b)(1)(i).

(ii) For purposes of this section, rules for eligibility include, but are not limited to, rules relating to—

- (A) Enrollment;
- (B) The effective date of coverage;
- (C) Waiting (or affiliation) periods;
- (D) Late and special enrollment;
- (E) Eligibility for benefit packages (including rules for individuals to change their selection among benefit packages);
- (F) Benefits (including rules relating to covered benefits, benefit restrictions, and cost-sharing mechanisms such as coinsurance, copayments, and deductibles), as described in paragraphs (b) (2) and (3) of this section;
- (G) Continued eligibility; and