

Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market; Technical Amendment

Announcement 2001-37

AGENCIES: Internal Revenue Service, Department of the Treasury; Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Interim final rules; delay of effective date and conforming amendments.

SUMMARY: Consistent with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action delays for 60 days the effective date for the rules entitled "Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market," published in the **Federal Register** on January 8, 2001 (66 FR 1378 [T.D. 8931, 2001-7 I.R.B. 542]). This document also makes conforming amendments to reflect the delay in effective date.

DATES: The effective date of the Interim Final Rules amending 26 CFR Part 54, 29 CFR Part 2590, and 45 CFR Part 146, published in the **Federal Register** on January 8, 2001, at 66 FR 1378, is delayed for 60 days, from March 9, 2001, until May 8, 2001. The conforming amendments in this document are effective May 8, 2001.

FOR FURTHER INFORMATION CONTACT: Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622-6080; Amy J. Turner, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219-7006; or Ruth A. Bradford, Health Care Financing Administration, Department of Health and Human Services, at (410) 786-1565.

SUPPLEMENTARY INFORMATION:

Consistent with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action delays for 60 days the effective date and, for consistency, certain applicability dates for the rules entitled "Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market," published in the **Federal Register** on January 8, 2001 (66 FR 1378). These rules implement statutory provisions prohibiting discrimination based on a health factor by group health plans and issuers offering health insurance coverage in connection with a group health plan. The rules implement changes made to the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, and the Public Health Service Act, enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and most of the guidance contained in these rules remains applicable for plan years beginning on or after July 1, 2001. This document also makes conforming amendments to reflect the delay in effective date.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the Departments' implementation of this rule without opportunity for public comment, effective immediately upon publication today (March 9, 2001) in the **Federal Register**, is based on the good cause ex-

ceptions in 5 U.S.C. 553(b)(3)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary, and contrary to the public interest. The 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this delay would have been impractical, unnecessary, and contrary to the public interest in the orderly promulgation and implementation of regulations. Because the delay is only for 60 days, a 30-day comment period before the delay could be effective would exhaust a substantial amount of time that group health plans, health insurance issuers, and State insurance commissioner's offices could otherwise use to review their plan documents, insurance policies, and State laws for purposes of the orderly implementation of the interim regulations. In addition, it would create confusion among State agencies, employers, plan administrators, issuers, and third party administrators as to the effective date of certain provisions, impeding their compliance and enforcement efforts

List of Subjects

26 CFR Part 54

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

29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Conforming Amendments to the Regulations

Internal Revenue Service

26 CFR Chapter I

Accordingly, the publication on January 8, 2001, of the temporary and final rules, 26 CFR Part 54, is amended as follows:

PART 54 — PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 continues to read in part as follows:

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

§54.9802-1 [Amended]

Par. 2. Section 54.9802-1 is amended by removing the date “March 9, 2001” in each place it appears in paragraph (i)(1) and adding in its place “May 8, 2001”.

§54.9802-1T [Amended]

Par. 3. Section 54.9802-1T is amended by:

- 1. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(1).
- 2. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(A) introductory text.
- 3. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(C) *Example 2* (ii).

Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

Approved March 2, 2001.

Pamela F. Olsen,
*Deputy Assistant Secretary
of the Treasury.*

Pension and Welfare Benefits
Administration

29 CFR Chapter XXV

For the reasons set forth above, the publication on January 8, 2001, of the interim final rule, 29 CFR Part 2590, is amended as follows:

PART 2590 – RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

Paragraph 1. The authority citation for Part 2590 continues to read as follows:

Authority: Secs. 107, 209, 505, 701–703, 711–713, and 731–734 of

ERISA (29 U.S.C. 1027, 1059, 1135, 1171–1173, 1181–1183, and 1191–1194), as amended by HIPAA (Public Law 104–191, 110 Stat. 1936), MHPA and NMHPA (Public Law 104–204, 110 Stat. 2935), and WHCRA (Public Law 105–277, 112 Stat. 2681–436), section 101(g)(4) of HIPAA, and Secretary of Labor’s Order No. 1–87, 52 FR 13139, April 21, 1987.

§ 2590.702 [Amended]

Par. 2. Section 2590.702 is amended by:

- 1. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in the heading to paragraph (i)(1).
- 2. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(1).
- 3. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(A) introductory text.
- 4. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(C) *Example 2* (ii).

Signed at Washington, DC, this 16th day of February 2001.

Alan D. Lebowitz,
*Acting Assistant Secretary, Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

Health Care Financing Administration
45 CFR Subtitle A

For the reasons set forth above, the publication on January 8, 2001, of the interim final rule, 45 CFR Part 146, is amended as follows:

PART 146 – RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

Paragraph 1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791 and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, 300gg–92 as

amended by HIPAA (Public Law 104–191, 110 Stat. 1936), MHPA and NMHPA (Public Law 104–204, 110 Stat. 2935), and WHCRA (Public Law 105–277, 112 Stat. 2681–436), and section 102(c)(4) of HIPAA.

§ 146.121 [Amended]

Par. 2. Section 146.121 is amended by:

- 1. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in the heading to paragraph (i)(1).
- 2. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(1).
- 3. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(A) introductory text.
- 4. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(C) *Example 2* (ii).

Dated February 20, 2001.

Michael McMullan,
*Acting Deputy Administrator,
Health Care Financing Administration.*

Approved March 5, 2001.

Tommy G. Thompson,
*Secretary,
Health and Human Services.*

(Filed by the Office of the Federal Register on March 8, 2001, 8:45 a.m., and published in the issue of the Federal Register for March 9, 2001, 66 F.R. 14076)