

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

[REG-118412-10]

RIN 1545-BJ50

Group Health Plans and Health Insurance Coverage Rules Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act**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 IRS is issuing temporary regulations under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) dealing with rules relating to status as a grandfathered health plan. The IRS is issuing the temporary regulations 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 with respect to group health plans and health insurance coverage offered in connection with a group health plan 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 15, 2010.**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-118412-10), 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-118412-10), 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-118412-10).**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Karen Levin

at 202-622-6080; concerning submissions of comments or to request a hearing, Regina Johnson, 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has 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 16, 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 § 54.9815-1251T(a)(2) and (a)(3) (*see* the temporary regulations published elsewhere in this issue of the **Federal Register**). The temporary regulations require any group health plan or group health insurance coverage intended to be a grandfathered health plan to include in any description of plan benefits provided to participants or beneficiaries a statement that the plan or issuer believes the plan or health insurance coverage is a grandfathered health plan under section 1251 of the Affordable Care Act. The temporary regulations provide model language for this purpose. The temporary regulations

also require any such plan or issuer to maintain records documenting the terms of the plan or health insurance coverage on March 23, 2010 and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. The likely respondents to the collections of information requirements are business or other for-profit institutions, and nonprofit institutions. Responses to this collection of information are mandatory if a plan or health insurance coverage is intended to be a grandfathered health plan under the Affordable Care Act.

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 § 54.9815-1251T 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 the 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.

The temporary regulations require any group health plan or group health insurance coverage intended to be a grandfathered health plan to include in

any description of plan benefits provided to participants or beneficiaries a statement that the plan or issuer believes the plan or health insurance coverage is a grandfathered health plan under section 1251 of the Affordable Care Act. The temporary regulations provide model language for this purpose. This disclosure requirement applies only when the plan or issuer is otherwise distributing a description of plan benefits. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will prepare the description of plan benefits in almost all cases. Thus, there will almost always be no burden of statement preparation imposed on small business entities. Because the distribution is not required other than when a description of plan benefits is otherwise provided, the distribution requirement will not add any burden to plans maintained by small business entities. For this reason, the information collection requirement of providing a statement, in descriptions of plan benefits, that the plan is intended to be a grandfathered health plan will not impose a significant impact on a substantial number of small entities.

The temporary regulations also require any plan or issuer intending the group health plan or health insurance coverage to be a grandfathered health plan to maintain records documenting the terms of the plan or health insurance coverage on March 23, 2010 and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. Under the temporary regulations, if a sponsor of a group health plan switches to an insurance policy under which none of its employees was covered on March 23, 2010, the plan ceases to be a grandfathered health plan. Thus, an

insured plan can maintain its status as a grandfathered health plan only by renewing its contract with the same health insurance issuer. Almost all plans maintained by small business entities are insured plans, and the issuer is also required to satisfy this recordkeeping requirement for the health insurance coverage to remain a grandfathered health plan. It is anticipated that the issuer will satisfy this recordkeeping obligation for almost all small businesses. 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 an entry in numerical order to read as follows:

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

Section 54.9815–1251 also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9815–1251 is added to read as follows:

§ 54.9815–1251 Preservation of right to maintain existing coverage.

[The text of proposed § 54.9815–1251 is the same as the text of § 54.9815–1251T published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–14487 Filed 6–14–10; 11:15 am]

BILLING CODE 4830–01–P