

discount.) Thus, the premium discount violates paragraph (c) of this section because it may require an individual to pay a higher premium based on a health factor of the individual than is required of a similarly situated individual under the plan.

Example 4. (i) Facts. Same facts as *Example 3*, except that if it is unreasonably difficult due to a medical condition for a participant to achieve the targeted cholesterol count (or if it is medically inadvisable for a participant to attempt to achieve the targeted cholesterol count), the plan will make available a reasonable alternative standard that takes the relevant medical condition into account. In addition, all plan materials describing the terms of the program include the following statement: "If it is unreasonably difficult due to a medical condition for you to achieve a cholesterol count under 200, or if it is medically inadvisable for you to attempt to achieve a count under 200, call us at the number below and we will work with you to develop another way to get the discount." Individual *D* is unable to achieve a cholesterol count under 200. The plan accommodates *D* by making the discount available to *D*, but only if *D* complies with a low-cholesterol diet.

(ii) *Conclusion.* In this *Example 4*, the program is a bona fide wellness program because it satisfies the four requirements of this paragraph (f). First, the program complies with the limits on rewards under a program. Second, it is reasonably designed to promote good health or prevent disease. Third, the reward under the program is available to all similarly situated individuals because it accommodates individuals for whom it is unreasonably difficult due to a medical condition to achieve the targeted count (or for whom it is medically inadvisable to attempt to achieve the targeted count) in the prescribed period by providing a reasonable alternative standard. Fourth, the plan discloses in all materials describing the terms of the program the availability of a reasonable alternative standard. Thus, the premium discount does not violate this section.

Example 5. (i) Facts. A group health plan will waive the \$250 annual deductible (which is less than [10/15/20] percent of the annual cost of employee-only coverage under the plan) for the following year for participants who have a body mass index between 19 and 26, determined shortly before the beginning of the year. However, any participant for whom it is unreasonably difficult due to a medical condition to attain this standard (and any participant for whom it is medically inadvisable to attempt to achieve this standard) during the plan year is given the same discount if the participant walks for 20 minutes three days a week. Any participant for whom it is unreasonably difficult due to a medical condition to attain either standard (and any participant for whom it is medically inadvisable to attempt to achieve either standard during the year) is given the same discount if the individual satisfies a reasonable alternative standard that is tailored to the individual's situation. All plan materials describing the terms of the wellness program include the following statement: "If it is unreasonably difficult due

to a medical condition for you to achieve a body mass index between 19 and 26 (or if it is medically inadvisable for you to attempt to achieve this body mass index) this year, your deductible will be waived if you walk for 20 minutes three days a week. If you cannot follow the walking program, call us at the number above and we will work with you to develop another way to have your deductible waived, such as a dietary regimen."

(ii) *Conclusion.* In this *Example 5*, the program is a bona fide wellness program because it satisfies the four requirements of this paragraph (f). First, the program complies with the limits on rewards under a program. Second, it is reasonably designed to promote good health or prevent disease. Third, the reward under the program is available to all similarly situated individuals because it generally accommodates individuals for whom it is unreasonably difficult due to a medical condition to achieve (or for whom it is medically inadvisable to attempt to achieve) the targeted body mass index by providing a reasonable alternative standard (walking) and it accommodates individuals for whom it is unreasonably difficult due to a medical condition (or for whom it is medically inadvisable to attempt) to walk by providing an alternative standard that is reasonable for the individual. Fourth, the plan discloses in all materials describing the terms of the program the availability of a reasonable alternative standard for every individual. Thus, the waiver of the deductible does not violate this section.

Example 6. (i) Facts. In conjunction with an annual open enrollment period, a group health plan provides a form for participants to certify that they have not used tobacco products in the preceding twelve months. Participants who do not provide the certification are assessed a surcharge that is [10/15/20] percent of the cost of employee-only coverage. However, all plan materials describing the terms of the wellness program include the following statement: "If it is unreasonably difficult due to a health factor for you to meet the requirements under this program (or if it is medically inadvisable for you to attempt to meet the requirements of this program), we will make available a reasonable alternative standard for you to avoid this surcharge." It is unreasonably difficult for Individual *E* to stop smoking cigarettes due to an addiction to nicotine (a medical condition). The plan accommodates *E* by requiring *E* to participate in a smoking cessation program to avoid the surcharge. *E* can avoid the surcharge for as long as *E* participates in the program, regardless of whether *E* stops smoking (as long as *E* continues to be addicted to nicotine).

(ii) *Conclusion.* In this *Example 6*, the premium surcharge is permissible as a bona fide wellness program because it satisfies the four requirements of this paragraph (f). First, the program complies with the limits on rewards under a program. Second, it is reasonably designed to promote good health or prevent disease. Third, the reward under the program is available to all similarly situated individuals because it accommodates individuals for whom it is unreasonably difficult due to a medical

condition (or for whom it is medically inadvisable to attempt) to quit using tobacco products by providing a reasonable alternative standard. Fourth, the plan discloses in all materials describing the terms of the program the availability of a reasonable alternative standard. Thus, the premium surcharge does not violate this section.

* * * * *

Dated: June 22, 2000.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing
Administration.

Approved: August 29, 2000.

Donna E. Shalala,
Secretary.
[FR Doc. 01-107 Filed 1-5-01; 8:45 am]
BILLING CODE 4120-01-P; 4510-29-P; 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG-114082-00]

RIN 1545-AY32

HIPAA Nondiscrimination

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 and final regulations governing the provisions prohibiting discrimination based on a health factor for group health plans. The IRS is issuing the temporary and final regulations at the same time that the Pension and Welfare Benefits Administration of the U.S. Department of Labor and the Health Care Financing Administration of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations governing the provisions prohibiting discrimination based on a health factor for group health plans and issuers of 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 and group health plans relating to the group health plan nondiscrimination requirements. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by April 9, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-114082-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:M&SP:RU (REG-114082-00), room 5226, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax_regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer at 202-622-6080; concerning submissions of comments or requests for a hearing, Sonya Cruse at 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information referenced 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)).

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.

The collections of information are in § 54.9802-1T (see the temporary regulations published elsewhere in this issue of the **Federal Register**). The collections of information are required so that individuals denied enrollment in a group health plan based on one or more health factors will be apprised of their right to enroll in the plan without regard to their health. The likely respondents are business or other for-profit institutions, nonprofit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required of plans that have denied enrollment to individuals based on one or more health factors.

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.

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, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by April 9, 2001. 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 burden 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.

Background

The temporary regulations published elsewhere in this issue of the **Federal Register** add a new § 54.9802-1T to the Miscellaneous Excise Tax Regulations.¹ When these proposed regulations are published as final regulations, they will supplement the final regulations in § 54.9802-1 being published elsewhere in this issue of the **Federal Register**. The proposed, temporary, and final 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).

Special Analyses

This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation. It has also been determined

¹ A previous § 54.9802-1T was published in the **Federal Register** on April 8, 1997. By operation of section 7805(e) of the Internal Revenue Code, the previous § 54.9802-1T expired on April 8, 2000. Proposed regulations containing the same text as previous § 54.9802-1T were also published on April 8, 1997, and final regulations based on those proposed regulations are being published elsewhere in this issue of the **Federal Register** as § 54.9802-1. The new § 54.9802-1T being published elsewhere in this issue of the **Federal Register** consists almost entirely of new guidance not contained in the previous § 54.9802-1T.

that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. 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 notice of proposed rulemaking will be 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) 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 Russ Weinheimer, Office of the Operating Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and Treasury Department participated in their development. 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 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 continues to read in part as follows:

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

Par. 2. Section 54.9802-1 is amended to read as follows:

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

[The text of this proposed amendments to this section is the same as the text of § 54.9802-1T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.
[FR Doc. 01-108 Filed 1-5-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG-114083-00]

RIN 1545-AY33

Exception to the HIPAA Nondiscrimination Requirements for Certain Grandfathered Church Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance under section 9802(c) of the Internal Revenue Code relating to the exception for certain grandfathered church plans from the nondiscrimination requirements applicable to group health plans under section 9802(a) and (b). Final, temporary, and proposed regulations relating to the nondiscrimination requirements under section 9802(a) and (b) are being published elsewhere in this issue of the **Federal Register**. The regulations will generally affect sponsors of and participants in certain self-funded church plans that are group health plans, and the regulations provide plan sponsors and plan administrators with guidance necessary to comply with the law.

DATES: Written or electronic comments and requests for a public hearing must be received by April 9, 2001.

ADDRESSES: Send Submissions to: CC:M&SP:RU (REG-114083-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-114083-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on

the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer at 202-622-6080; concerning submissions of comments or requests for a hearing, Sonya Cruse at 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Miscellaneous Excise Tax Regulations (26 CFR part 54) relating to the exception for certain grandfathered church plans from the nondiscrimination requirements applicable to group health plans. The nondiscrimination requirements applicable to group health plans were added to the Internal Revenue Code (Code), in section 9802, by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191. HIPAA also added similar nondiscrimination provisions applicable to group health plans and health insurance issuers (such as health insurance companies and health maintenance organizations) under the Employee Retirement Income Security Act of 1974 (ERISA), administered by the U.S. Department of Labor, and the Public Health Service Act (PHS Act), administered by the U.S. Department of Health and Human Services.

Final and temporary regulations relating to the HIPAA nondiscrimination requirements in paragraphs (a) and (b) of section 9802 of the Code are being published elsewhere in this issue of the **Federal Register**. Those regulations are similar to, and have been developed in coordination with, interim final regulations also being published today by the Departments of Labor and Health and Human Services. Guidance under the HIPAA nondiscrimination requirements is summarized in a joint preamble to the final, interim final, and temporary regulations.

The exception for certain grandfathered church plans was added to section 9802, in a new subsection (c), by section 1532 of the Taxpayer Relief Act of 1997, Public Law 105-34. These proposed regulations would provide guidance for this exception. The guidance is summarized in the explanation below.

Explanation of Provisions

Church plans that are group health plans are generally subject to the Code provisions in Chapter 100 relating to

access, portability, and renewability.¹ However, under section 9802(c), church plans satisfying certain requirements continuously since July 15, 1997 are not treated as failing to meet the section 9802 prohibitions against discrimination based on any health factor solely because the plan requires evidence of good health for the coverage of certain individuals.

The grandfather rule in section 9802(c) applies to a church plan for a plan year only if, on July 15, 1997 and at all times after that date before the beginning of the plan year, the church plan had provisions satisfying one of two alternative conditions. The first alternative condition is that the plan contain provisions requiring evidence of good health of two sets of individuals, that is, both (1) any employee of an employer with 10 or fewer employees and (2) any self-employed individual. The proposed regulations specify that this condition is not satisfied if the plan requires evidence of good health of only one of these sets of individuals. The proposed regulations also clarify that the plan provision for the first set of individuals must be exactly 10 or fewer. Thus, a plan provision requiring evidence of good health for employees of an employer of fewer than 10, or of greater than 10, employees does not satisfy this condition. For example, a plan provision requiring evidence of good health of any employee of an employer of five or fewer employees does not satisfy this condition.

The second alternative condition is that the plan contain provisions requiring evidence of good health of any individual who enrolls after the first 90 days of initial eligibility. The proposed regulations clarify that the period for these plan provisions must be exactly 90 days. Thus, a plan provision requiring evidence of good health of any individual who enrolls after the first 120 days of initial eligibility does not satisfy this condition.

The grandfather rule in section 9802(c) of the Code is not by its terms limited in its application to self-funded church plans. Section 2702 of the Public Health Service Act (PHS Act) imposes nondiscrimination requirements on health insurance issuers offering group health insurance coverage, and those nondiscrimination requirements are generally similar to the nondiscrimination requirements imposed on group health plans

¹ However, church plans are not subject to the similar requirements in Part 7 of Subtitle B of Title I of ERISA or to the similar requirements in Title XXVII of the PHS Act (except for health insurance coverage in connection with a church plan, as discussed below).