

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

[REG-120692-09]

RIN 1545-B170

**Regulations Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and withdrawal of notice of proposed rulemaking.

**SUMMARY:** Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). MHPAEA prohibits group health plans providing mental health or substance use disorder benefits along with medical/surgical benefits from imposing more restrictive financial requirements or treatment limitations with respect to the mental health or substance use disorder benefits than the predominant ones imposed with respect to substantially all medical/surgical benefits. 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 Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations with respect to MHPAEA 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 mental health and substance use disorder parity requirements. The text of those temporary regulations also serves as the text of these proposed regulations. This document also withdraws the notice of proposed rulemaking relating to mental health parity requirements for group health plans that was published on December 22, 1997 (REG-109704-97, 62 FR 66967).

**DATES:** Written or electronic comments and requests for a public hearing must be received by May 3, 2010.**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-120692-09), 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-120692-09), 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-120692-09).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Russ Weinheimer at 202-622-6080; concerning submissions of comments, *Richard.A.Hurst@irs.counsel.treas.gov*, 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 collections 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 collections of information should be received by April 5, 2010. Comments are specifically requested concerning:

- Whether the proposed collections of information are 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 collections 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 collections 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 § 54.9812-1 (see the temporary

regulations published elsewhere in this issue of the **Federal Register**). MHPAEA includes two new disclosure provisions. First, the criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits must be made available in accordance with regulations by the plan administrator to any current or potential participant, beneficiary, or contracting provider upon request. MHPAEA also requires the reason for any denial under a group health plan of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available upon request or as otherwise required by the plan administrator to the participant or beneficiary in accordance with regulations. 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** revise § 54.9812-1T 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.

**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 proposed rule generally applies to employers who provide health coverage through group health plans to employees that include benefits for mental health or substance use disorder conditions. The IRS expects that the rules to reduce the compliance burden imposed on plans and issuers by clarifying definitions and terms contained in the statute and providing examples of acceptable methods to comply with specific provisions. MHPAEA and the regulations under it do not apply to employers with 50 or fewer employees. Moreover, small employers subject to the rule that have more than 50 employees will generally provide any health coverage through insurance or a third-party administrator. The issuers of insurance or other third-party administrators of the health plans, rather than the small employers, will as a practical matter, satisfy the requirements of the rules in order to provide a marketable product. For this reason, the burden imposed by the reporting requirement of the statute and this notice of proposed rulemaking on small entities is expected to be near zero. 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 Russ Weinheimer, 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.

#### **Withdrawal of Proposed Regulations**

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-109704-97) that was published in the **Federal Register** on Monday, December 22, 1997 (62 FR 66967) is withdrawn.

#### **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 54.9812-1 also issued under 26 U.S.C. 9833. \* \* \*

**Par. 2.** Section 54.9812-1 is added to read as follows:

#### **§ 54.9812-1 Parity in mental health and substance use disorder benefits.**

[The text of proposed § 54.9812-1 is the same as the text of § 54.9812-1T published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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