

# Notice of Proposed Rulemaking

## HIPAA Mental Health Parity Act

### REG-109704-97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8741, page 6, the IRS is issuing temporary regulations relating to mental health parity requirements imposed on group health plans. These requirements were added to the Internal Revenue Code by section 1532 of the Taxpayer Relief Act of 1997. The IRS is issuing the temporary 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 relating to mental health parity requirements added by the Mental Health Parity Act of 1996 to 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 new mental health parity 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 March 23, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-109704-97), room 5226, Internal Revenue Service, room 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:DOM:CORP:R (REG-109704-97), 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.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html)

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer, (202) 622-4695; concerning submissions or to request a hearing, Mike Slaughter, 202-622-7180. These are 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 collection of information is in §54.9812-1T (see T.D. 8741). The collection of information is required if a plan

wishes to avail itself of an exemption provided under the statute. 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 in order to obtain the benefit of being exempt from the mental health parity requirement.

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, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 20, 1998. 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 in T.D. 8741);

— 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 in T.D. 8741 add §54.9812-1T to the Miscellaneous Excise Tax Regulations. These 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*

Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is hereby certified that the collection of information referenced in this notice of proposed rulemaking (see §54.9812–1T of the temporary regulations published in T.D. 8741) will not have a significant economic impact on a substantial number of small entities. Employers with 50 or fewer employees are not subject to the law. Moreover, even for employers that are subject to the mental health parity requirements, no collection of information is required unless they qualify for and claim the 1% increased cost exemption. Even for employers subject to the law who claim the exemption, the estimated time for each response is 2 minutes. Thus, for example, an employer with 100 employees in its group health plan that claimed the 1% increased cost exemption, that took advantage of the three-month transitional period provided in the temporary regulations and that received 10 requests to examine the assumptions used in claiming the exemption would incur a total one-time burden of less than 4 hours. At an estimated cost of \$11 per hour, this would result in a one-time cost of less

than \$44. This is not a significant economic impact.

This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive 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. 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 Chief Counsel, Employee Benefits and Exempt Organizations. However, other personnel from the IRS and Treas-

ury 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 U.S. Department of Health and Human Services.

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### *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 is 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 the application of certain limits to mental health benefits.*

[The text of this proposed section is the same as the text of §54.9812 1T published in T.D. 8741.]

*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on December 19, 1997, 8:45 a.m., and published in the issue of the Federal Register for December 22, 1997, 62 F.R. 66967)