

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 54 and 602**

[T.D. 8716]

RIN 1545-AV05

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****29 CFR Part 2590**

RIN 1210-AA54

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Care Financing Administration****45 CFR Parts 146 and 148**

RIN 0938-AI08; RIN 0938-AH75

**Approval of Information Collection Requirements for the Joint Interim Rules for Health Insurance Portability for Group Health Plans, and the Individual Market Health Insurance Reform: Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules**

**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 rules with request for comments; approval of information collection requirements.

**SUMMARY:** On April 8, 1997, the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (Departments) published joint interim rules governing the access, portability and renewability requirements for group health plans and issuers offering group health insurance coverage in connection with a group health plan. The rules implemented changes made to certain provisions of the Internal Revenue Code of 1986 (Code), the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHS Act) enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In the April 8 publication, the Departments submitted the group market information collection requirements, for, among other things, establishing creditable

coverage, notice of special enrollment rights, and notice of pre-existing condition exclusion periods, to the Office of Management and Budget (OMB) for emergency review under the Paperwork Reduction Act of 1995 (PRA 95). In addition, on April 8, 1997 the Department of Health and Human Services submitted the HIPAA individual market information collection requirements to OMB for emergency review under PRA 1995. This document amends the April 8 **Federal Register** documents to properly display the OMB control numbers.

**DATES:** These amendments are effective June 1, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Russ Weinheimer, Internal Revenue Service, at 202-622-4695; Gerald Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N-5647, Washington, DC 20210, at 202-219-4782; John Burke, Department of Health and Human Services, Health Care Financing Administration, at 410-786-1325. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The interim regulations published on April 8, 1997 (62 FR 16894 and 16985), contained distinct information collection requests (ICRs) for the group and individual insurance markets. The ICRs issued by the Department of the Treasury and the Department of Labor apply to employers and group health plans. The ICRs issued by the Department of Health and Human Services apply to health insurance issuers.

**Department of the Treasury and Department of Labor ICRs**

The ICRs on group health plans' obligations regarding Establishing Prior Creditable Coverage and Notice of Enrollment Rights are prescribed by the statute. The ICRs regarding the certification and special enrollment notice obligations of health insurance issuers are addressed separately in the Department of Health and Human Services' ICR.

The first ICR implements statutorily prescribed requirements necessary to establish Prior Creditable Coverage. This is accomplished primarily through the issuance of certificates of prior coverage by group health plans or by service providers with which the group health plans contract in order to provide these documents. In addition this ICR permits the use of a notice that may be used by the plans to meet their obligations in connection with periods of coverage ending during the transition period,

October 1, 1996 through May 31, 1997, saving the respondents both hours and cost during that period. This ICR also covers the requests that certain plans will make regarding additional information they require because they are using the Alternative Method of Crediting Coverage. Finally, this ICR also includes the occasional circumstances where a participant is unable to secure a certificate and needs to provide some supplemental form of documentation in order to establish prior creditable coverage.

The second ICR, Notice of Enrollment Rights, imposes disclosure obligations on plans to inform a participant, at the time of enrollment, of the plan's special enrollment rules.

The third ICR, Notice of Pre-existing Condition Exclusion, concerns the disclosure requirements on those plans that contain pre-existing condition exclusion provisions. This ICR has two components: a notice to all participants at the time of the enrollment stating the terms of the plan's pre-existing condition provisions, the participant's rights to demonstrate creditable coverage, and that the plan or issuer will assist in securing a certificate as necessary; and notice by the plan of its determination that an exclusion period applies to an individual.

**Department of Health and Human Services ICRs**

The Department of Health and Human Services separately issued two Information Collection Requirements. The first one, titled Information Collection Requirements referenced in HIPAA for the Individual Insurance Market, will ensure that the issuers in the individual market will provide individuals with documentation necessary to demonstrate prior creditable coverage. These information collection requirements will also give the States the flexibility to implement State alternative mechanisms to protect HIPAA eligible individuals.

The second information collection requirements, titled Information Collection Requirements referenced in HIPAA for the Group Health Plans, will ensure that the issuers in the group market will provide individuals with documentation necessary to demonstrate prior creditable coverage, and that group health plans notify individuals of their special enrollment rights in the group health insurance market.

**Approval**

OMB reviewed the Department of the Treasury's collection of information collection in accordance with the

Paperwork Reduction Act of 1995 (PRA 95). On May 30, 1997, under OMB control number 1545-1537, OMB approved the information collection requests contained in (1) 26 CFR 54.9801-3T, 54.9801-4T and 54.9801-5T on rules relating to the notices regarding preexisting condition exclusion periods; (2) 26 CFR 54.9801-5T on rules relating to establishing prior coverage; and (3) 26 CFR 54.9801-6T on rules relating to special enrollment periods. These information collection provisions are currently approved until November 30, 1997.

OMB also reviewed the Department of Labor's collection of information requirements in accordance with the PRA 95, 44 U.S.C. chapter 35, and 5 CFR 1320.11. On May 30, 1997, OMB approved the information collection requirements contained in 29 CFR 2590.701-6 for Notice of Special Enrollment Rights under OMB control number 1210-0101. OMB also approved the information collection requirements contained in 29 CFR 2590.701-3, 2590.701-4, and 2590.701-5 for Notice of Preexisting Condition Exclusion under OMB clearance number 1210-0102. In addition, OMB approved the information collection requirements contained in 29 CFR 2590.701-5 for Establishing Prior Creditable Coverage under OMB control number 1210-0103. These information collection provisions are currently approved until December 31, 1997.

Finally, OMB reviewed the Department of Health and Human Services' collection of information requests in accordance with the PRA 95. On May 30, 1997, under OMB control number 0938-0702, OMB approved the information collection requests contained in 45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160 and 146.180 for issuers in the group market on demonstrating prior creditable coverage and notice of special enrollment rights. On the same day, under OMB control number 0938-0703, OMB also approved the information collection requests contained in 45 CFR 148.120, 148.122, 148.124, and 148.128 for issuers in the individual market on demonstrating prior creditable coverage and State alternative mechanisms. These information collection requests are currently approved until December 31, 1997.

**Statutory Authorities**

The Department of the Treasury temporary rule is adopted pursuant to the authority contained in 26 U.S.C. 7805 and in 26 U.S.C. 9806, as added by Section 401 (Pub. L. 104-191, 101 Stat. 1936).

The Department of Labor interim final rule is adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1171, 1194; Section 101, Public L. 104-191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

The Department of Health and Human Services interim final rule is adopted pursuant to the authority contained in Sections 2701 through 2723 of the Public Health Service Act (PHS Act, 42 U.S.C. 300gg, et. seq.), Sections 2741 through 2763 of the PHS Act, and 2791 through 2792 of the PHS Act as amended by HIPAA.

**List of Subjects**

*26 CFR Part 54*

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

*29 CFR Part 2590*

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

*45 CFR Parts 146 and 148*

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

**Internal Revenue Service**

**26 CFR Chapter I**

Accordingly, 26 CFR Part 602 is amended as follows:

**PART 602—[AMENDED]**

1. The authority citation for Part 602 continues to read as follows:

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

2. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

CFR part or section where identified and described	Current OMB control No.
* * * * *	
(c) * * *	
54.9801-3T .....	1545-1537
54.9801-4T .....	1545-1537
54.9801-5T .....	1545-1537
54.9801-6T .....	1545-1537
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**Dale D. Goode,**  
*Federal Register Liaison, Assistant Chief Counsel (Corporate).*

**Pension and Welfare Benefits Administration**

**29 CFR Chapter XXV**

Accordingly, 29 CFR Part 2590 is amended as follows:

**PART 2590—[AMENDED]**

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

**Authority:** 29 U.S.C. 1027, 1059, 1135, 1171, 1194; Sec. 101, Pub. L. 104-191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

2. In § 2590.701-3, by adding a parenthetical at the end of the section to read as follows:

**§ 2590.701-3 Limitations on preexisting condition exclusion period.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1210-0102.)

3. In § 2590.701-4, by adding a parenthetical at the end of the section to read as follows:

**§ 2590.701-4 Rules relating to creditable coverage.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1210-0102.)

4. In § 2590.701-5, by adding a parenthetical at the end of the section to read as follows:

**§ 2590.701-5 Certification and disclosure of previous coverage.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 1210-0102 and 1210-0103.)

5. In § 2590.701-6, by adding a parenthetical at the end of the section to read as follows:

**§ 2590.701-6 Special enrollment periods.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1210-0101.)

Signed at Washington D.C. this 24th day of June, 1997.

**Alan D. Lebowitz,**  
*Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.*

**Health Care Financing Administration**

**45 CFR Subtitle A, Subchapter B**

Accordingly, 45 CFR Parts 146 and 148 are amended as follows:

**PART 146—[AMENDED]**

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

**Authority:** Secs. 2701 through 2763, 2791, and 2792 of the PHS Act, 42 U.S.C. 300gg through 300gg-63, 300gg-91 and 300gg-92.

2. In § 146.111, by adding a parenthetical at the end of the section to read as follows:

**§ 146.111 Limitations on preexisting condition exclusion period.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0702.)

3. In § 146.115, by adding a parenthetical at the end of the section to read as follows:

**§ 146.115 Certification and disclosure of previous coverage.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0702.)

4. In § 146.117, by adding a parenthetical at the end of the section to read as follows:

**§ 146.117 Special enrollment periods.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0702.)

5. In § 146.150, by adding a parenthetical at the end of the section to read as follows:

**§ 146.150 Guaranteed availability of coverage for employers in the group market.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0702.)

6. In § 146.152, by adding a parenthetical at the end of the section to read as follows:

**§ 146.152 Guaranteed renewability of coverage for employers in the group market.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0702.)

7. In § 146.160, by adding a parenthetical at the end of the section to read as follows:

**§ 146.160 Disclosure of information.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0702.)

8. In § 146.180, by adding a parenthetical at the end of the section to read as follows:

**§ 146.180 Treatment of non-Federal governmental plans.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0702.)

**PART 148—[AMENDED]**

9. The authority citation for Part 148 continues to read as follows:

**Authority:** Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg-41 through 300gg-63, 300gg-91 and 300gg-92).

10. In § 148.120, by adding a parenthetical at the end of the section to read as follows:

**§ 148.120 Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0703.)

11. In § 148.122, by adding a parenthetical at the end of the section to read as follows:

**§ 148.122 Guaranteed renewability of individual health insurance coverage.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0703.)

12. In § 148.124, by adding a parenthetical at the end of the section to read as follows:

**§ 148.124 Certification and disclosure of coverage.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0703.)

13. In § 148.128, by adding a parenthetical at the end of the section to read as follows:

**§ 148.128 State flexibility in individual market reforms—alternative mechanisms.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0938-0703.)

Dated: June 26, 1997.

**Edwin J. Glatzel,**

*Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration, Department of Health and Human Services.*

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