

9. In § 164.514, revise paragraph (g) to read as follows:

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

* * * * *

(g) *Standard: Uses and disclosures for activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits.* If a health plan receives protected health information for the purpose of premium rating or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if such health insurance or health benefits are not placed with the health plan, such health plan may only use or disclose such protected health information for such purpose or as may be required by law, subject to the prohibition at § 164.502(a)(3) with respect to genetic information included in the protected health information.

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10. In § 164.520, add a new paragraph (b)(1)(iii)(D) to read as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

- (b) * * *
(1) * * *
(iii) * * *

(D) If a covered entity that is a health plan intends to use or disclose protected health information for underwriting purposes, a statement that the covered entity is prohibited from using or disclosing protected health information that is genetic information of an individual for such purposes.

Dated: June 5, 2009.

Kathleen Sebelius,
Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG-123829-08]

RIN 1545-BI02

Genetic Information Nondiscrimination 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 and final regulations governing the provisions of the Genetic Information Nondiscrimination Act (GINA) prohibiting discrimination based on genetic information for group health plans. The IRS is issuing the temporary and final 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 GINA 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 genetic nondiscrimination requirements. 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 January 5, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-123829-08), 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-123829-08), 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-123829-08).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer at 202-622-6080; concerning submissions of comments, Oluwafumilayo Taylor at (202) 622-7180 (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)). 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 December 7, 2009. 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.

The collection of information is in § 54.9802-3 (see the temporary regulations published elsewhere in this issue of the **Federal Register**). The collection of information is required so that the IRS can be apprised when a group health plan is conducting research with respect to genetic information of plan participants or beneficiaries to ensure that all the requirements of the research exception to GINA are being complied with. The likely respondents are business or other for-profit institutions, and nonprofit institutions. Responses to this collection of information are required if a plan wishes to conduct genetic research with respect to participants or beneficiaries of the plan.

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 a new § 54.9802-3T to the

Miscellaneous Excise Tax Regulations. In the same document, certain conforming changes are also being made to the final regulations under §§ 54.9801-1, 54.9801-2, 54.9802-1, and 54.9831-1. 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). 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 collection 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. GINA requires group health plans claiming the research exception to GINA to notify the Secretary of the Treasury when the exception is being claimed. This notice of proposed rulemaking does not add to the reporting requirement imposed by the statute. Moreover, it is anticipated that very few and only the largest group health plans are likely to claim the

research exception to GINA and thus be subject to the reporting requirement. 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 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) 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 and final 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 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 54.9802-3 also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9802-3 is added to read as follows:

§ 54.9802-3 Additional requirements prohibiting discrimination based on genetic information.

[The text of proposed § 54.9802-3 is the same as the text of § 54.9802-3T published elsewhere in this issue of the **Federal Register**].

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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