**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 54**

**TD 9541**

**RIN 1545-BJ60**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2590**

**RIN 1210-AB44**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**CMS-9992-IFC2**

**45 CFR Part 147**

**RIN 0938-AQ07**

**Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act**

**AGENCIES:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Interim final rules with request for comments.

**SUMMARY**: This document contains amendments to the interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding preventive health services.

**DATES**: Effective date. These interim final regulations are effective on [**OFR: INSERT DATE OF DISPLAY IN FEDERAL REGISTER**].

Comment date. Comments are due on or before [**OFR: INSERT DATE 60 DAYS AFTER DISPLAY IN FEDERAL REGISTER**].

Applicability dates. These interim final regulations generally apply to group health plans and group health insurance issuers on **[OFR: INSERT DATE OF DISPLAY IN FEDERAL REGISTER]**.

**ADDRESSES:** Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. **WARNING**: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210-AB44, by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Email: E-OHPSCA2713.EBSA@dol.gov.

- Mail or Hand Delivery: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: RIN 1210-AB44.

Comments received by the Department of Labor will be posted without change to http://www.regulations.gov and http://www.dol.gov/ebsa, and available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code CMS-9992-IFC2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to **http://www.regulations.gov**. Follow the "Submit a comment" instructions.

2. By regular mail. You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,

Department of Health and Human Services,

Attention: CMS-9992-IFC2,

P.O. Box 8010,

Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,

Department of Health and Human Services,

Attention: CMS-9992-IFC2,

Mail Stop C4-26-05,

7500 Security Boulevard,

Baltimore, MD 21244-1850.

4. By hand or courier. Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

Centers for Medicare & Medicaid Services,

Department of Health and Human Services,

Room 445-G, Hubert H. Humphrey Building,

200 Independence Avenue, SW.,

Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD--

Centers for Medicare & Medicaid Services,

Department of Health and Human Services,

7500 Security Boulevard,

Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-4492 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: http://www.regulations.gov. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1-800-743-3951.

Internal Revenue Service. Comments to the IRS, identified by REG-120391-10, by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

- Mail: CC:PA:LPD:PR (REG-120391-10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

- Hand or courier delivery: Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-120391-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW, Washington, DC from 9 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693-8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622-6080; Robert Imes, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at (410) 786-1565.

***Customer Service Information*:** Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the Department of Labor's website (http://www.dol.gov/ebsa). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) website (http://cciio.cms.gov) and information on health reform can be found at http://www.HealthCare.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Patient Protection and Affordable Care Act, Pub. L. 111-148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Pub. L. 111-152, was enacted on March 30, 2010 (collectively known as the "Affordable Care Act"). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term "group health plan" includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered, with some, mostly minor, changes.

Subtitles A and C of title I of the Affordable Care Act amend the requirements of title XXVII of the PHS Act (changes to which are incorporated into ERISA section 715). The preemption provisions of ERISA section 731 and PHS Act section 2724[2] (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the requirements of part 7 of ERISA and

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[1] The term "group health plan" is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term "health plan," as used in other provisions of title I of the Affordable Care Act. The term "health plan" does not include self-insured group health plans.

[2] Code section 9815 incorporates the preemption provisions of PHS Act section 2724. Prior to the Affordable Care Act, there were no express preemption provisions in chapter 100 of the Code.

title XXVII of the PHS Act, as amended by the Affordable Care Act, are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of the Affordable Care Act. Accordingly, State laws that impose requirements on health insurance issuers that are stricter than the requirements imposed by the Affordable Care Act are not superseded by the Affordable Care Act.

Section 2713 of the PHS Act, as added by the Affordable Care Act and incorporated under section 715(a)(1) of ERISA and section 9815(a)(1) of the Code, specifies that a group health plan and a health insurance issuer offering group or individual health insurance coverage provide benefits for and prohibit the imposition of cost-sharing with respect to:

- Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force (Task Force) with respect to the individual involved.[3]
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (Advisory Committee) with respect to the individual involved. A recommendation of the Advisory Committee is considered to be "in effect" after it has been adopted by the Director of the Centers for Disease Control and Prevention. A recommendation is considered to be for routine use if it appears on the

[3] Under PHS Act section 2713(a)(5), the Task Force recommendations regarding breast cancer screening, mammography, and prevention issued in or around November of 2009 are not to be considered current recommendations on this subject for purposes of PHS Act section 2713(a)(1). Thus, the recommendations regarding breast cancer screening, mammography, and prevention issued by the Task Force prior to those issued in or around November of 2009 (that is, those issued in 2002) will be considered current until new recommendations in this area are issued by the Task Force or appear in comprehensive guidelines supported by HRSA concerning preventive care and screenings for women, which will be commonly known as HRSA's Women's Preventive Services: Required Health Plan Coverage Guidelines.

Immunization Schedules of the Centers for Disease Control and Prevention.

- With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- With respect to women, preventive care and screening provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the Task Force), which will be commonly known as HRSA's Women's Preventive Services: Required Health Plan Coverage Guidelines.

The requirements to cover recommended preventive services without any cost-sharing do not apply to grandfathered health plans.[4] The Departments previously issued interim final regulations implementing PHS Act section 2713; these interim final rules were published in the **Federal Register** on July 19, 2010 (75 FR 41726). For the reasons explained below, the Departments are now issuing an amendment to these interim final rules.

## II. Overview of the Amendment to the Interim Final Regulations

The interim final regulations provided that a group health plan or health insurance issuer must cover certain items and services, without cost-sharing, as recommended by the U.S. Preventive Services Task Force, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the Health Resources and Services Administration. Notably, to the extent not described in the U.S. Preventive Services Task Force recommendations, HRSA was charged with developing comprehensive guidelines for preventive care and screenings with respect to women (i.e., the Women's Preventive Services: Required Health Plan Coverage Guidelines or "HRSA Guidelines"). The interim final regulations also require that changes in the required items and services be implemented no later than plan years

[4] See 26 CFR 54.9815-1251T, 29 CFR 2590.715-1251 and 45 CFR 147.140 (75 FR 34538, June 17, 2010).

(in the individual market, policy years) beginning on or after the date that is one year from when the new recommendation or guideline is issued.

In response to the request for comments on the interim final regulations, the Departments received considerable feedback regarding which preventive services for women should be considered for coverage under PHS Act section 2713(a)(4). Most commenters, including some religious organizations, recommended that HRSA Guidelines include contraceptive services for all women and that this requirement be binding on all group health plans and health insurance issuers with no religious exemption. However, several commenters asserted that requiring group health plans sponsored by religious employers to cover contraceptive services that their faith deems contrary to its religious tenets would impinge upon their religious freedom. One commenter noted that some religious employers do not currently cover such benefits under their group health plan due to their religious beliefs.

The Departments note that PHS Act section 2713(a)(4) gives HRSA the authority to develop comprehensive guidelines for additional preventive care and screenings for women "for purposes of this paragraph." In other words, the statute contemplated HRSA Guidelines that would be developed with the knowledge that certain group health plans and health insurance issuers would be required to cover the services recommended without cost-sharing, unlike the other guidelines referenced in section 2713(a), which pre-dated the Affordable Care Act and were originally issued for purposes of identifying the non-binding recommended care that providers should provide to patients. These HRSA Guidelines exist solely to bind non-grandfathered group health plans and health insurance issuers with respect to the extent of their coverage of certain preventive services for women. In the Departments' view, it is appropriate that HRSA, in issuing these Guidelines, takes into account the effect on the religious beliefs of

certain religious employers if coverage of contraceptive services were required in the group health plans in which employees in certain religious positions participate. Specifically, the Departments seek to provide for a religious accommodation that respects the unique relationship between a house of worship and its employees in ministerial positions. Such an accommodation would be consistent with the policies of States that require contraceptive services coverage, the majority of which simultaneously provide for a religious accommodation.

In light of the above, the Departments are amending the interim final rules to provide HRSA additional discretion to exempt certain religious employers from theGuidelines where contraceptive services are concerned. The amendment to the interim final rules provides HRSA with the discretion to establish this exemption. Consistent with most States that have such exemptions, as described below, the amended regulations specify that, for purposes of this policy, a religious employer is one that: (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization under section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) refer to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order. The definition of religious employer, as set forth in the amended regulations, is based on existing definitions used by most States that exempt certain religious employers from having to comply with State law requirements to cover contraceptive services. We will be accepting comments on this definition as well as alternative definitions, such as those that have been developed under Title 26 of the United States Code. The definition set forth here is intended to reasonably balance the extension of any coverage of contraceptive services under the HRSA Guidelines to as many women as possible, while

respecting the unique relationship between certain religious employers and their employees in certain religious positions. The change in policy effected by this amendment to these interim final rules is intended solely for purposes of PHS Act section 2713 and the companion provisions of ERISA and the Internal Revenue Code.

Because HRSA's discretion to establish an exemption applies only to group health plans sponsored by certain religious employers and group health insurance offered in connection with such plans, health insurance issuers in the individual health insurance market would not be covered under any such exemption.

**III. Interim Final Regulations and Waiver of Delay of Effective Date**

Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act authorize the Secretaries of the Treasury, Labor, and HHS (collectively, the Secretaries) to promulgate any interim final rules that they determine are appropriate to carry out the provisions of chapter 100 of the Code, part 7 of subtitle B of title I of ERISA, and part A of title XXVII of the PHS Act, which include PHS Act sections 2701 through 2728 and the incorporation of those sections into ERISA section 715 and Code section 9815. The amendments promulgated in this rulemaking carry out the provisions of these statutes. Therefore, the foregoing interim final rule authority applies to these amendments.

Under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), while a general notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of regulations, an exception is made when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The provisions of the APA that ordinarily require a notice of proposed rulemaking do

not apply here because of the specific authority to issue interim final rules granted by section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act.

Even if the APA requirements for notice and comment were applicable to these regulations, they have been satisfied. This is because the Secretaries find that providing for an additional opportunity for public comment is unnecessary, as the July 19, 2010 interim final rules implementing section 2713 of the PHS Act provided the public with an opportunity to comment on the implementation of the preventive services requirements in this provision, and the amendments made in these interim final rules in fact are based on such public comments. Specifically, commenters expressed concerns that HRSA-supported guidelines issued under section 2713(a)(4) that included coverage of contraceptive services could impinge upon the religious freedom of certain religious employers. The flexibility that is afforded under these amendments is being provided to HRSA in order to allow HRSA the discretion to accommodate, in a balanced way, as discussed above, these commenter concerns.

In addition, the Departments have determined that an additional opportunity for public comment would be impractical and contrary to the public interest. The requirement in section 2713(a)(4) that preventive services supported by HRSA be provided without cost-sharing took effect at the beginning of the first plan or policy year beginning on or after September 23, 2010. At that time, however, HRSA had not issued any such guidelines. Under the July 19, 2010 interim final rules, group health plans and insurance issuers do not have to begin covering preventive services supported in HRSA guidelines until the first plan or policy year that begins one year after the guidelines are issued. Thus, while the law requiring coverage of recommended women's preventive health services was enacted on March 23, 2010, and has been in effect since September 23, 2010, no such guidelines have yet been issued, and it will be at least a full year

after they are issued before group health plans and issuers will be required to start covering preventive services recommended in the guidelines without cost sharing.

The July 19, 2010 interim final rules indicated that HRSA expected to issue guidelines by August 1, 2011. After considering public comments raising the issue addressed in these amendments, however, the Departments determined that HRSA should be granted the discretion to address the commenter concerns at issue prior to issuing guidelines under section 2713(a)(4). Many college student policy years begin in August and an estimated 1.5 million young adults are estimated to be covered by such policies.[5] Providing an opportunity for public comment as described above would mean that the guidelines could not be issued until after August of 2011. This delay would mean that many students could not benefit from the new prevention coverage without cost-sharing following from the issuance of the guidelines until the 2013-14 school year, as opposed to the 2012-13 school year. Similarly, 2008 data from the Department of Labor indicate that over 4 million Americans have ERISA group health plan coverage that starts in August or September; they too would experience over a year's delay in the receipt of the new benefit if the public comment period delayed the issuance of the guidance for over a month. The Departments have determined that such a delay in implementation of the statutory requirement that women receive vital preventive services without cost-sharing would be contrary to the public interest because it could result in adverse health consequences that may not otherwise have occurred.

While the Departments have determined that, even if the APA were applicable, issuing these regulations in proposed form, so they would not become effective until after public comment, would be contrary to the public interest in the case of these amendments, the

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[5] Department of Health and Human Services, Notice of Proposed Rulemaking on Student Health Insurance Coverage (76 FR 7767, February 22, 2011),

Departments are issuing these amendments as interim final rules so as to provide the public with an opportunity for public comment on these amendments.

The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause why the effective date should not be delayed, and the agency incorporates a statement of the findings and its reasons in the rule issued.

As indicated above, many college student policy years begin in August. Delaying the effective date of this amendment by 30 days would mean that the HRSA guidelines could not be issued until after August of 2011. This delay would mean many students could not benefit from the new prevention coverage without cost-sharing following from the issuance of the guidelines until the 2013-14 school year, as opposed to the 2012-13 school year. As discussed above, all other participants, beneficiaries and enrollees in plans or policies with a plan or a policy year beginning in the months between August 1 and whenever a final rule would be published should the Departments provide a pre-promulgation opportunity for public comment would face a similar one-year delay in receiving these important health benefits. The Departments have determined that such a delay in implementation of the statutory requirement that women receive vital preventive services without cost-sharing would be impracticable and contrary to the public interest because it could result in adverse health consequences that may not otherwise have occurred. Therefore, the Departments are waiving the 30-day delay in effective date of these amendments.

## IV. Economic Impact and Paperwork Burden

A. Executive Orders 13563 and 12866-Department of Labor and Department of Health and Human Services

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

1. Need for Regulatory Action

As stated earlier in this preamble, the Departments previously issued interim final regulations implementing PHS Act section 2713 that were published in the **Federal Register** on July 19, 2010 (75 FR 41726). Comments received in response to the interim final regulations raised the issue of imposing on certain religious employers through binding guidelines the requirement to cover contraceptive services that would be in conflict with the religious tenets of the employer. The Departments have determined that it is appropriate to amend the interim final rules to provide HRSA the discretion to exempt from its guidelines group health plans maintained by certain religious employers where contraceptive services are concerned.

2. Anticipated Effects

The Departments expect that this amendment will not result in any additional significant burden or costs to the affected entities.

B. Special Analyses—Department of the Treasury

Notwithstanding the determinations of the Department of Labor and Department of Health and Human Services, for purposes of the Department of the Treasury, it has been

determined that this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the APA (5 U.S.C. chapter 5) does not apply to these interim final regulations. For the applicability of the RFA, refer to the Special Analyses section in the preamble to the cross-referencing notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

C. Paperwork Reduction Act

As stated in the previously issued interim final regulations, this rule is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502 (11).

## V. Statutory Authority

The Department of the Treasury temporary regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor interim final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161-1168, 1169, 1181-1183, 1181 note, 1185, 1185a, 1185b, 1185c, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L.104-191, 110 Stat. 1936; sec. 401(b), Pub. L. 105-200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110-343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111-148, 124 Stat. 119, as amended by Pub. L. 111-152, 124 Stat. 1029; Secretary of Labor's Order 3-2010, 75 FR 55354 (September 10, 2010).

The Department of Health and Human Services interim final regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 USC 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

**List of Subjects**

26 CFR Part 54

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

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 147

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

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

26 CFR Chapter 1

Accordingly, 26 CFR Part 54 is amended as follows:

PART 54--PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 continues to read as follows:

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

Par. 2. Section 54.9815-2713T is amended by revising paragraph (a)(1)(iv) to read as follows:

§54.9815-2713T Coverage of preventive health services (temporary).

(a) * * *

(1) * * *

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services Administration and developed in accordance with 45 CFR 147.130(a)(1)(iv).

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**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

29 CFR Chapter XXV

29 CFR Part 2590 is amended as follows:

**PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS**

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

**Authority**:

29 U.S.C. 1027, 1059, 1135, 1161-1168, 1169, 1181-1183, 1181 note, 1185, 1185a, 1185b, 1185c, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L.104-191, 110 Stat. 1936; sec. 401(b), Pub. L. 105-200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110-343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111-148, 124 Stat. 119, as amended by Pub. L. 111-152, 124 Stat. 1029; Secretary of Labor's Order 3-2010, 75 FR 55354 (September 10, 2010).

Subpart C—Other Requirements

2. Section 2590.715-2713 is amended by revising paragraph (a)(1)(iv) to read as follows:

**§ 2590.715-2713 Coverage of preventive health services.**

(a) * * *

(1) * * *

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services Administration and developed in accordance with 45 CFR 147.130(a)(1)(iv).

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 147 as follows:

**PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS**

1. The authority citation for part 147 continues to read as follows:

**Authority:** 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 USC 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

2. Section 147.130 is amended by revising paragraph (a)(1)(iv) to read as follows:

**§ 147.130 Coverage of preventive health services.**

(a) * * *

(1) * * *

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services Administration.

(A) In developing the binding health plan coverage guidelines specified in this paragraph (a)(1)(iv), the Health Resources and Services Administration shall be informed by evidence and may establish exemptions from such guidelines with respect to group health plans established or maintained by religious employers and health insurance coverage provided in connection with group health plans established or maintained by religious employers with respect to any requirement to cover contraceptive services under such guidelines.

(B) For purposes of this subsection, a "religious employer" is an organization that meets all of the following criteria:

(1) The inculcation of religious values is the purpose of the organization.

(2) The organization primarily employs persons who share the religious tenets of the organization.

(3) The organization serves primarily persons who share the religious tenets of the organization.

(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

*  *  *  *  *

Steven T. Miller
Deputy Commissioner for Services and Enforcement,
Internal Revenue Service.

Approved: July 28, 2011

Emily S. McMahon
Acting Assistant Secretary of the Treasury (Tax Policy).

Signed this 29th day of July, 2011.

Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
Department of Labor

OCIIO-9992-IFC2

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare--Hospital Insurance; and Program No. 93.774, Medicare--Supplementary Medical Insurance Program)

Dated: July 28, 2011

**Donald M. Berwick,**

Administrator,

Centers for Medicare & Medicaid Services.

Approved: July 28, 2011

**Kathleen Sebelius,**

Secretary,

Department of Health and Human Services.

**BILLING CODE 4120-01-P**

**[FR Doc. 2011-19684 Filed 08/01/2011 at 8:45 am; Publication Date: 08/03/2011]**