

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 54****DEPARTMENT OF LABOR****Pension and Welfare Benefits
Administration****29 CFR Part 2590****DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Health Care Financing Administration****45 CFR Subtitle A, Parts 144 and 146****Health Insurance Portability**

AGENCY: Office of Tax Policy and Internal Revenue Service, Treasury; Pension and Welfare Benefits Administration, Labor; and Health Care Financing Administration, HHS (the Departments).

ACTION: Solicitation of comments on interim rule.

SUMMARY: In response to interim regulations published on April 8, 1997, the Departments have received comments from the public on a number of issues arising under the portability, access, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Departments are interested in receiving further comments reflecting the experience that interested parties have had with the interim regulations.

DATES: The Departments have requested that comments be submitted on or before January 25, 2000.

ADDRESSES: For convenience, written comments should be submitted with a signed original and 3 copies to the Health Care Financing Administration (HCFA) at the address specified below. HCFA will provide copies to each of the Departments for their consideration. All comments will be available for public inspection in their entirety. Comments should be sent to: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-2056-NC, P.O. Box 9013, Baltimore, MD 21244-9013.

If you prefer, you may deliver a signed original and 3 copies of your written comments to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

or

Room C5-16-03, 7500 Security Boulevard, Baltimore, Maryland.

Comments may also be submitted electronically to the following e-mail address: HIPAAComments@hcfa.gov. E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated into the text of the e-mail message itself in case of any difficulty in accessing attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, comments by facsimile (FAX) transmission cannot be accepted. In commenting, please refer to file code HCFA-2056-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room 309-G of the Department of Health and Human Service's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

Upon receipt from HCFA, the Department of Labor will make all comments available for public inspection and copying in their entirety. All comments received by the Department of Labor will be available for public inspection and copying at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW, Washington, DC 20210, on Monday through Friday of each week from 8:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner, Department of Labor, Pension and Welfare Benefits Administration, Health Care Task Force, at (202) 219-7006 (not a toll-free number); Russ Weinheimer, Internal Revenue Service, at (202) 622-4695 (not a toll-free number); or Danielle Noll, Health Care Financing Administration, at 410-786-1565 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Customer Service Information**

To assist consumers and the regulated community, the Departments have issued questions and answers concerning HIPAA. Individuals interested in obtaining a copy of the Department of Labor's publication "Recent Changes in Health Care Law" may call a toll free number, 800-998-7542, or access the publication on-line at www.dol.gov/dol/pwba, the Department of Labor's website.

Questions and answers pertaining to HIPAA are also available on-line at www.hcfa.gov/hipaa/hipaahm.htm (HCFA's website). The IRS publication "Deciding Whether to Elect COBRA Health Care Continuation Coverage After the Enactment of HIPAA" is available on the IRS's website at <http://www.irs.ustreas.gov/prod/news/index.html>. Copies of the interim rules under HIPAA, as well as notices and press releases related to HIPAA and other recently enacted health care laws, are also available at the above referenced websites.

Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted on August 21, 1996 (Public Law 104-191). HIPAA amended the Internal Revenue Code of 1986 (Code), the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHS Act) to provide for, among other things, improved portability and continuity of health coverage including group health plan coverage provided in connection with employment and other coverage in the group and the individual insurance markets. Health coverage is regulated in part by the Federal government, through the Code, ERISA, the PHS Act and other Federal provisions, and in part by the States.

The portability, access, and renewability provisions of HIPAA are set forth in Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act (referred to below as the HIPAA portability provisions). The HIPAA portability provisions are designed to improve the availability and portability of health coverage by limiting exclusions for preexisting conditions and providing credit for prior coverage, guaranteeing availability of health coverage for small employers, prohibiting discrimination against employees and dependents based on health status, and guaranteeing renewability of health coverage for employers and individuals. The HIPAA portability provisions also include rules that guarantee access to individual coverage for people who lose their group coverage. These provisions also set forth requirements imposed on health insurance issuers. Pursuant to sections 101(g)(4), 102(c)(4), and 401(c)(4) of HIPAA, the Departments issued interim regulations made available on April 1, 1997 (published in the **Federal Register** on April 8, 1997) (62 FR 16894) to carry out these provisions, and are in the process of updating those regulations.

Comments

In response to the interim regulations issued in April of 1997, comments have been received from the public on a number of issues arising under the HIPAA portability provisions. Further comments on the HIPAA portability provisions are welcome, including comments concerning, for example, certificates of creditable coverage, limitations on preexisting condition exclusion periods, special enrollment, excepted benefits, guaranteed availability and renewability of coverage, and individual market requirements. The Departments are interested in comments reflecting the experience of group health plans, health insurance issuers, States, individuals, and other interested parties in complying with or enforcing HIPAA's statutory and regulatory requirements, or in obtaining the protections provided by these provisions. With respect to HIPAA's nondiscrimination provisions, the Departments expect to publish comprehensive regulations shortly and comments will be solicited separately in connection with that rulemaking. In order to quantify the costs and benefits associated with the major provisions of HIPAA and the interim rule, the Departments are interested in comments, studies, surveys, or reports on these costs and benefits and why and how they arise. For benefits, areas of interest include the impact HIPAA has had on: "job lock," in which the risk of losing health care coverage discourages

workers from changing jobs; health coverage—whether it has been expanded and whether lapses in health coverage have become less frequent and shorter in duration; and access to health coverage, particularly in light of HIPAA's nondiscrimination and guaranteed issue provisions. In terms of costs, areas of interest include the impact HIPAA has had on administrative costs, claims costs, and group and individual premiums. In addition, comments are sought regarding other changes to group health plans resulting from HIPAA, as well as the experience with State implementation of alternative mechanisms in the individual health insurance market.

In addition, a recent General Accounting Office (GAO) report contained a recommendation that the model certificate of creditable health plan coverage should more explicitly inform consumers of their rights under HIPAA.¹ The GAO recommended that, at a minimum, the model certificate should inform consumers about appropriate contacts for additional information about HIPAA, and highlight key provisions and restrictions, including: (1) The limits on preexisting condition exclusion periods and the guaranteed renewability of all health coverage; (2) the reduction or elimination of preexisting condition

¹ *Private Health Insurance: Progress and Challenges in Implementing 1996 Federal Standards* (HEHS-99-100, May 1999).

exclusion periods for employees changing jobs; (3) the prohibition against excluding an individual from an employer health plan on the basis of one or more health factors; and (4) the guarantee of access to insurance products for certain individuals losing group health coverage and the restrictions placed on that guarantee. In light of the GAO's recommendation, the Departments are interested in comments on how best to improve the model certificate of creditable coverage under HIPAA.

Signed at Washington, DC this 5th day of August 1999.

J. Mark Iwry,

Benefits Tax Counsel, Department of the Treasury.

Signed at Washington, DC this 5th day of August 1999.

Nancy J. Marks,

Acting Associate Chief Counsel, Employee Benefits and Exempt Organizations, Internal Revenue Service, Department of the Treasury.

Signed at Washington, DC this 19th day of July 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

Signed at Washington, DC this 15th day of September 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration, Department of Health and Human Services.

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