Federal Register

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Part IV

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590
Mental Health Parity; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AA62

Mental Health Parity

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final amendment to regulation.

SUMMARY: This document contains an interim final amendment to modify the sunset date of interim final regulations under the Mental Health Parity Act (MHPA) to be consistent with legislation passed during the 108th Congress.

DATES: *Effective date.* The interim final amendment is effective December 19, 2003.

Applicability dates. The requirements of the interim final amendment apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan beginning December 19, 2003. The MHPA interim final amendment extends the sunset date from December 31, 2003 to December 31, 2004. Pursuant to the extended sunset date, MHPA requirements apply to benefits for services furnished before December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Lisa Campbell, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335.

SUPPLEMENTARY INFORMATION:

Customer Service Information: Individuals interested in obtaining additional information on the Mental Health Parity Act and other health care laws may request copies of Department of Labor publications concerning changes in health care law by calling the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272), or access the publications on-line at *http://www.dol.gov/ebsa*, the Department of Labor's Web site. Information on the Mental Health Parity Act and other health care laws is also available on the Department of Labor's interactive Web pages, Health *E*laws (*http://www.dol.gov/elaws/ebsa/health*).

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 1080).

The provisions of MHPA, as originally enacted, are set forth in Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act.[1] The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under state law.

B. Overview of MHPA

The MHPA provisions set forth in section 712 of ERISA apply to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions applied to benefits for services furnished before September 30, 2001. On December 22, 1997, the Departments of Labor, the Treasury, and Health and Human Services issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107–116, 115 Stat. 2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education.[2] This legislation extended MHPA's original sunset date under ERISA, the Code, and the PHS Act, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002.

On March 9, 2002, President Bush signed H.R. 3090, the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21), that included an amendment to section 9812 of the Code (the mental health parity provisions). This legislation further extended MHPA's original sunset date under the Code to December 31, 2003.

On September 27, 2002, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (67 FR 60859). The interim final amendment included the new statutory sunset date under H.R. 3061, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002. The Department made the effective date of this interim final amendment to the regulations September 30, 2001.

On December 2, 2002, President Bush signed H.R. 5716, the Mental Health Parity Reauthorization Act of 2002 (Pub. L. 107–313, 116 Stat. 2457), an amendment to section 712 of ERISA and Section 2705 of the PHS Act. This legislation further extended MHPA's original sunset date under ERISA and the PHS Act to December 31, 2003. On April 14, 2003, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (68 FR 18048). The interim final amendment included the new statutory sunset date under H.R. 5716, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2003.

On December 19, 2003, President Bush signed S. 1929, the Mental Health Parity Reauthorization Act of 2003 (Pub. L. 108–197, 117 Stat. 2998), an amendment to section 712 of ERISA and Section 2705 of the PHS Act. This legislation further extends MHPA's original sunset date under ERISA and the PHS Act to December 31, 2004. Like MHPA, this amendment to MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.[3] As

[1] Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191.

[2] During the 107th Congress, legislation was passed by the Senate to substantively amend and expand the provisions of MHPA already in place. This legislation was offered as an amendment to the provisions of H.R. 3061. The Conference Report accompanying the underlying provisions of H.R. 3061 states that instead of the amendment proposed by the Senate, the amendment to MHPA contained in H.R. 3061 extends the original sunset date of MHPA, so that MHPA's provisions apply to benefits for services furnished before December 31, 2002. H.R. Rep. 107–342, at 170 (2001).

[3] The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term ''small employer'' is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has developed this amendment of the interim final regulations, in consultation with the Department of Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date. The Department is also making conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date.

Since the extension of this sunset date is not discretionary, this amendment to the MHPA regulations is promulgated on an interim final basis pursuant to Section 734 of ERISA. This interim final amendment is also promulgated pursuant to Section 553(d)(3) of the Administrative Procedure Act, allowing for regulations to become effective immediately for good cause.

C. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is not a ''significant regulatory action'' within the meaning of the Executive Order. This action is an amendment to the interim final regulations and merely extends the regulatory sunset date to conform to the new statutory sunset date added by S. 1929.

D. Paperwork Reduction Act

The information collection provisions of MHPA incorporated in the Department's interim final rules are currently approved under OMB control numbers 1210–0105 (Notice to Participants and Beneficiaries and Federal Government of Electing One Percent Increased Cost Exemption), and 1210–0106 (Calculation and Disclosure of Documentation of Eligibility for Exemption). These information collection requests are approved through November 30, 2004 and October 31, 2004, respectively. Because no substantive or material change is made to the approved information collection provisions in connection with this interim final amendment, no submission for continuing OMB approval is required or made at this time.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Because this amendment to the interim final regulations is being published on an interim final basis, without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), as well as Executive Order 12875, this interim final amendment does not include any federal mandate that may result in expenditures by state, local, or tribal governments, and does not include mandates that may impose an annual expenditure of $100 million or more on the private sector.

G. Congressional Review Act

This interim final amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and has been transmitted to Congress and the Comptroller General for review. This amendment to the interim final regulations is not a major rule, as that term is defined by 5 U.S.C. 804.

H. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the states, the relationship between the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This interim final amendment does not have federalism implications as it only conforms the regulatory sunset date to the new statutory sunset date added by S. 1929.

List of Subjects in 29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

Employee Benefits Security Administration

■ 29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

■ 1. The authority citation for part 2590 is amended to read:

Authority: 29 U.S.C. 1027, 1059, 1135, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, sec. 101(g), Pub. L. 104–191, 101 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

§2590.712 [Amended]

■ 2. Amend § 2590.712 (f)(1), (g)(2), and (i) to remove the date ''December 31, 2003'' and add in its place the date ''December 31, 2004.

Signed at Washington, DC this 16th day of January, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–1517 Filed 1–23–04; 8:45 am]

BILLING CODE 4510–29–P