

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–132554–08) that was published in the **Federal Register** on Tuesday, October 19, 2010 (75 FR 64197) providing guidance relating to certain provisions of the Internal Revenue Code that apply to hybrid defined benefit pension plans.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu, Lauson C. Green, or Linda S. F. Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 411 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–132554–08) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–132554–08), which was the subject of FR Doc. 2010–25942, is corrected as follows:

§ 1.411(b)(5)–1 [Corrected]

On page 64214, column 3, § 1.411(b)(5)–1(e)(2)(iii)(A), line 19, the language “change the rate of interest crediting” is corrected to read “change the interest crediting rate”.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2010–32538 Filed 12–27–10; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

Request for Information Regarding Value-Based Insurance Design in Connection With Preventive Care Benefits

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Office of Consumer Information and Insurance Oversight, Department of Health and Human Services.

ACTION: Request for information.

SUMMARY: This document contains a request for information on how group health plans and health insurance issuers can employ value-based insurance design in the coverage of recommended preventive services.

DATES: Comments are due on or before February 28, 2011.

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 may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by VBID, by one of the following methods:

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

- *E-mail:* E-OHPSCA-VBID.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: VBID.

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 HHS–OS–2010–002. 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):

- *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions under the “More Search Options” tab.

- *By regular mail.* You may mail written comments to the following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: HHS–OS–2010–002, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

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

- *By express or overnight mail.* You may send written comments to the following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: HHS–OS–2010–002, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

- *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the following address: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: HHS–OS–2010–002, 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 OCIO 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.)

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

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 VBID, 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 VBID), 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 VBID), 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; Lisa Campbell, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, at (301) 492-4100.

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 Web site (<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) Web site (http://www.cms.hhs.gov/HealthInsReformforConsumers/01_Overview.asp) and the Office of Consumer Information & Insurance Oversight (OCIO) Web site (<http://www.hhs.gov/OCIO>).

SUPPLEMENTARY INFORMATION:

I. Background

Section 1001 of the Patient Protection and Affordable Care Act (the Affordable Care Act) added a new section 2713 to the Public Health Service Act (the PHS Act), relating to preventive care. The Affordable Care Act also added a new section 715(a)(1) to the Employee Retirement Income Security (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) incorporating the provisions of part A of title XXVII of the PHS Act (including PHS Act section 2713) into ERISA and the Code, making section 2713 applicable to group health plans and health insurance coverage in connection with group health plans. The Departments of the Treasury, Labor, and Health and Human Services (the Departments) published interim final regulations implementing the provisions of PHS Act section 2713 on July 19, 2010, at 75 FR 41726.

Section 2713 of the PHS Act and the Departments' implementing regulations apply to group health plans and health insurance issuers offering group or individual health insurance coverage that is not grandfathered.¹ These provisions require such plans and issuers to provide coverage for recommended preventive services, without imposing cost-sharing requirements.² The complete list of items and services that are required to be covered under these interim final regulations can be found at <http://www.HealthCare.gov/center/regulations/prevention.html>.

The interim final regulations clarify that, with respect to a plan or health insurance coverage that has a network of providers, a plan or issuer is not required to provide coverage for recommended preventive services

¹ For information on whether a particular group health plan or health insurance coverage is a grandfathered plan, see Affordable Care Act section 1251 and the Departments' implementing regulations at 75 FR 34538 (as amended by 75 FR 70114).

² In general, the recommended preventive services are: (1) 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; (2) 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 with respect to the individual involved; (3) 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); and (4) with respect to women, evidence-informed preventive care and screening provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the Task Force).

delivered by an out-of-network provider. Such a plan or issuer may also impose cost-sharing requirements for recommended preventive services delivered by an out-of-network provider.

The interim final regulations also provide that if a recommendation or guideline for a recommended preventive service does not specify the frequency, method, treatment, or setting for the provision of that service, the plan or issuer may use reasonable medical management techniques to determine any coverage limitations. The use of reasonable medical management techniques allows plans and issuers to adapt these recommendations and guidelines for coverage of specific items and services where cost sharing must be waived. Thus, a plan or issuer may rely on established techniques and the relevant evidence base to determine the frequency, method, treatment, or setting for which a recommended preventive service will be available without cost-sharing requirements to the extent not specified in a recommendation or guideline.

The preamble to the interim final regulations also invited comments on value-based insurance designs (VBID). In general, VBID includes the provision of information and incentives for consumers that promote access to and use of higher value providers, treatments, and services. The preamble stated:

The Departments recognize the important role that value-based insurance design can play in promoting the use of appropriate preventive services. These interim final regulations, for example, permit plans and issuers to implement designs that seek to foster better quality and efficiency by allowing cost-sharing for recommended preventive services delivered on an out-of-network basis while eliminating cost-sharing for recommended preventive health services delivered on an in-network basis. The Departments are developing additional guidelines regarding the utilization of value-based insurance designs by group health plans and health insurance issuers with respect to preventive benefits. The Departments are seeking comments related to the development of such guidelines for value-based insurance designs that promote consumer choice of providers or services that offer the best value and quality, while ensuring access to critical, evidence-based preventive services.

In response to the solicitation of comments, the Departments received about 25 comment letters regarding VBID. Many commenters cited the importance of using VBID to help control rising health care costs and promote better health care outcomes. A number of other commenters raised

concerns about VBID becoming a barrier to access to services. Some also questioned how value would be assessed and whether that assessment would include measures such as quality and effectiveness, not solely measures of cost.

The Departments remain interested in promoting high-value, clinically effective, evidence-based preventive care. (Outside the context of preventive care, the coverage requirements and cost-sharing prohibition of PHS Act section 2713 are not applicable.) The Departments are issuing the fifth in a series of Affordable Care Act Implementation Frequently Asked Questions (FAQs), which identifies certain health plan design elements that are considered to comply with PHS Act section 2713. To inform future guidance, this RFI solicits additional information on specific examples and best practices of VBID for recommended preventive services, as well as data used to support and inform VBID benefit design, measurement, and evaluation in the context of recommended preventive services.

II. Solicitation of Comments

A. Comments Regarding Regulatory Guidance

This RFI requests comments generally on VBID in the context of recommended preventive services, as well as specifically on the following questions:

1. What specific plan design tools do plans and issuers currently use to incentivize patient behavior, and which tools are perceived as most effective (for example, specific network design features, targeted cost-sharing mechanisms)? How is effective defined?

2. Do these tools apply to all types of benefits for preventive care, or are they targeted towards specific types of conditions (for example, diabetes) or preventive services treatments (for example, colonoscopies, scans)?

3. What considerations do plans and issuers give to what constitutes a high-value or low-value treatment setting, provider, or delivery mechanism? What is the threshold of acceptable value? What factors impact how this threshold varies between services? What data are used? How is quality measured as part of this analysis? What time frame is used for assessing value? Are the data readily available from public sources, or are they internal and/or considered proprietary?

4. What data do plans and issuers use to determine appropriate incentive models and/or amounts in steering patients towards high-value and/or away from low-value mechanisms for

delivery of a given recommended preventive service?

5. How often do plans and issuers re-evaluate data and plan design features? What is the process for re-evaluation? Specifically:

a. How is the impact of VBID on patient utilization monitored?

b. How is the impact of VBID on patient out-of-pocket costs monitored?

c. How is the impact of VBID on health plan costs monitored?

d. What factors are considered in evaluating effectiveness (for example, cost, quality, utilization)?

6. Are there particular instances in which a plan or issuer has decided not to adopt or continue a particular VBID method? If so, what factors did they consider in reaching that decision?

7. What are the criteria for adopting VBID for new or additional preventive care benefits or treatments?

8. Do plans or issuers currently implement VBIDs that have different cost-sharing requirements for the same service based on population characteristics (for example, high vs. low risk populations based on evidence)?

9. What would be the data requirements and other administrative costs associated with implementing VBIDs based on population characteristics across a wide range of preventive services?

10. What mechanisms and/or safety valves, if any, do plans and issuers put in place or what data are used to ensure that patients with particular comorbidities or special circumstances, such as risk factors or the accessibility of services, receive the medically appropriate level of care? For example, to the extent a low-cost alternative treatment is reasonable for some or the majority of patients, what happens to the minority of patients for whom a higher-cost service may be the only medically appropriate one?

11. What other factors, such as ensuring adequate access to preventive services, are considered as part of a plan or issuer's VBID strategy?

12. How are consumers informed about VBID features in their health coverage?

13. How are prescribing physicians/ other network providers informed of VBID features and/or encouraged to steer patients to value based services and settings?

14. What consumer protections, if any, need to be in place to ensure adequate access to preventive care without cost sharing, as required under PHS Act section 2713?

B. Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act

Executive Order 12866 (EO 12866) requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. These costs and benefits are not limited to the Federal government, but pertain to the affected public as a whole. Under Executive Order 12866, a determination must be made whether implementation of this rule will be economically significant. A rule that has an annual effect on the economy of \$100 million or more is considered economically significant.

In addition, the Regulatory Flexibility Act (RFA) may require the preparation of an analysis of the impact on small entities of proposed rules and regulatory alternatives. An analysis under the Regulatory Flexibility Act must generally include, among other things, an estimate of the number of small entities subject to the regulations (for this purpose, plans, employers, and issuers and, in some contexts small governmental entities), the expense of the reporting, recordkeeping, and other compliance requirements (including the expense of using professional expertise), and a description of any significant regulatory alternatives considered that would accomplish the stated objectives of the statute and minimize the impact on small entities. For this purpose, the Departments consider a small entity to be an employee benefit plan with fewer than 100 participants.

The Paperwork Reduction Act (PRA) requires an estimate of how many respondents will be required to comply with any "collection of information" requirements contained in regulations and how much time and cost will be incurred as a result. A collection of information includes recordkeeping, reporting to governmental agencies, and third-party disclosures.

The Departments are requesting comments that may contribute to the analyses that will be performed under these requirements, both generally and with respect to the following specific areas:

1. What costs and benefits are associated with expanded use of VBID methods? How do costs and benefits vary among different types of preventive screenings, lifestyle interventions, medications, immunizations, and diagnostic tests?

2. What policies, procedures, practices and disclosures of group

health plans and health insurance issuers would be impacted by expanded use of VBIID methods? What direct or indirect costs and benefits would result? Which stakeholders will be impacted by such benefits and costs?

3. What impact would expanded use of VBIID methods have on small employers or small plans? Are there unique costs or benefits for small plans? What special considerations, if any, should the Departments take into account for small employers or small plans?

Signed at Washington, DC on December 20, 2010.

Nancy J. Marks,

Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, Internal Revenue Service, Department of the Treasury.

Signed at Washington, DC on December 21, 2010.

George H. Bostick

Benefits Tax Counsel, Department of the Treasury.

Signed at Washington, DC on December 16, 2010.

Phyllis C. Borzi

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Dated: December 21, 2010.

Jay Angoff

Director, Office of Consumer Information and Insurance Oversight.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 182

[DOD-2009-OS-0038; RIN 0790-A154]

Defense Support of Civilian Law Enforcement Agencies

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements 32 CFR part 185 and legislation concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement efforts, including responses to civil disturbances.

DATES: Comments must be received by February 28, 2011.

ADDRESSES: You may submit comments, identified by docket number and or RIN

number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Tom LaCrosse, 703-697-5822.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 182 does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 182 does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 182 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures and

assigns responsibilities within DoD for assisting civilian law enforcement agencies, therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 182 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 182 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 182

Armed forces, Law enforcement.

Accordingly, 32 CFR part 182 is proposed to be added to read as follows:

PART 182—DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES

Sec.

- 182.1 Purpose.
- 182.2 Applicability and scope.
- 182.3 Definitions.
- 182.4 Policy.
- 182.5 Responsibilities.
- 182.6 Procedures.

Authority: Legal authorities include title 10 U.S.C. 113, 331-334, 371-382, 2576, and 2667; title 14 U.S.C. 141; title 16 U.S.C. 23, 78, 593, and 1861; title 18 U.S.C. 112, 351, 831, 1116, 1385, and 1751; title 22 U.S.C. 408, 461-462; title 25 U.S.C. 180; title 31 U.S.C. 1535; title 42 U.S.C. 97, 1989, and 5121-5207 (Stafford Act); title 50 U.S.C. 1621-1622; Public Law 94-524, and Executive Order 12656.

§ 182.1. Purpose.

This part implements 32 CFR part 185 and title 10, United States Code (U.S.C.) 375 concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement efforts, including responses to civil disturbances.

§ 182.2. Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military