



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG-107707-21]

RIN 1545-BQ02

Requirements Related to Surprise Billing; Part II

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury Department) and Internal Revenue Service (IRS) are proposing regulations that provide for a federal independent dispute resolution (IDR) process to permit group health plans and nonparticipating providers, facilities, and providers of air ambulance services to determine the out-of-network rate for items and services that are emergency services, nonemergency services furnished by nonparticipating providers at participating facilities, and air ambulance services furnished by nonparticipating providers of air ambulance services, under certain circumstances. Elsewhere in this issue of the **Federal Register**, the IRS is issuing the temporary regulations that correspond to this proposal at the same time that the Office of Personnel Management (OPM), the Employee Benefits Security Administration of the Department of Labor (DOL), and the Center for Medicare & Medicaid Services of the Department of Health and Human Services (HHS) are issuing substantially similar interim final rules with request for comments. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

Applicability date: It is proposed that these regulations apply for plan years beginning on or after January 1, 2022.

ADDRESSES: In commenting, please refer to file code REG-107707-21. Comments, including mass comment submissions, must be submitted in one of the following two 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 mail. You may mail written comments to the following address ONLY:

Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-5653, Washington, DC 20210

Attention: RIN 1210-AB00.

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

FOR FURTHER INFORMATION CONTACT: Kari DiCecco, (202) 317-5500, Internal Revenue Service, Department of the Treasury.

SUPPLEMENTARY INFORMATION:

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://regulations.gov>. Follow the search instructions on that website to view public comments.

Background and Regulatory Impact Analysis

The Treasury Department and the IRS propose to amend paragraphs (a), (c), (d), and (g) of § 54.9815-2719 of the Miscellaneous Excise Tax Regulations to expand the scope of claims eligible for external review to include adverse benefit determinations related to compliance with the surprise billing and cost-sharing protections under the No Surprises Act.

The Treasury Department and the IRS also propose to add §§ 54.9816-8 and 54.9817-2 to establish a federal IDR process that nonparticipating providers or facilities, nonparticipating providers of air ambulance services, and group health plans may use following the end of an unsuccessful open negotiation period to determine the out-of-network rate for certain services.

The temporary regulations published elsewhere in this issue of the Federal Register add §§ 54.9815-2719T, 54.9816-8T, and 54.9817-2T. The proposed and temporary regulations are being published as part of a joint rulemaking with the OPM, DOL, and HHS. The text of temporary sections added elsewhere also serves as the text of the corresponding sections proposed in this document. The preamble to the temporary regulations contains the agency's rationale and provides a regulatory impact analysis.

Drafting Information

The principal author of this notice of proposed rulemaking is Kari DiCecco, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the OPM, DOL, and HHS.

List of Subjects in 26 CFR Part 54

Excise taxes, 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 general authority citation for part 54 continues to read as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

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Par. 2. Section 54.9815-2719 is amended by revising paragraphs (a), (c), (d), and (g) to read as follows:

§54.9815-2719 Internal claims and appeals and external review processes.

[The text of proposed § 54.9815-2719(a), (c), (d), and (g) is the same as the text of § 54.9815-2719T(a), (c), (d), and (g) published elsewhere in this issue of the Federal Register].

Par. 3. Section 54.9816-1 is added to read as follows:

[The text of proposed § 54.9816-1 is the same as the text of § 54.9816-1T published elsewhere in this issue of the Federal Register].

Par. 4. Section 54.9816-2(a) and (b) is added to read as follows:

[The text of proposed § 54.9816-2(a) and (b) is the same as the text of § 54.9816-2T(a) and (b) published elsewhere in this issue of the Federal Register].

Par. 5. Sections 54.9816-8 and 54.9817-2 are added to read as follows:

§ 54.9816-8 Independent dispute resolution process.

[The text of proposed § 54.9816-8 is the same as the text of § 54.9816-8T published elsewhere in this issue of the Federal Register].

§ 54.9817-2 Independent dispute resolution process for air ambulance services.

[The text of proposed § 54.9817-2 is the same as the text of § 54.9817-2T published elsewhere in this issue of the Federal Register].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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