



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG-110878-24]

RIN 1545-BR35

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210-AC25

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS-9887-WN]

RIN 0938-AV57

Enhancing Coverage of Preventive Services Under the Affordable Care Act

AGENCY: 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: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking that appeared in the **Federal Register** on October 28, 2024, regarding coverage of certain preventive services under the Affordable Care Act.

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the notice of proposed rulemaking that appeared in the **Federal Register** on October 28, 2024, at 89 FR 85750 is withdrawn.

ADDRESSES: Comments received on the proposed rule can be viewed at

https://www.regulations.gov/docket/HHS_FRDOC_0001/document.

FOR FURTHER INFORMATION CONTACT: Regan Rusher, Internal Revenue Service, Department of the Treasury, at (202) 317-5500. Matthew Meidell, Employee Benefits Security Administration, Department of Labor, at (202) 693-8335. Rebecca Miller, Employee Benefits Security Administration, Department of Labor, at (202) 693-8335. Geraldine Doetzer, Centers for Medicare & Medicaid Services, Department of Health and Human Services at (667) 290-8855.

SUPPLEMENTARY INFORMATION: Section 2713 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act and incorporated into the Employee Retirement Income Security Act and the Internal Revenue Code, requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to provide coverage of certain recommended preventive services without imposing any cost-sharing requirements. Section 2715A of the PHS Act provides that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage must comply with section 1311(e)(3) of the Affordable Care Act, which addresses transparency in health coverage and imposes certain reporting and disclosure requirements for health plans that are seeking certification as qualified health plans to be offered on an American Health Benefits Exchange (generally referred to as an Exchange).

On October 28, 2024, the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) issued proposed rules under PHS Act sections 2713 and 2715A titled, “Enhancing Coverage of Preventive Services Under the Affordable Care Act.”¹ The proposed rules sought to address ongoing complaints and reports of noncompliance with section 2713 of the PHS Act and its implementing regulations. These complaints and reports indicate that participants, beneficiaries, and enrollees face barriers when attempting to use their

¹ 89 FR 85750 (Oct. 28, 2024).

coverage to access recommended preventive services without cost sharing. As a result of these concerns, the Departments proposed to amend the regulations governing coverage of recommended preventive services to ensure that participants, beneficiaries, and enrollees would be able to access the full range of recommended preventive services to which they are entitled, with particular focus on strengthening coverage requirements with respect to recommended contraceptive items for women.

The proposed rules would have required plans and issuers that utilize reasonable medical management techniques with respect to any recommended preventive services to provide an easily accessible, transparent, and sufficiently expedient exceptions process that allows an individual to receive coverage without cost sharing for the preventive service according to the frequency, method, treatment, or setting that is medically necessary for them, as determined by the individual's attending provider. The proposed rules would also have required plans and issuers to cover certain recommended over-the-counter contraceptive items without requiring a prescription and without imposing cost-sharing requirements. In addition, the proposed rules would have required plans and issuers to cover certain recommended contraceptive items that are drugs and drug-led combination products without imposing cost-sharing requirements, unless a therapeutic equivalent of the drug or drug-led combination product is covered without cost sharing. Finally, the proposed rules would have required plans and issuers to provide a disclosure pertaining to coverage and cost-sharing requirements for recommended over-the-counter contraceptive items in plans' and issuers' Transparency in Coverage internet-based self-service tools or, if requested by the individual, on paper.

The Departments requested comments on all aspects of the proposed rules, as well as on a number of specific issues. The comment period on the proposed rules closed on December 27, 2024, and the Departments received 268 comments to review. The comments addressed a range of issues, including operational and cost issues related to the Departments' contraceptive coverage proposals.

The Departments have determined it is appropriate to withdraw the proposed rules at this time, focusing instead on other matters. For example, the Departments have identified Cost Sharing Under the Affordable Care Act (RIN 0938-AV59); Requirements Related to Advanced Explanation of Benefits and Other Provisions Under the Consolidated Appropriations Act, 2021 (RIN 0938-AU98); Independent Dispute Resolution Operations (RIN 0938-AV15); Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement (RIN 0938-AU61); and Provider Nondiscrimination Requirements for Group Health Plans and Health Insurance Issuers in the Group and Individual Markets (RIN 0938-AU64) in their respective Fall 2024 Regulatory Agendas, as potential matters on which to focus. Moreover, should the Departments decide in the future that it is a priority to move forward with rulemaking regarding all or a subset of the preventive services coverage requirements of PHS Act section 2713, the Departments want to ensure that they will have the benefit of the most up-to-date facts and information on the basis of any specific proposals that they determine to put forward at such time. For these independently sufficient reasons, the Departments are withdrawing the proposed rules, and may propose new rules in the future, as appropriate to meet these goals.

This withdrawal action does not limit the Departments' ability to make new regulatory proposals in the areas addressed by the withdrawn proposed rules, including new proposals that may be substantially identical or similar to those described therein. In addition, this withdrawal action does not affect the Departments' ongoing application of existing statutory and regulatory requirements or their responsibility to faithfully administer the statutory requirements the proposed rules would have implemented if finalized.

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