

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****29 CFR Part 2560**

RIN 1210-AA61

**Employee Retirement Income Security Act of 1974; Rules and Regulations for Administration and Enforcement; Claims Procedure****AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.**ACTION:** Final Regulation; delay of applicability date.

**SUMMARY:** This action delays for at least six months and not more than one year the applicability date for the regulation governing minimum requirements for benefit claims procedures of group health plans covered by Title I of the Employee Retirement Income Security Act. As published on November 21, 2000, the benefit claims procedure would be applicable to claims filed on or after January 1, 2002. The current action amends the regulation so that it will apply to group health claims filed on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003. This action provides a limited additional period within which group health plan sponsors, administrators, and service providers can bring their claims processing systems into compliance with the new requirements. A postponement of the applicability date with respect to group health claims will allow a more orderly transition to the new standards and will avoid the confusion and additional expense that would be caused if certain pending Congressional bills are enacted before or soon after the original applicability date. This action does not apply to pension plans or plans providing disability or welfare benefits (other than group health). For these plans, the regulation will continue to be applicable to claims filed on or after January 1, 2002.

**EFFECTIVE DATE:** July 9, 2001.**FOR FURTHER INFORMATION CONTACT:**

Susan G. Lahne, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219-7461. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:****A. Background**

On November 21, 2000, the Department of Labor (the Department)

published in the **Federal Register** (65 FR 70246) a final regulation, designated as § 2560.503-1 of Title 29 (the regulation), which revised the minimum requirements for benefit claims procedures of all employee benefit plans covered under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). In particular, the regulation made substantial changes in the way in which employee benefit plans must process claims for group health benefits. These changes include shorter time frames for decisionmaking, new procedural standards for appeals of denied claims, and increased disclosure to claimants. The regulation also made changes to the procedural requirements for processing disability claims. With respect to other types of benefits, the regulation largely continued the standards applicable under the previous regulation, which has been in force since 1977.

Since the publication of the regulation, a number of issues have been raised by plan sponsors, service providers, state regulators, and others concerning the interpretation and application of the various provisions and requirements of the regulation that apply to group health plans. In this regard, the Department has been requested to provide additional guidance concerning the regulation in order to ensure efficient and effective implementation of the new rules. In addition, it has been argued that a delay of the regulation's applicability date is necessary for group health plans and service providers to better understand the requirements of the regulation, as well as to take into account clarifying guidance from the Department, and to efficiently implement the significant systems and other changes required by the new rules. It also has been argued that an extension of the regulation's applicability date is necessary to enable entities subject to state regulation (e.g., insurers, managed care organizations) to obtain state-level reviews and approvals of claims processes and other changes required by the regulation. In addition, concerns have been expressed about group health plans having to incur substantial costs to make the procedural, systems, and other changes necessary to accommodate the new rules while Congress is actively considering Patients' Bill of Rights legislation that, if enacted, would require new and additional changes to the same procedures and systems.

The Department is committed to ensuring that participants and beneficiaries are afforded fair and timely reviews of their benefit claims. At the same time, the Department recognizes

that an orderly, efficient, and cost-effective implementation of the claims procedure rules by group health plans will ultimately benefit all affected parties, including plan participants and beneficiaries. In this regard, the Department is persuaded that plans, service providers, and state regulators would benefit from additional guidance from the Department concerning the application of the claims procedure rules to group health plans. The Department also is persuaded that the magnitude of the procedural, systems, and other changes required by the regulation, in conjunction with the need to obtain state-level approvals with respect to such changes, may necessitate more time than was originally thought necessary when the rules were adopted in November, 2000. The Department also believes that there is a significant likelihood that Patients' Bill of Rights legislation directly affecting the procedural requirements for group health plans addressed in the final rules will be enacted before, or shortly after, the January 1, 2002, applicability date of the regulation. For these reasons, the Department has determined that a limited and temporary deferral of the applicability date of the claims procedure regulation for group health plans is warranted. It should be noted, however, that this action does not apply to pension plans or plans providing disability or welfare benefits (other than group health). For these plans, the regulation will continue to be applicable to claims filed on or after January 1, 2002.<sup>1</sup>

Under the amendment, the regulation will apply to group health claims filed on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003. The effect of this amendment will be to provide plans an additional compliance period for group health claims of at least six months (from January 1, 2002, to July 1, 2002). For group health plans with plan years beginning on July 1, 2002, the regulation will begin to apply to new claims filed under those plans as of that date; group health plans with plan years beginning from July 2, 2002, through December 31, 2002, will need to begin processing new claims under the regulation as of the beginning of that plan year. Calendar year group health plans and all other

<sup>1</sup> As noted above, the rules applicable to pension plans (and welfare plans other than group health and disability) have remained essentially unchanged from the 1977 regulation. Further, issues raised with respect to group health plans, including the impact of Patients' Bill of Rights legislation, have not been raised with respect to plans providing disability or other welfare benefits.

group health plans will be required to comply with respect to all new claims filed on or after January 1, 2003.

During the period before the relevant applicability dates, the Department expects plans, at a minimum, to continue to comply with the procedural rules that were in effect before promulgation of the regulation. For those periods, compliance with either the claims procedure regulation published on November 21, 2000, or as in effect prior to January 20, 2001, will be considered by the Department to be in compliance with the requirements of section 503 of ERISA.

This amendment is published as a final rule, effective as of the date of publication in the **Federal Register**. The Department's implementation of this rule without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(3)(B). The Department has determined, for the following reasons, that seeking public comment would be impracticable and contrary to the public interest.<sup>2</sup>

Absent the temporary postponement provided herein, the affected parties would have to be ready to comply with the regulation by January 1, 2002, a date that is less than six months distant from the date of publication. Therefore, for this action to serve its intended purpose, it must become effective as soon as possible. If the Department published this action in proposed form with a period for notice and comment, the affected parties would remain in doubt concerning whether compliance could be postponed. Given the imminence of the regulation's applicability date, the period for notice and comment would exhaust most of the remaining compliance period without providing certainty to the regulated public. Because the delay would exacerbate the pressures on employers, plan administrators, service providers, state regulators, and others affected by the rules and increase their confusion as to when compliance with the new procedural standards is mandatory, and because this action merely delays application of the standards for a limited period of time, the Department believes publication of the final action without notice and comment is justified under 5 U.S.C. 553(b).

<sup>2</sup> An agency may find that a comment period is impractical when it would impede the due and timely execution of the agency's function. A comment period is contrary to the public interest when the interest of the public would be defeated by any requirement of advance notice. *U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act* 30-31 (1947).

The Department has also determined that good cause exists to make this rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. Because this action has precisely that effect—giving affected parties additional time within which to comply with the new standards—the delay contemplated by section 553(d) would not serve this purpose, the Department finds that good cause exists to make this amendment effective upon publication.

## B. Economic Analysis

### 1. Executive Order 12866

Under Executive Order 12866, the Department must determine whether the 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 "significant" as defined above, and accordingly was reviewed by the Office of Management and Budget. By delaying the applicability date of the claims procedure regulation for group health plans, this action will slightly alter the timing of the regulation's economic effects for such plans, but generally will not alter the magnitude or nature of those effects. In particular, this action will allow group health plans to spread the start-up cost of complying with the regulation for six to twelve months beyond January 1, 2002. Once the regulation is applicable, its ongoing

costs and benefits are expected to be the same as originally estimated.

### 2. Regulatory Flexibility Act

Because this amendment is being published as a final rule without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

### 3. Paperwork Reduction Act

This action is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3). This final rule will not substantially or materially change the information collection provisions of 29 CFR § 2560.503-1 as currently approved by OMB control number 1210-0053.

### 4. Unfunded Mandates Reform Act

Because this amendment is a final rule, section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 (UMRA), does not apply. For purposes of Executive Order 12875, this rule does not include a Federal mandate that may result in expenditures by state, local or tribal governments.

### 5. Small Business Regulatory Enforcement Fairness Act

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

## List of Subjects in 29 CFR Part 2560

Employee benefit plans, Employee retirement income security act, benefit claims procedures

For the reasons set out in the preamble, 29 CFR part 2560 is amended as follows:

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for part 2560 continues to read as follows:

**Authority:** Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

Section 2560-502-1 also issued under sec. 502(b)(1), 29 U.S.C. 1132(b)(1).

Section 2560-502i-1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560-503-1 also issued under sec. 503, 29 U.S.C. 1133.

2. Revise paragraph (o) of § 2560.503-1 to read as follows:

**§ 2560.503-1 Claims Procedure.**

\* \* \* \* \*

(o) *Applicability dates.*

(1) Except as provided in paragraph (o)(2) of this section, this section shall apply to claims filed under a plan on or after January 1, 2002.

(2) This section shall apply to claims filed under a group health plan on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003.

Signed at Washington, DC, this 3rd day of July, 2002.

**Ann L. Combs,**

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

[FR Doc. 01-17145 Filed 7-5-01; 11:26 am]

**BILLING CODE 4510-29-P**