

DEPARTMENT OF THE TREASURY**Internal Revenue Service****DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Care Financing Administration****Notice of Signing of a Memorandum of Understanding among the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services**

AGENCIES: The Internal Revenue Service, Department of the Treasury; the Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Memorandum of Understanding Among the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

SUMMARY: The Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (the Departments) entered into a Memorandum of Understanding (MOU) effective April 21, 1999. The purpose of the MOU is to implement section 104 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, which directs the Departments to enter into an interagency MOU to ensure that regulations, rulings, and interpretations relating to the changes made by Subtitle A of Title I and section 401 of Title IV of HIPAA over which two or more Secretaries have responsibility are administered so as to have the same effect at all times. Section 104 also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT: Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622-4695; Mark Connor, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219-7006; or David Mlawsky, Health Care Financing Administration, Department of Health and Human Services, at (410) 786-1565.

Dated: December 9, 1999.

Alan Tawshunsky,

Special Counsel to the Associate Chief Counsel, Employee Benefits and Exempt Organizations, Internal Revenue Service, Department of the Treasury.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

Gale P. Arden,

Acting Deputy Director, Private Health Insurance Group, Health Care Financing Administration, Department of Health and Human Services.

Memorandum of Understanding Among the U.S. Department of the Treasury, the U.S. Department of Labor, and the U.S. Department of Health and Human Services**Article I***Introduction and Purpose*

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, was enacted on August 21, 1996. Titles I and IV of HIPAA amended the Internal Revenue Code, the Employee Retirement Income Security Act of 1974, and the Public Health Service Act to add provisions to improve access, portability and continuity of health insurance coverage in the group and individual health insurance markets.

Section 104 of HIPAA directs the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to enter into an interagency memorandum of understanding. Section 104 requires that the memorandum of understanding ensure that regulations, rulings, and interpretations relating to the changes made by Subtitle A of Title I and section 401 of Title IV of HIPAA over which two or more Secretaries have responsibility ("shared provisions") are administered so as to have the same effect at all times. Section 104 also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. This memorandum of understanding (MOU) is adopted pursuant to section 104 of HIPAA.

This MOU formally establishes an interagency agreement among the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to ensure coordination in the manner and for the purposes set forth in section 104 of HIPAA. The Departments also intend to follow the process set forth in this MOU, to the extent appropriate, with

regard to interpretations and enforcement of the provisions of the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and Subsequent Legislation. In addition, the Departments of Labor and HHS agree to follow the process set forth in this MOU, to the extent appropriate, with regard to interpretations and enforcement of the provisions of the Women's Health and Cancer Rights Act of 1998.

Article II*Authority*

This MOU is entered pursuant to the authority set forth in section 104 of HIPAA, Pub. L. No. 104-191.

Article III*Definitions*

"Agency" refers to a component of a Department. For purposes of this MOU, this includes the Internal Revenue Service (IRS) within the Department of the Treasury, the Pension and Welfare Benefits Administration (PWBA) within the Department of Labor, and the Health Care Financing Administration (HCFA) within the Department of Health and Human Services.

"Code" refers to the Internal Revenue Code of 1986.

"Committee" refers to the Coordinating Committee described in Article V.

"Department" refers to each of the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

"Departments" refers collectively to the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

"ERISA" refers to the Employee Retirement Income Security Act of 1974.

"HCFA" refers to the Health Care Financing Administration.

"HHS" refers to the Department of Health and Human Services.

"Interpretations" refers to any written Agency or Departmental statement, guidance, ruling, pronouncement, or explanation regarding a statute described in Article I of this MOU that is not a Regulation. Interpretations include statements such as Revenue Rulings, Technical Bulletins/Releases, Advisory Opinions, and similar Agency or Departmental releases that are binding on the issuing Agency or Department. Interpretations also include policy guidance, such as information letters, bulletins and policy letters,

whether or not such guidance is binding on the issuing Agency or Department.

“IRS” refers to the Internal Revenue Service.

“Labor” and “DOL” refer to the Department of Labor.

“MHPA” refers to the Mental Health Parity Act of 1996.

“NMHPA” refers to the Newborns’ and Mothers’ Health Protection Act of 1996.

“PHS Act” refers to the Public Health Service Act.

“PWBA” refers to the Pension and Welfare Benefits Administration.

“Regulations” refers to rules that are promulgated in accordance with the provisions of the Administrative Procedure Act applicable to substantive rules and that are published in the **Federal Register** and codified in the Code of Federal Regulations.

“Related Acts” refers to MHPA and NMHPA.

“Subsequent Legislation” refers to future federal legislative enactments concerning health care which result in two or more of the Departments having shared jurisdiction.

“Treasury” refers to the Department of the Treasury.

“WHCRA” refers to the Women’s Health and Cancer Rights Act of 1998.

Article IV

Background

Subtitle A of Title I and section 401 of Title IV of HIPAA are intended to improve the availability of private health insurance by increasing portability, access and renewability in the group market. HIPAA establishes limits on the imposition of preexisting condition exclusions and generally prohibits group health plans and health insurance issuers from discriminating against individuals based on health status when determining eligibility to enroll in a group health plan or to obtain related insurance or in deciding the amount of premium to be charged to similarly situated individuals. Employers may not be denied continued access to multiemployer plans, or multiple employer welfare arrangements, except for certain reasons set forth in HIPAA.

HIPAA and Related Acts amended three federal statutes: the Code, administered by the Treasury through IRS; ERISA, administered by DOL through PWBA; and the PHS Act, administered by HHS through HCFA. Under the Code, as amended by HIPAA and Related Acts, the Treasury has authority over group health plans (including church plans) and their sponsors, and IRS enforces the

requirements of HIPAA and Related Acts through the imposition of an excise tax. Under ERISA, as amended by HIPAA and Related Acts, DOL has increased authority over group health plans that are subject to Part 7 of subtitle B of Title I of ERISA. Health insurance issuers offering health insurance coverage in connection with such plans are also subject to Part 7. However, in accordance with the provisions of HIPAA, only participants and beneficiaries (and not DOL) may bring an enforcement action against health insurance issuers under Part 7.

Under the PHS Act, as amended by HIPAA and Related Acts, HCFA has authority over health insurance issuers and nonfederal governmental plans. If a State fails to substantially enforce Parts A and B of Title XXVII of the PHS Act, or requests that HCFA enforce the provisions or requirements, HCFA enforces the group and individual market requirements by imposing a civil monetary penalty on issuers that fail to comply with HIPAA’s requirements in that State.

There are differences in some of the amendments that HIPAA and Related Acts made to the three statutes. In some instances, changes were made to only one of the federal statutes with no counterpart in the other two statutes. Section 104 of HIPAA requires the Secretaries of the Treasury, Labor and HHS to coordinate in the areas of parallel responsibility relating to the shared provisions of HIPAA.

Article V

Scope of Work

The Departments agree to assign representatives to work closely to ensure that all Interpretations, Regulations and enforcement strategies relating to shared provisions of Subtitle A of Title I and section 401 of Title IV of HIPAA and Related Acts will be developed and implemented in a coordinated manner. All such Interpretations, Regulations and enforcement strategies will be administered in a manner that promotes consistency in effect, that avoids duplication of enforcement efforts, and that reflects consideration of the appropriate priorities in enforcement.

In this regard, the Departments will continue to work together closely through regular joint meetings and frequent consultation, consistent with the process (*i.e.*, by mutual consent) that has been used in developing existing Regulations and Interpretations under HIPAA and Related Acts. Similarly, DOL and HHS will continue to work together closely through regular joint

meetings and frequent consultation to develop Regulations and Interpretations under WHCRA.

In order to further effectuate this coordination, the Treasury, IRS, DOL, and HHS each will name a “Department Designee” to serve on a Coordinating Committee. The Committee’s task will be to ensure the identification and coordination of policies involving areas of shared responsibility under HIPAA and Related Acts to maintain consistency in the application of these provisions that amend the Code, ERISA, and the PHS Act.

The Committee also will take steps to maximize the efficiency of Agency enforcement efforts, including developing the terms of further agreement(s), as necessary. The Committee members shall meet, quarterly, or at such times as they may agree, to review and discuss relevant pending Regulations and Interpretations to evaluate whether the position(s) set forth therein reflect a coordinated position. Committee meetings will be held at locations agreed to by the Committee members. Upon agreement of the Committee members, such meetings may be held by conference call. Each Department will assume the costs associated with the participation of its respective Committee members.

Timely and prompt consensus will be sought in the development and administration of all Interpretations affected by this MOU. Any Department Designee can bring any matter subject to the MOU before the Committee. The Department Designees serving on the Committee will attempt to reach consensus on issues within 45 days (except in unusual circumstances) after such issues have been formally presented (including a written summary) at a meeting of the Committee. If consensus on particular issues is reached by the members of the Committee, appropriate clearance will be initiated within each Department.

Article VI

Coordinated Enforcement Strategy

Generally, the Departments intend to continue the current informal arrangements that have developed for cooperation and collaboration in the handling of inquiries arising under HIPAA, MHPA, NMHPA, and WHCRA. In addition, pursuant to Section 104(2) of HIPAA and this MOU, the Committee, and any appropriate individuals designated by the Agencies or Departments, shall develop a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in

enforcement. The Agencies or Departments shall first designate, within six months of the execution of this MOU, individuals who are to work with the Committee in developing the enforcement strategy. This group shall also devise a written operational agreement for the sharing of information that is related to enforcement cases among the Departments. Moreover, the operational agreement may address procedures for the referral of cases, the development of audit checklists and training materials, and the coordination of public affairs information. The operational agreement may also describe the individuals within each Department who are responsible for implementing the sharing of information.

Subject to applicable legal restrictions (including section 6103 of the Code), the Departments agree, absent exigent circumstances, to notify each other in writing (through the Department Designee) prior to the commencement of any administrative or judicial proceeding on matters within the scope of this MOU and to inform each other of the final action resulting from such proceeding.

Nothing in this section shall be construed to affect the enforcement authority that HIPAA or Related Acts confers on any Department, including enforcement concerning a matter as to which a Department has given or received the information or notice described herein, nor shall this paragraph be construed to preclude the Departments from agreeing to different arrangements on a case by case basis.

Article VII

Confidentiality of Information

The Departments agree that any information shared or disclosed pursuant to this MOU will be held in strict confidence and may be used only for purposes consistent with this MOU or as otherwise permitted by law. All requests by parties other than the Departments for disclosure of information shall be coordinated with the Agency that initially compiled or collected the information, provided that no Agency shall disclose information initially compiled by another Agency to the public without the approval of the appropriate Agency or Department unless the Agency is required by law to do so (e.g., Freedom of Information Act (FOIA), 5 U.S.C. 552; Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2), in which event it will notify the appropriate Department or Agency in writing of its intent to disclose such information. Nothing in this MOU shall be deemed to confer rights on any party other than the Departments as a result of any act or omission by any Agency or Department with respect to its obligations under this MOU.

Article VIII

Duration of Agreement

This MOU will become effective upon the date of the final signature and may be amended by written agreement of the undersigned. It will remain in effect until amended by the parties, or until terminated by any of the parties upon 30 days written notice to the other parties and, upon the agreement of the

Departments, shall apply to Subsequent Legislation.

Article IX

Officials Responsible for MOU

The appropriate Departmental officials will appoint their respective Department Designees to the Committee within 30 days after the signing of this MOU and will appoint any successors in a timely manner.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 8, 1999.

Donald C. Lubick,

*Assistant Secretary for Tax Policy,
Department of the Treasury.*

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 21, 1999.

Robert E. Wenzel,

*Deputy Commissioner, Internal Revenue
Service, Department of the Treasury.*

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 17, 1999.

Richard M. McGahey,

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

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 30, 1999.

Nancy-Ann Min DeParle,

*Administrator, Health Care Financing
Administration, Department of Health and
Human Services.*

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