

# **SUPPORTING STATEMENT**

## **(REG-109704-97)**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

The Service published proposed and temporary regulations relating to mental health parity requirements for group health plans added as section 9812 of the Internal Revenue Code by section 1531 of the Taxpayer Relief Act of 1997, Pub. L. 105-34. The Mental Health Parity Act of 1996 added similar requirements to the Employee Retirement Income Security Act of 1974 (administered by the Pension and Welfare Benefits Administration in the U.S. Department of Labor) and the Public Health Service Act (administered by the Health Care Financing Administration in the U.S. Department of Health and Human Services). The regulations interpret statutory requirements imposed on group health plans requiring them to impose no lower dollar limit on mental health benefits under the plan than are imposed on medical/surgical benefits. The statute allows plans to claim an exemption from the mental health parity requirements if complying with those requirements results in an increased cost of 1% or more.

The regulations require any plan claiming the exemption to give advance notice to participants and beneficiaries under the plan and to the government of the intent to claim the exemption. The plan must make available for the inspection of participants and beneficiaries a summary of the data it is relying on in claiming the exemption.

### **2. USE OF DATA**

The notice of exemption and the summary data required to be made available upon request will allow participants, beneficiaries, and the government to confirm that the plan has a legal basis for claiming the exemption. The notice of noncompliance will assist the government in identifying plans that may not be amended by the transitional date to comply with the mental health parity requirements.

### **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance

with the IRS Reform and Restructuring Act of 1998.

**4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication wherever possible. The regulations also provide relief from potentially duplicative requirements by designating a single agency as the recipient of the notices for various types of plans.

**5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Not applicable.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d) (2)**

Not applicable.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

A notice of proposed rulemaking (62 FR 66967) was published in the **Federal Register** simultaneously with temporary regulations (62 FR 66932) on December 22, 1997.

We received no comments during the comment period in response to the **Federal Register** notice dated January 23, 2007 (72 FR 2924).

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

The collections of information are reporting, third-party reporting,

and recordkeeping requirements. Information provided to the Internal Revenue Service will generally be tax return information subject to nondisclosure requirements. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103. Third parties -- participants and beneficiaries under the plan -- provided with information can keep the information confidential to the extent they wish to do so.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

The burdens described below are imposed on group health plans under both the mental health parity provisions of ERISA, which are administered by the PWBA, and the mental health parity provisions of the Code, which are administered by the Service. The collections of information under ERISA are almost identical to the collections of information under the Code. Because PWBA and the Service jointly administer these requirements as they relate to group health plans, the burdens numbers below (and in paragraph 13), the agencies are allocating half of these burdens to each agency.

Hour burdens were estimated only for plans that perform notification functions in house. This is assumed to encompass 25 percent of insured plans sponsored by employers with 100 or more employees and 25 percent of all self-insured plans, but no insured plans sponsored by employers with fewer than 100 employees. The remaining plans are assumed to use service providers for these functions. Estimates of the cost burden incurred by plans using services providers are provided at item 13, below. These assumptions regarding the delegation of plans' administrative functions are consistent with those reflected in prior estimates of the hour burdens attributable to similar requirements. Specifically, similar assumptions were employed in estimating the hour burdens attributable to the certification of prior creditable coverage and various notices as required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations of prior creditable coverage and various notices as required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations.

Section 54.9812-IT(f)(3) requires a plan wishing to claim the one-percent increased cost exemption to give advance notice of its intent to claim the exemption to either PWBA or the Service and to participants and beneficiaries under the plan. This burden will consist mainly in preparing the initial notice with plan identification information. Once prepared, the notice can be photocopied in volume and mailed to each participant and beneficiary as well as to the appropriate government agency. There is no information required on the notice that is particular to the individual (though some information will be particular to the plan). It is estimated that 958 plans covering 188,751 participants will issue 189,709 of these notices in-house and that the average response time will be about 2 minutes. The total hour burden for these plans is estimated to be 6,324 hours (all in 1999). The cost burden associated with these hours is estimated at \$11 per hour plus an additional \$.50 per notice for a total cost of \$164,414 (all in 1999).

Section 54.9812(f)(4) requires group health plans claiming the one-percent increased cost exemption to make available to participants and beneficiaries under the plan (and their representatives) a summary of the information on which the exemption is based. It is estimated that 958 plans covering 188,751 participants will respond these requests in-house. It is estimated that such plans will receive 7,053 requests for these summaries in each of the years 1999 and 2000 and that the average response time per request will be about 2 minutes. (The time required to prepare the summary is described in Item 13; these numbers reflect only the amount of time required to respond to a request to review the summary.) The total hour burden for these plans is estimated to be 235 hours in each of the years 1999 and 2000. The cost burden associated with these hours is estimated at \$11 per hour plus an additional \$.50 per request for a total cost of \$6,113 for each of the two years.

The total burden for the above requirements is 6,559 hours (6,324 and 235). IRS is allocated 50% of this burden, or 3,280 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

It is estimated that most of the collections of information required by the regulations will be performed by contract service providers such as insurance companies and third-party administrators.

It is estimated that -- for the notice to participants and beneficiaries and to the government of claiming the one percent increased cost exemption -- 4,654 plans covering 619,142 participants will contract with service providers to furnish 623,796 of these notices (all in 1999). The cost is estimated to be \$0.87 per notice, for a total cost of approximately \$540,000.

For the preparation of the information needed to claim the one percent increased cost exemption, it is estimated that 958 plans performing these calculations in-house and 1,770 service providers performing these calculations for other plans will each incur expenses of \$5,000. The total cost for plans performing the calculation is \$4.8 million. The total cost for service providers is \$8.9 million, but approximately 13% of that cost is allocable to governmental plans, for a total cost allocable to private plans of \$7.7 million. Amortized over three years (1999-2001) at a discount rate of 8%, the annualized costs are \$4.8 million, including \$1.8 million for in-house costs and \$3.0 million for service-provider costs.

It is estimated that -- for the summary information made available upon request to participants and beneficiaries --4,654 plans covering 619,142 participants will contract with service providers to furnish these summaries and that such plans will receive 23,135 requests in each of the years 1999 and 2000. The cost is estimated to be \$0.87 per response, for a total cost of approximately \$20,000 in each of the years 1999 and 2000.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.