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July 9, 2010

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable John Kline
Ranking Member
Committee on Education and Labor
House of Representatives

The Honorable Henry A. Waxman
Chairman
The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; and Department of Health and Human Services: Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; and Department of Health and Human Services (the agencies), entitled “Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections” (RINs: 1545-BJ61; 1210-AB43; 0991-AB69). We received the rule from the Department of Health and Human Services on June 24, 2010, from the Department of Labor on June 28, 2010, and from the Department of the Treasury, Internal Revenue Service on June 25, 2010. They were published in the *Federal Register* as interim final rules with request for

comments on June 28, 2010. 75 Fed. Reg. 37,188. These interim final rules are effective on August 27, 2010.

These interim final rules implement the requirements for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act¹ regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, and patient protections.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day requirement, any rule that an agency for good cause finds that the notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The agencies determined that they had good cause to waive prior notice and comment procedures in this case. Therefore, the requirement to have a 60-day delay does not apply to this rule.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Phyllis C. Borzi
Assistant Secretary, Employee Benefits
Security Administration
Department of Labor

¹ Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010).

Vivian Stallion
Office Manager
Department of Health and Human Services

LaNita Van Dyke
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Department of the Treasury

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE;
DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION;
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
ENTITLED
"PATIENT PROTECTION AND AFFORDABLE CARE ACT:
PREEXISTING CONDITION EXCLUSIONS, LIFETIME
AND ANNUAL LIMITS, RESCISSIONS,
AND PATIENT PROTECTIONS"
(RINS: 1545-BJ61; 1210-AB43; 0991-AB69)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS); Department of Labor, Employee Benefits Security Administration (EBSA); and Department of Health and Human Services (HHS) (collectively, the agencies) analyzed the costs and benefits of these interim final rules. The agencies stated that they crafted these interim final rules in the most economically efficient manner possible. The agencies estimate that these interim final rules will have an annual monetized cost of \$4.9 million from 2011 to 2013.

The agencies expect these interim final rules will expand coverage for children with preexisting conditions and individuals who face rescissions, lifetime limits, and annual limits as a result of high health care costs. The agencies expect these benefits to manifest in a number of ways including: (1) increasing access to health care, improving health outcomes, improving worker productivity, and reducing family financial strain and "job lock"; (2) promoting equity, in the sense that the benefits will be enjoyed by those who are especially vulnerable as a result of health problems and financial status; (3) building better, sustained patient-provider relationships through choice of physician, resulting in decreased malpractice claims and improved medication adherence and health promotion; and (4) reducing administrative and time burdens on both patients and physicians while improving health outcomes by allowing quicker access to medical services when necessary by removing referrals and prior authorizations for primary care, obstetrical and gynecological care, and emergency services.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603–605, 607, and 609

The agencies determined that the Act does not apply to these interim final rules and the agencies are not required to either certify that the regulations would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The agencies reached this determination because the Act applies to rules subject to notice-and-comment procedures and the agencies made a good cause finding that a notice of proposed rulemaking was not necessary. Nevertheless, the agencies stated that they carefully considered the likely impact of the regulations on small entities in connection with their assessment under Executive Order 12,866 (discussed below).

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

The agencies determined that these interim final regulations are not subject to the Act because they are being issued as interim final regulations. However, the agencies note that, consistent with the policy embodied in the Act, they designed these interim final regulations to be the least burdensome alternative for state, local, and tribal governments, and the private sector, while achieving their objectives.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The agencies determined that no notice of proposed rulemaking was required for these interim final rules. The agencies reached this determination because of the specific authorities they identified as granting the agencies authority to issue interim final rules.¹ The agencies also determined that, because of statutory deadlines, it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process is completed.

Specifically, the statutory requirement implemented in these interim final regulations was enacted on March 23, 2010, and applies for plan years (in the individual market, policy years) beginning on or after September 23, 2010.

¹ 26 U.S.C. § 9833 (for IRS); 29 U.S.C. § 1191c (for EBSA); and 42 U.S.C. § 300gg-92 (for HHS).

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

The agencies determined that this final rule contains information collection requirements under the Act. IRS and EBSA estimated the following:

- (1) the information collection requirement entitled “Notice of Special Enrollment Opportunity under the Patient Protection and Affordable Care Act Relating to Lifetime Limits” (Office of Management and Budget (OMB) Control Numbers 1210-0143 and 1545-2179) will have 315 respondents providing 29,000 one-time responses for a total annual burden of 1,300 hours and total annual cost of \$7,000;
- (2) the information collection requirement entitled “Required Notice of Rescission of Coverage under the Patient Protection and Affordable Care Act Disclosures” (OMB Control Numbers 1210-0141 and 1545-2180) will have 100 respondents providing 1,600 responses for a total annual burden of 25 hours and total annual cost of \$400; and
- (3) the information collection requirement entitled “Disclosure Requirement for Patient Protections under the Affordable Care Act” (OMB Control Numbers 1210-0142 and 1545-2181) will have 262,000 one-time respondents providing 6,186,000 responses for a total annual burden of 33,000 hours and total annual cost of \$48,000.

HHS also analyzed these three information collection requirements and determined the following:

- (1) the information collection requirement entitled “Patient Protection and Affordable Care Act Enrollment Opportunity Notice Relating to Lifetime Limits” (OMB Control Number 0938-1094) will have 630 respondents providing 13,000 one-time responses for a total annual burden of 1,300 hours and total annual cost of \$6,500;
- (2) the information collection requirement entitled “Required Notice of Rescission of Coverage under the Patient Protection and Affordable Care Act Disclosures” (OMB Control Number 0938-1094) will have 490 respondents providing 10,700 responses for a total annual burden of 300 hours and total annual cost of \$5,200; and
- (3) the information collection requirement entitled “Disclosure Requirements for Patient Protection under the Affordable Care Act” (OMB Control Number 0938-1094) will have 10,600 respondents providing 2,067,000 one-time responses for a total annual burden of 2,700 hours and total annual cost of \$32,000.

Statutory authorization for the rule

IRS promulgated these interim final rules under the authority of sections 7805 and 9833 of title 26, United States Code. EBSA promulgated these interim final rules under the authority of sections 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181

note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c of title 29, United States Code; sections 300gg-5 note and 651 note of title 42, United States Code; section 101(g) of the Health Insurance Portability and Accountability Act of 1996²; sections 1001, 1201, and 1562(e) of the Patient Protection and Affordable Care Act³ and Secretary of Labor Order 6-2009.⁴ HHS promulgated these interim final rules under the authority of sections 300gg through 300gg-63, 300gg-91, and 300gg-92 of title 42, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

Under analysis by EBSA and HHS, these interim final rules were determined to be economically significant under the Order because they are likely to have an annual effect on the economy of \$100 million or more in any one year. OMB reviewed these rules under the Order. Notwithstanding the determinations by EBSA and HHS, for purposes of IRS, a determination was made that the relevant Department of the Treasury decision was not a significant regulatory action under the Order.

Executive Order No. 13,132 (Federalism)

EBSA and HHS determined that these interim final regulations have federalism implications because they have direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. However, in EBSA's and HHS's views the federalism implications of these rules are substantially mitigated because, with respect to health insurance issues, EBSA and HHS expect that the majority of states will enact laws or take other appropriate action resulting in the states' standard meeting or exceeding the federal standard.

² Pub. L. No. 104-191, 110 Stat. 1936, 1953-54 (Aug. 21, 1996).

³ Pub. L. No. 111-148, 124 Stat. 119, 130-138, 154-161, 270 (Mar. 23, 2010) (as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010)).

⁴ 74 Fed. Reg. 21,524 (May 7, 2009).