



441 G St. N.W.
Washington, DC 20548

B-331720

January 10, 2020

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Health and Human Services: Patient Protection and Affordable Care Act;
Exchange Program Integrity*

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 Health and Human Services (HHS) entitled "Patient Protection and Affordable Care Act; Exchange Program Integrity" (RIN: 0938-AT53). We received the rule on December 20, 2019. It was published in the *Federal Register* as a final rule on December 27, 2019. 84 Fed. Reg. 71674. The effective date of the rule is February 25, 2020.

The final rule revises standards relating to oversight of exchanges established by state and periodic data matching frequency. The final rule also includes new requirements for certain issuers related to the collection of separate payment for the portion of a plan's premium attributable to coverage for certain abortion services.

Enclosed is our assessment of HHS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
Regulations Coordinator
Department of Health and Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
ENTITLED
“PATIENT PROTECTION AND AFFORDABLE CARE ACT;
EXCHANGE PROGRAM INTEGRITY”
(RIN: 0938-AT53)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS) estimates a total annualized net cost of \$182.98 million over a perpetual time horizon at 7 percent discount rate. HHS also explained that some of the benefits of this final rule include better alignment of the regulatory requirements for qualified health program (QHP) issuer billing of premiums with the separate payment requirements in section 1303 of the Patient Protection and Affordable Care Act, clearer regulatory requirements for how frequently exchanges should be conducting periodic checks for dual enrollment in other qualifying coverage, and clearer regulatory requirements for state exchanges around the Centers for Medicare & Medicaid Services’ oversight and reporting process that allows for more effective oversight of state exchanges.

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

HHS certified that this final rule will not have a significant economic impact on a substantial number of small entities. HHS also determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

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

HHS determined that this final rule will have an impact on state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars (approximately \$154 million in 2019 dollars). HHS found that states impacted by the separate billing and payment requirements in this final rule may incur costs of approximately \$26.8 million in 2020, \$11 million in 2021, \$9.8 million in 2022, and \$8.6 million in 2023. HHS, however, stated that issuers impacted by the separate billing and payment requirements will incur costs of approximately \$482.6 million in 2020 and approximately \$195.3 million each year after. Additionally, HHS found that states impacted by the periodic data matching requirements will incur costs of up to \$6.9 million in 2020.

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

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

On November 9, 2018, HHS published a proposed rule. 83 Fed. Reg. 56015. HHS received 75,439 comments, including 70,396 comments that were substantially similar to one of 13 different form letters, resulting in 5,043 unique comments on the proposed rule. HHS responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

HHS determined that this final rule contains a new information collection requirement under the Act. It is entitled “Billing and Collection of the Separate Payment for Certain Abortion Services” (Office of Management and Budget Control Number 0938-1358). HHS estimates that it will have an annual burden of 24,120 hours per respondent and an annual total cost of \$1,065,774 per respondent.

Statutory authorization for the rule

HHS promulgated this final rule pursuant to sections 18021–8024, 18031–18033, 18041–18042, 18044, 18051, 18054, 18061, 18063, 18071, and 18081–18083 of title 42; section 36B of title 26; and section 9701 of title 31, United States Code.

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

HHS determined that this final rule is economically significant under the Order and submitted it to the Office of Management and Budget for review.

Executive Order No. 13,132 (Federalism)

HHS determined that portions of this final rule impose substantial direct costs on state and local governments or preempt state law. HHS stated that the final rule has federalism implications due to its requirements that (1) exchanges conduct Medicare, Medicaid, Children’s Health Insurance Program and, if applicable, Basic Health Program periodic data matching at least twice a year, beginning with the 2021 calendar year; and (2) state exchanges submit certain reports to HHS and require them to enter into contracts with an external independent audit entity to perform audits, and incur the associated costs. However, for both requirements, HHS stated it believes that the federalism implications are substantially mitigated. Lastly, HHS determined that there are no federalism concerns regarding the policy on state laws requiring coverage of non-Hyde abortion services on the exchange.