



441 G St. N.W.
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September 16, 2022

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services: Requirements Related to Surprise Billing*

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 (IRS), the Department of Labor (DOL), Employee Benefits Security Administration (EBSA), and the Department of Health and Human Services (HHS) (collectively, the Departments) titled "Requirements Related to Surprise Billing" (RINs: 1545-BQ01; 1545-BQ02; 1210-AB99; 1210-AC00; 0938-AU62; 0938-AU63). We received the rule on September 1, 2022. It was published in the *Federal Register* as final rules on August 26, 2022. 87 Fed. Reg. 52618. The effective date is October 25, 2022.

According to the Departments, this final rule finalizes certain disclosure requirements relating to information that group health plans, and health insurance issuers offering group or individual health insurance coverage, must share about the qualifying payment amount under the interim final rule issued in July 2021, titled "Requirements Related to Surprise Billing; Part I". 86 Fed. Reg. 36872. Additionally, the Departments stated that this document finalizes select provisions under the October 2021 interim final rule, titled "Requirements Related to Surprise Billing; Part II," to address certain requirements related to consideration of information when a certified independent dispute resolution entity makes a payment determination under the federal independent dispute resolution process. 86 Fed. Reg. 55980.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* on August 26, 2022. The *Congressional Record* does not yet reflect the date this rule was received by the House and Senate; however, the Departments sent proof of delivery

showing the rule was delivered to both chambers of Congress on August 31, 2022. The effective date is October 25, 2022. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the Departments' 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Oluwafunmilayo A. Taylor
Branch Chief
Legal Processing Division, Publications, and Regulations Branch
Department of the Treasury

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
TITLED
“REQUIREMENTS RELATED TO SURPRISE BILLING”
(RINs: 1545-BQ01; 1545-BQ02; 1210-AB99; 1210-AC00; 0938-AU62; 0938-AU63)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS), the Department of Labor (DOL), Employee Benefits Security Administration (EBSA), and the Department of Health and Human Services (HHS) (collectively, the Departments) prepared an accounting statement summarizing the benefits, costs, and transfers associated with this final rule. According to the Departments, the final rule will increase transparency in the federal independent dispute resolution (IDR) process. The Departments stated that the final rule will help a provider, facility, or air ambulance service ascertain what information will demonstrate that an offer best represents the value of the item or service and aid the certified IDR entity in selecting an offer that best represents the value of the item or service. The Departments also stated that the final rule will promote more consistent payment determinations in the federal IDR process for providers, facilities, air ambulance services, plans, and issuers. The Departments stated further that the final rule will promote transparency with respect to the certified IDR entity's payment determination and will help to ensure that the determination of a total payment amount for a particular item or service is based on the facts and circumstances of the dispute at issue in each case.

The Departments estimate the total annual cost associated with the final rule to be \$5.9 million. The Departments stated that \$4.3 million of the total annual cost is attributable to the additional information plans and issuers will be required to provide related to the qualifying payment amount (QPA), \$1.2 million is attributable to the preparation of IDR payment determination notices by certified IDR entities for nonparticipating providers or emergency facility claims, and \$0.3 million is attributable to the preparation of IDR payment determination notices by certified IDR entities for nonparticipating air ambulance providers' claims. Lastly, the Departments stated that the final rule makes no changes that impact the transfers as described in the July 2021 and October 2021 interim final rules. 86 Fed. Reg. 55980; 86 Fed. Reg. 36872.

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

The Departments certified that this final rule will not have a significant impact on a substantial number of small entities during the first year. The Departments prepared an analysis to justify its determination. The Departments defined what constitutes a small entity and the percentage of these small entities within each type of entity. The analysis also provided the estimated monetary impact of the final rule on these small entities.

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

The Departments stated that the final rule does not include any federal mandate that it expects to result in expenditures by state, local, or tribal governments in excess of \$165 million (\$100 million, adjusted for inflation).

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

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

On July 13, 2021, the Departments published an interim final rule titled, “Requirements Related to Surprise Billing; Part I.” 86 Fed. Reg. 36872. On October 7, 2021, the Departments published a related interim final rule titled, “Requirements Related to Surprise Billing; Part II.” 86 Fed. Reg. 55980. The Departments stated that this final rule implements these interim final rules. The Departments also stated that they received thousands of comments on many different aspects of the interim final rules. The Departments stated further that the final rule addresses only the provisions related to certain comments, and the final rule makes changes in light of certain district court decisions. See *Texas Medical Association v. United States Department of Health and Human Services*, F.Supp.3d (E.D. Tex. 2022); *LifeNet, Inc. v. United States Department of Health and Human Services*, F.Supp.3d (E.D. Tex. 2022). Lastly, the Departments stated that they intend to address comments related to other provisions of the interim final rules at a later date.

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

The Departments determined that this final rule contains several information collections (ICs) as defined under PRA. The Departments stated that the ICs were submitted to the Office of Management and Budget (OMB) for review. The Departments stated further that the changes made by the final rule are part of an existing information collection request titled, “No Surprises Act: IDR Process” (OMB Control Number 1210-0169). The Departments provided burden estimates for the ICs promulgated by the final rule. The Departments estimated the total annual burden hours to be 89,521 and the estimated total annual burden cost to be \$555,427.

Statutory authorization for the rule

The Departments promulgated this final rule pursuant to section 7805 of title 26; sections 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a–n, 1191, 1191a–c of title 29; sections 300gg-92 and 300gg-111 through 300gg-139 of title 42, United States Code; section 101(g) of Public Law 104-191; section 401(b) of Public Law 105-200; section 512(d) of Public Law 110-343; sections 1001, 1201, and 1562(e) of Public Law 111-148, as amended by Public Law 111-152; division M of Public Law 113-235; and Public Law 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

According to the Departments, OMB’s Office of Information and Regulatory Affairs has determined that this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

The Departments determined that this final rule has federalism implications because it has a direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among various levels of government. The Departments stated that they engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the North American Industry Classification System (NAICS) and consulting with state insurance officials on a state-by-state basis. The Departments also stated that they consulted with NAICS. The Departments stated further that they attempted to balance the states' interests in regulating health insurance issuers, providers, and facilities with the need to ensure at least the minimum federal consumer protections in every state. By doing so, the Departments assert that they have complied with the requirements of the Order.