



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

B-335257

May 11, 2023

The Honorable Ron Wyden

Chairman

The Honorable Mike Crapo

Ranking Member

Committee on Finance

United States Senate

The Honorable Cathy McMorris Rodgers

Chair

The Honorable Frank Pallone

Ranking Member

Committee on Energy and Commerce

House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024*

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), Centers for Medicare & Medicaid Services (CMS), titled “Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024” (RIN: 0938-AU97). We received the rule on April 19, 2023. It was published in the *Federal Register* as a final rule on April 27, 2023. 88 Fed. Reg. 25740. The effective date is June 18, 2023.

According to CMS, this final rule includes payment parameters and provisions related to the HHS-operated risk adjustment and risk adjustment data validation programs, as well as 2024 user fee rates for issuers offering qualified health plans (QHPs) through Federally-Facilitated Exchanges (FFEs) and State-Based Exchanges on the Federal Platform (SBE-FPs). CMS stated that the final rule also has requirements related to updating standardized plan options and reducing plan choice overload; the automatic re-enrollment hierarchy; plan and plan variation marketing name requirements for QHPs; essential community providers and network adequacy; failure to file and reconcile; special enrollment periods; the annual household income verification; the deadline for QHP issuers to report enrollment and payment inaccuracies; requirements related to the State Exchange improper payment measurement program; and requirements for agents, brokers, and web-brokers assisting FFE and SBE-FP consumers.

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). The House received the rule on April 19, 2023. 169 Cong. Rec. H2123 (daily ed. May 2, 2023). The Senate received the rule on April 25, 2023. 169 Cong. Rec. S1565 (daily ed. May 9, 2023). The final rule was published in the *Federal*

Register on April 27, 2023. The rule has a stated effective date of June 18, 2023. Therefore, the final rule does not have the required 60-day delay in its effective date.

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

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is fluid and cursive, with "Shirley" on the top line and "A. Jones" on the bottom line.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
Regulations Coordinator
Centers for Medicare & Medicaid Services
Department of Health and Human Services

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE & MEDICAID SERVICES
TITLED
“PATIENT PROTECTION AND AFFORDABLE CARE ACT,
HHS NOTICE OF BENEFIT AND PAYMENT PARAMETERS FOR 2024”
(RIN: 0938-AU97)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) provided an accounting statement that classifies the impacts associated with the final rule. For a period covering program years 2023–2027, CMS estimates the annualized monetized benefits of the final rule to be \$79.52 million in 2022 dollars at a 7 percent discount rate and \$81.16 million at a 3 percent discount rate. For the same period, CMS estimates the annualized monetized costs to be \$679.57 million in 2022 dollars at a 7 percent discount rate and \$691.07 million at a 3 percent discount rate. Lastly, for the same period, CMS estimates the annualized monetized transfers from issuers to the federal government to be \$400.62 million in 2022 dollars at a 7 percent discount rate and \$410.73 million at a 3 percent discount rate.

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

CMS stated that the Secretary of HHS has certified that this final rule will not have a significant economic impact on a substantial number of small entities or 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

CMS stated that it expects that the combined impact of the final rule on state, local, or tribal governments and the private sector does not meet the definition of an unfunded mandate under the Act.

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

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

On December 21, 2022, CMS issued a proposed rule. 87 Fed. Reg. 78206. CMS addressed comments relevant to its discussion of the final rule throughout the preamble.

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

CMS determined that this final rule contains information collection requirements (ICRs) under PRA. The ICRs in the final rule are assigned the following Office of Management and Budget (OMB) Control Numbers: 0938-1155, 0938-NEW, 0938-1207, and 0938-1439. CMS estimates

the total annual burden hours imposed by the ICRs in the final rule to be 590,252 hours and the total cost to be \$44,366,240.60.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to section 36B of title 26; sections 18021–18024, 18031–18033, 18041–18042, 18044, 18051, 18054, 18061–18063, 18071, and 18081–18083 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB's Office of Information and Regulatory Affairs has determined that this rulemaking is economically significant as measured by the \$200 million threshold provided under the amended Order.

Executive Order No. 13132 (Federalism)

According to CMS, this final rule will not impose substantial direct requirement costs on state and local governments. CMS stated that the final rule has federalism implications but they are mitigated through flexibilities provided for in the rule. CMS also stated that it has engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with state insurance officials on an individual basis. CMS stated further that it invited State Exchanges to submit comments on the proposed rule if they believe it would conflict with state law but CMS stated that it did not receive any such comments.