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May 27, 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 Henry A. Waxman  
Chairman  
The Honorable Joe Barton  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Sander M. Levin  
Acting Chairman  
The Honorable Dave Camp  
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, Office of the Secretary: Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act*

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; Department of Health and Human Services, Office of the Secretary (the agencies), entitled “Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act” (RINs: 1545-BJ46; 1210-AB41; 0991-AB66). We received the rule from the Department of Health and Human Services on May 11, 2010, from the Department of Labor on May 13, 2010, and from the Department of the Treasury, Internal Revenue Service on May 14, 2010. It was published in the *Federal Register*

as interim final rules with request for comments on May 13, 2010. 75 Fed. Reg. 27,122. These interim final rules are effective on July 12, 2010.

These interim final rules implement the requirements for group health plans and health insurance issuers in the group and individual markets under provisions of the Patient Protection and Affordable Care Act<sup>1</sup> regarding dependent coverage of children who have not attained age 26. Specifically, a plan or issuer that makes available dependent coverage of children must make such coverage available for children until attainment of 26 years of age. This rule clarifies that, with respect to children who have not attained age 26, a plan or issuer may not define dependent for the purposes of eligibility for dependent coverage of children other than in terms of the relationship between the child and the participant (in the individual market, the primary subscriber).

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

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<sup>1</sup> Pub. L. No. 111-148, § 1102, 124 Stat. 119, 145 (Mar. 23, 2010).

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

Annie Lamb  
Regulations Coordinator  
Department of Health and Human Services

LaNita Van Dyke  
Chief, Publications and Regulations  
Internal Revenue Service  
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,  
OFFICE OF THE SECRETARY  
ENTITLED  
"INTERIM FINAL RULES FOR GROUP HEALTH PLANS AND  
HEALTH INSURANCE ISSUERS RELATING TO  
DEPENDENT COVERAGE OF CHILDREN TO AGE 26  
UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT"  
(RINS: 1545-BJ46; 1210-AB41; 0991-AB66)

(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, Office of the Secretary (HHS) (collectively, the agencies) analyzed the costs and benefits of these interim final rules. The agencies determined that the benefits are expected to outweigh the costs to the regulated community. For 2011, the agencies estimated the number of previously uninsured individuals who will be covered under their parents' coverage. The agencies estimated that under their low-range assumptions, 190,000 such individuals would be covered; under their mid-range assumptions, 650,000 such individuals; and under their high-range assumptions, 1.64 million such individuals. According to the agencies, expanding coverage options for the 19–25 population should decrease the number uninsured, which in turn should decrease the cost-shifting of uncompensated care onto those with coverage, increase the receipt of preventive health care, and provide more timely access to high quality care, resulting in a healthier population. In particular, the agencies predict children with chronic conditions or other serious health issues will be able to continue coverage through a parents' plan until age 26. The agencies also expect that allowing extended dependent coverage will permit greater job mobility for this population as their health coverage will no longer be tied to their own jobs or student status. The agencies estimated the annual monetized costs of these interim final rules for 2011 through 2013 to be \$11.2 million at a discount rate of 7 percent and \$10.4 million at a discount rate of 3 percent.

(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 no notice of proposed rulemaking was 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.<sup>1</sup> 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.

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<sup>1</sup> 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 that the information collection requirement entitled “Affordable Care Act Enrollment Opportunity Notice Relating to Extended Dependent Coverage” (Office of Management and Budget (OMB) Control Number 1210-0139) will have 2.8 million respondents providing 79,573,000 responses for a total annual burden of 822,000 hours and total annual cost of \$2,467,000. HHS estimated that the information collection requirement entitled “Notice of Special Enrollment Opportunity under the Affordable Care Act Relating to Dependent Coverage” (OMB Control Number 0938-1089) will have 126,000 respondents providing 25,071,000 responses for a total annual burden of 259,000 hours and total annual cost of \$777,000.

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 1996;<sup>2</sup> sections 1001, 1201, and 1562(e) of the Patient Protection and Affordable Care Act,<sup>3</sup> and Secretary of Labor Order 6-2009.<sup>4</sup> 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.

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<sup>2</sup> Pub. L. No. 104-191, 110 Stat. 1936, 1953–54 (Aug. 21, 1996).

<sup>3</sup> 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)).

<sup>4</sup> 74 Fed. Reg. 21,524 (May 7, 2009).

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.