



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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August 16, 2018

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

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

The Honorable Virginia Foxx
Chairwoman
The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services: Short-Term, Limited-Duration Insurance*

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 (collectively, the Departments) entitled "Short-Term, Limited-Duration Insurance" (RINs: 1545-BO41, 1210-AB86; 0938-AT48). We received the rule on August 2, 2018. It was published in the *Federal Register* as a final rule August 3, 2018. 83 Fed. Reg. 38,212. The effective date of the final rule is October 2, 2018.

The final rule amends the definition of short-term, limited-duration insurance for purposes of its exclusion from the definition of individual health insurance coverage. This action is being taken to lengthen the maximum duration of short-term, limited-duration insurance, which will provide more affordable consumer choices for health coverage.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Agnes Thomas
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 THE TREASURY,
INTERNAL REVENUE SERVICE;
DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION;
DEPARTMENT OF HEALTH AND HUMAN SERVICES
ENTITLED
“SHORT-TERM, LIMITED-DURATION INSURANCE”
(RINs: 1545-BO41, 1210-AB86; 0938-AT48)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services (collectively, the Departments) stated the final rule would create benefits by leading to increased access to affordable health insurance for consumers unable or unwilling to purchase available individual market plans, potentially decreasing the number of uninsured individuals and resulting in improved health outcomes for these individuals. The Departments also stated the rule would lead to increased choice at lower cost and increased financial protection (for consumers who are currently uninsured or face extremely high premiums and deductibles for PPACA coverage) from catastrophic health care expenses for consumers purchasing short-term, limited-duration insurance. Finally, the Departments further stated the final rule would bring potentially broader access to health care providers compared to available individual market plans for some consumers; increased profits for issuers and brokers of short-term, limited-duration insurance; and economic efficiency gains from people buying unsubsidized coverage and minimizing overinsurance.

The Departments stated the final rule will result in reduced access to some services and providers for some consumers who switch from available individual market plans and possibly reduced choice for individuals remaining in the individual market risk pools. There is also a potential increase in out-of-pocket costs for some consumers, possibly leading to financial hardships.

The Departments also discussed potential transfers from the taxpayers (via the federal government) to enrollees in individual market plans in the form of increased Premium Tax Credits as well as higher premiums for some consumers remaining in the individual market as healthier than average individuals choose short-term, limited-duration insurance to a greater degree. The Departments also stated the rule may create tax liability for consumers who replace available individual market plans and will thus no longer maintain minimum essential coverage in 2018 and a potential increase in uncompensated care by hospitals.

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

The Departments certified that the final rule will not have a significant impact on a substantial number of small entities. They further certified the 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

The Departments stated the final rule does not include any federal mandate that may result in expenditure by state, local, or tribal governments, or by the private sector in excess of the statutory threshold.

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

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

The Departments published a Notice of Proposed Rulemaking on February 21, 2018. 83 Fed. Reg. 7437. The Departments received approximately 12,000 comments, which were responded to in the final rule.

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

The Departments stated the final rule does not contain a collection of information subject to the Act.

Statutory authorization for the rule

The Department of the Treasury promulgated the rule under 26 U.S.C. §§ 7805, 9833. The Department of Labor promulgated the rule under 29 U.S.C. §§ 1135, 1191c. The Department of Health and Human Services promulgated the rule under sections 2701-63, 2791, 2792, and 2794 of Public Health Service Act.

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

The Departments submitted the rule to the Office of Management and Budget (OMB) for review and OMB found it to be significant. A Regulatory Impact Assessment was included in the final rule.

Executive Order No. 13,132 (Federalism)

The Departments stated the final rule has no federalism implications to the extent that current state law requirements for short-term, limited-duration insurance are the same as or more restrictive than the federal standard in the rule.