



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

B-330639

January 11, 2019

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

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

Subject: *Department of Health and Human Services: Patient Protection and Affordable Care Act; Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program for the 2018 Benefit Year Final Rule*

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, Centers for Medicare and Medicaid Services (CMS) entitled “Patient Protection and Affordable Care Act; Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program for the 2018 Benefit Year Final Rule” (RIN: 0938-AT66). Congress received the rule on December 10, 2018. We received the rule on December 27, 2018. It was published in the *Federal Register* as a final rule on December 10, 2018. 83 Fed. Reg. 63,419. The effective date of the final rule is February 8, 2019.

The final rule adopts the HHS-operated risk adjustment methodology for the 2018 benefit year. In February 2018, a district court vacated the use of statewide average premium in the HHS-operated risk adjustment methodology for the 2014 through 2018 benefit years. Following review of all submitted comments to the proposed rule, HHS is adopting for the 2018 benefit year an HHS-operated adjustment methodology that utilizes the statewide average premium and is operated in a budget-neutral manner, as established in the final rules published in the March 23, 2012, and the December 22, 2016, editions of the *Federal Register*.

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

signed

Julia C. Matta
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 HEALTH AND HUMAN SERVICES
ENTITLED
“PATIENT PROTECTION AND AFFORDABLE CARE ACT;
ADOPTION OF THE METHODOLOGY FOR THE HHS-OPERATED
PERMANENT RISK ADJUSTMENT PROGRAM FOR THE
2018 BENEFIT YEAR FINAL RULE”
(RIN: 0938-AT66)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) stated the approximate estimated risk adjustment transfers in the final rule for the 2018 benefit year would be \$4.8 billion.

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

CMS stated that it examined the impact of the final rule as required by RFA.

(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 examined the impact of the final rule as required by the Act.

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

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

CMS published a proposed rule in the *Federal Register* on August 10, 2018. 83 Fed. Reg. 39,644. CMS stated it received comments on the proposed rule and addressed those comments in the final rule.

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

CMS stated the final rule does not impose information collection requirements.

Statutory authorization for the rule

CMS stated it promulgated the final rule under sections 13421(c)(1) and 1343 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

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

CMS stated the Office of Management and Budget reviewed the final rule, and a final regulatory impact analysis was incorporated in the final rule.

Executive Order No. 13,132 (Federalism)

CMS stated that it examined the impact of the final rule as required by the Order.