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October 31, 2008

The Honorable Max Baucus  
Chairman  
The Honorable Charles E. Grassley  
Ranking Minority Member  
Committee on Finance  
United States Senate

The Honorable George Miller  
Chairman  
The Honorable Howard P. "Buck" McKeon  
Ranking Minority Member  
Committee on Education and Labor  
House of Representatives

The Honorable John D. Dingell  
Chairman  
The Honorable Joe Barton  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Charles B. Rangel  
Chairman  
The Honorable Jim McCrery  
Ranking Minority 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, Centers for Medicare and Medicaid Services: Final Rules for Group Health Plans and Health Insurance Issuers Under the Newborns' and Mothers' Health Protection 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; the Department of Labor, Employee Benefits Security Administration; and the Department of Health and Human Services, Centers for Medicare and Medicaid Services (the agencies), entitled "Final Rules for Group Health Plans and Health

Insurance Issuers Under the Newborns' and Mothers' Health Protection Act" (RINs: 1545-BG82; 1210-AA63; 0938-AI17). We received the rule from the Centers for Medicare and Medicaid Services on October 20, 2008, and from the Employee Benefits Security Administration on October 24, 2008. It was published in the *Federal Register* as a final rule on October 20, 2008. 73 Fed. Reg. 62,410. This rule has a stated effective date of December 19, 2008. The regulations applicable to the group market apply to group health plans and group health insurance issues for plan years beginning on or after January 1, 2009.

The final rule provides protections for mothers and their newborn children with regard to the lengths of hospital stays following childbirth. This rule is meant to implement parts of the Newborns' and Mothers' Health Protection Act of 1996, Pub. L. No. 104-204, title VI, 110 Stat. 2874, 2935 (Sept. 26, 1996) and parallel changes contained in the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (Aug. 5, 1997). Under these statutes, group health plans and health insurance issuers generally may not restrict mothers' and newborns' benefits for a hospital stay in connection with childbirth to less than 48 hours following a vaginal delivery or 96 hours following a delivery by cesarean section. This final rule implements, explains, and clarifies certain aspects of this restriction.

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 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Ann Stallion  
Program Manager  
Department of Health and Human Services

Bradford P. Campbell  
Assistant Secretary, Employee  
Benefits Security Administration  
Department of Labor

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,  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
ENTITLED  
"FINAL RULES FOR GROUP HEALTH PLANS AND  
HEALTH INSURANCE ISSUERS UNDER THE NEWBORNS'  
AND MOTHERS' HEALTH PROTECTION ACT"  
(RINs: 1545-BG82; 1210-AA63; 0938-AI17)

(i) Cost-benefit analysis

The Employee Benefits Security Administration (EBSA) and the Centers for Medicare and Medicaid Services (CMS) analyzed the costs and benefits of this final rule. EBSA and CMS identified the primary economic benefit of the minimum length stays under this rule as deriving from the reduction in complications linked to the premature discharge of mothers and newborns. EBSA and CMS estimate the cost of enacting federal minimum stay requirements to be between \$139 and \$279 million annually. However, because this final rule implements an already established statutory requirement, EBSA and CMS conclude that the implementation costs of this final rule should be negligible.

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

EBSA and CMS determined that this final rule will not have a significant impact on a substantial number of 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 Department of Treasury (Treasury), EBSA, and CMS determined that this final rule does not contain any federal mandate resulting in expenditures by state, local, or tribal governments. However, the agencies did determine that this rule includes mandates on the private sector of more than \$100 million annually.

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

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

ESBA and CMS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On October 27, 1998, the interim final rule was published in the *Federal Register*. 63 Fed. Reg. 57,546. The agencies received eleven formal comment letters on the interim rule, to which they responded in this final rule. 73 Fed. Reg. 62,410–13. Treasury determined that general notice provision of the Act does not apply to the Treasury regulations.

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

According to the ESBA and CMS, this final rule contains no new information requirements under the Act.

Statutory authorization for the rule

IRS promulgated this rule under the authority of sections 7805 and 9833 of the Internal Revenue Code. 26 U.S.C. §§ 7805, 9833. ESBA promulgated this final rule under sections 1027, 1059, 1135, 1161–1169, 1181–1183, 1185–1185b, and 1191–1191c of title 29, United States Code; section 651 note of title 42, United States Code; and section 101(g) of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 112 Stat. 1936, 1953–54 (Aug. 21, 1996). CMS promulgated this final rule under the authority of sections 2701 to 2763, 2791, and 2792 of the Public Health Service Act. 42 U.S.C. §§ 300gg to 300gg-63, 300gg-91, 300gg-92.

Executive Order No. 12,866

ESBA and CMS determined that this final rule is economically significant under the Order. The Department of Treasury determined that, for its purposes, this final rule is not significant.

Executive Order No. 13,132 (Federalism)

ESBA and CMS determined that this final rule has federalism implications under the Order. However, ESBA and CMS judge these implications to be substantially mitigated because all but one state have requirements for health insurance issuers that prescribe benefits for length of hospital stays in connection to childbirth as long or longer than this final rule. In compliance with the Order, ESBA and CMS report having consulted and worked cooperatively with affected state and local officials.