



United States Government Accountability Office
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April 5, 2012

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Health and Human Services, Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment*

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) entitled "Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment" (RIN: 0938-AR07). We received the rule on March 20, 2012. It was published in the *Federal Register* as a final rule on March 23, 2012. 77 Fed. Reg. 17,220.

The final rule implements standards for states related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with title I of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010. These programs will mitigate the impact of potential adverse selection and stabilize premiums in the individual and small group markets as insurance reforms and the Affordable Insurance Exchanges are implemented, starting in 2014.

Enclosed is our assessment of HHS's 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 HHS 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

cc: Agnes Thomas
Correspondence and Regulations Assistant
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;
STANDARDS RELATED TO REINSURANCE,
RISK CORRIDORS AND RISK ADJUSTMENT"
(RIN: 0938-AR07)

(i) Cost-benefit analysis

HHS prepared a cost-benefit analysis in conjunction with the final rule. The Congressional Budget Office (CBO) estimated program payments and receipts for reinsurance and risk adjustment programs that will begin operation in 2014. CBO estimated that once the programs begin that risk adjustment payments and collections will be equal in the aggregate, but that risk adjustment payments lag revenues by one quarter. HHS stated that there are administrative costs to states and exchanges to set up and administer these programs, but noted that states may use grant funding to develop these programs, and that issuers would have reporting costs to submit data and financial information. HHS stated that the benefit to the final rule is that it will reduce the risk to the issuer and reduce the risk premium.

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

HHS concluded that the final rule will not have a significant economic impact on a substantial number of small entities, because HHS believes that few insurance firms offering comprehensive health insurance policies fall below the size threshold for small entities established by the Small Business Administration (SBA).

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

HHS determined that the final rule does not impose a mandate to incur costs in excess of the \$136 million threshold on state, local, or tribal governments, because states are not required to establish a reinsurance program or operate a risk adjustment program. HHS stated that it was unable to determine if the final rule imposes a mandate to incur costs above the \$136 million threshold on the private sector, because operational details on how health insurance issuers and entities that must participate in the reinsurance program have not been finalized.

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

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

On July 15, 2011, HHS published a notice of proposed rulemaking in the *Federal Register*. 76 Fed. Reg. 41,950. HHS received approximately 700 comments on the proposed rule, of which approximately 200 were not specific to the proposed rule. The comments received that were specific to the final rule came from a wide variety of stakeholders, including states and tribal organizations, health insurance issuers, consumer groups, healthcare providers, industry experts, and members of the public. HHS responded to the comments that were specific to the proposed rule in the final rule.

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

The final rule describes some information collections for which HHS stated that it plans to seek approval for at a later date. HHS stated that it will issue future notices in the *Federal Register* to seek comments on those information collection requirements as is required by the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a control number assigned by the Office of Management and Budget (OMB).

Statutory authorization for the rule

The final rule is authorized by section 1321 and sections 1341-1343 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010).

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

HHS determined that the final rule is economically significant under the Executive Order. The rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

The final rule does not address this Executive Order.