



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

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June 30, 2015

The Honorable Orrin G. Hatch  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

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

The Honorable John Kline  
Chairman  
The Honorable Robert "Bobby" Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

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

The Honorable Paul Ryan  
Chairman  
The Honorable Sander M. Levin  
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:  
Summary of Benefits and Coverage and Uniform Glossary*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on major rules promulgated by the Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services

(HHS) (collectively, the Departments) entitled “Summary of Benefits and Coverage and Uniform Glossary” (RINs: 1545-BM53; 1210-AB69; 0938-AS54). We received the rules on June 15, 2015. They were published in the *Federal Register* as final rules on June 16, 2015. 80 Fed. Reg. 34,292.

The final rules contain the summary of benefits and coverage (SBC) and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act (PPACA). It finalizes changes to the regulations that implement the disclosure requirements under section 2715 of the Public Health Service Act to help plans and individuals better understand their health coverage, as well as to gain a better understanding of other coverage options for comparison.

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 rules. Our review of the procedural steps taken indicates that the Departments 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 rules, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Deputy Director/ODRM  
Department of Health and Human Service

Assistant Secretary, Employee Benefits  
Security Administration  
Department of Labor

Chief, Publications and Regulations Branch  
Internal Revenue Service  
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON MAJOR RULES  
ISSUED BY THE  
DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE;  
DEPARTMENT OF LABOR,  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION;  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
ENTITLED  
“SUMMARY OF BENEFITS AND COVERAGE  
AND UNIFORM GLOSSARY”  
(RINs: 1545-BM53; 1210-AB69; 0938-AS54)

(i) Cost-benefit analysis

These final regulations state that they are expected to have only small benefits and costs as they primarily provide clarifications of the previous 2012 final regulations and also incorporate into regulations previous guidance issued by the Departments that has taken the form of responses to frequently asked questions or enforcement safe harbors. The Departments have not been able to quantify these costs and benefits, but they are qualitatively discussed in the rule. The clarifications would help lower costs as they establish that duplicates of the summary of benefits and coverage (SBC) do not have to be provided upon application if a previous SBC was provided and there have been no changes to the required information. The clarification also prevents unnecessary duplications for plans and issuers, while incorporating safeguards to ensure that participants and beneficiaries (and covered individuals and dependents) receive the required information. These final regulations also provide flexibility in providing SBCs for the situation where a plan has multiple issuers and also adopt the safe harbor for electronic delivery previously set forth in an FAQ, thereby reducing the cost of delivery. These final regulations also require an issuer to provide an internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained. The costs associated with this requirement are discussed in the Paperwork Reduction Act section below.

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

The Departments certified that these final regulations will not have a significant economic impact on a substantial number of small entities.

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

The Departments of Labor and HHS concluded that the final rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector. Regardless, consistent with policy embodied in UMRA, the Departments state that the final requirements described in the final rule have been designed to be the least burdensome alternative for state, local, and tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

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

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

On August 22, 2011, the Departments published proposed regulations (2011 proposed regulations) and an accompanying document soliciting comments on the template, instructions, and related materials for implementing the disclosure provisions under the Public Health Service Act (PHS Act) section 2715. 76 Fed. Reg. 52,442 (August 22, 2011) and 76 Fed. Reg. 52,475 (August 22, 2011), respectively. The Departments published joint final regulations to implement the disclosure requirements under PHS Act section 2715 (2012 final regulations) and an accompanying document with the template, instructions, and related materials. 77 Fed. Reg. 8,668 (February 14, 2012) and 77 Fed. Reg. 8,706 (February 14, 2012), respectively. On December 30, 2014, the Departments issued proposed regulations (December 2014 proposed regulations), as well as a new proposed SBC template, instructions, an updated uniform glossary, and other materials to incorporate some of the feedback the Departments have received and to make some improvements to the template. 79 Fed. Reg. 78,577 (December 30, 2014). The Departments state that they received many comments on the proposed changes to the template and associated documents but received very few comments relating to the regulations. The Departments state that they anticipate the new template and associated documents will be finalized by January 2016, and, therefore, only the comments on the regulations were addressed in the final rule.

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

The Departments of Labor and the Treasury stated that the final rule is not subject to the requirements of PRA because the regulations make no changes to the existing collection of information as defined in the PRA. They note that the proposed regulations included an information collection requirement (ICR) related to the revision of the SBC template that has been omitted in the final regulations as the Departments intend to utilize consumer testing and offer an opportunity for public comment before finalizing revisions to the SBC template, and that an analysis under PRA will be conducted when the SBC template is finalized.

The Department of Health and Human Services stated that the final rule requires health insurance issuers offering group and individual health insurance coverage to include in the SBC an internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained. These documents are required to be easily available to individuals, plan sponsors, and participants and beneficiaries shopping for coverage prior to submitting an application for coverage. With respect to group health coverage, because the actual “certificate of coverage” is not available until after the plan sponsor has negotiated the terms of coverage with the issuer, an issuer is permitted to satisfy this requirement with respect to plan sponsors that are shopping for coverage by posting a sample group certificate of coverage for each applicable product. After the actual certificate of coverage is executed, it must be easily available to plan sponsors and participants and beneficiaries via an internet web address. HHS states that it believes that the requirement to make these documents available via an internet web address will result in only a *de minimis* burden on issuers. The final rules make no other revisions to the existing collection of information. The December 2014 proposed regulations included an ICR related to the revision of the SBC template that has been omitted in the final rule as the Departments intend to utilize consumer testing and offer an opportunity for public comment before finalizing revisions to the SBC template. An analysis under PRA will be conducted when the SBC template is finalized. The 2015–2017 paperwork burden estimates were summarized as follows:

- Type of Review: Revision.
- Agency: Department of Health and Human Services.
- Title: Summary of Benefits and Coverage Uniform Glossary CMS Identifier (OMB Control Number): CMS–10407 (0938–1146).
- Affected Public: Private sector.
- Total Respondents: 126,500.
- Total Responses: 41,153,858.
- Frequency of Response: Ongoing.
- Estimated Total Annual Burden Hours (3-year average): 322,411 hours.
- Estimated Total Annual Cost Burden (3-year average): \$7,207,361.

#### Statutory authorization for the rule

The Department of the Treasury’s regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of title 26 of the U.S. Code.

The Department of Labor’s regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. No. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. No. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. No. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. No. 111–148, 124 Stat. 119, as amended by Pub. L. No. 111–152, 124 Stat. 1029; Secretary of Labor’s Order 1–2011, 77 Fed. Reg. 1,088 (Jan. 9, 2012).

The Department of Health and Human Services’ regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

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

The rule was designated a “significant regulatory action” under section 3(f) of Executive Order 12,866. Accordingly, the rule has been reviewed by the Office of Management and Budget. A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any one year). The Departments concluded that the final rule would not have economic impacts of \$100 million or more in any one year or otherwise meet the definition of an “economically significant rule” under Executive Order 12,866. Nonetheless, consistent with Executive Orders 12,866 and 13,563, the Departments provided an assessment of the potential benefits and the costs associated with these final regulations.

For purposes of the Department of the Treasury it was determined that this final rule is not a significant regulatory action as defined in Executive Order 12,866, as supplemented by Executive Order 13,563. Therefore, the Department of the Treasury states that a regulatory assessment is not required. It has also been determined by the Department of the Treasury that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the final rule. However, the rule includes a discussion of its impact on small entities. Pursuant to 26 U.S.C. 7805(f), this notice of final rulemaking has been submitted to the Small Business Administration for comment on its impact on small business.

## Executive Order No. 13,132 (Federalism)

In the Departments of Labor's and HHS's views, these final regulations have federalism implications because they would 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 relating to the disclosure of health insurance coverage information to consumers. Under this final rule, all group health plans and health insurance issuers offering group or individual health insurance coverage, including self-funded, non-federal governmental plans as defined in section 2791 of the PHS Act, would be required to follow uniform standards for compiling and providing a summary of benefits and coverage to consumers. According to the Departments, such federal standards developed under PHS Act section 2715(a) would preempt any related state standards that require a summary of benefits and coverage that provides less information to consumers than that required to be provided under PHS Act section 2715(a).

According to the Departments, in general, through section 514, the Employee Retirement Income Security Act of 1974 (ERISA) supersedes state laws to the extent that they relate to any covered employee benefit plan, and preserves state laws that regulate insurance, banking, or securities. While ERISA prohibits states from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act apply so that the requirements in title XXVII of the PHS Act (including those added by PPACA) are not to be construed to supersede any provision of state law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of a federal standard. States may continue to apply state law requirements except to the extent that such requirements prevent the application of PPACA requirements that are the subject of this rulemaking. Accordingly, states have significant latitude to impose requirements on health insurance issuers that are more restrictive than the federal law. However, under these final rules, a state would not be allowed to impose a requirement that modifies the summary of benefits and coverage required to be provided under PHS Act section 2715(a), because it would prevent the application of these final rules' uniform disclosure requirements.

The Departments state that in compliance with the requirement of Executive Order 13,132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the states, the Departments of Labor and HHS have engaged in efforts to consult with and work cooperatively with affected states, including consulting with, and attending conferences of, the National Association of Insurance Commissioners and consulting with state insurance officials on an individual basis. It is expected that the Departments of Labor and HHS will act in a similar fashion in enforcing PPACA, including the provisions of section 2715 of the PHS Act. Throughout the process of developing this final rule, to the extent feasible within the applicable preemption provisions, the Departments of Labor and HHS state that they have attempted to balance the states' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every state.