



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

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December 2, 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 Kevin Brady  
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: Final Rules for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections Under the Affordable Care Act*

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 “Final Rules for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections Under the Affordable Care Act” (RINs: 1545-BJ45; 1545-BJ50, 1545-BJ62, 1545-BJ57; 1210-AB72; 0938-AS56). We received the rules on November 13, 2015. They were published in the *Federal Register* as final rules on November 18, 2015. 80 Fed. Reg. 72,192.

The final rules pertain to grandfathered health plans, preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, coverage of dependent children to age 26, internal claims and appeal and external review processes, and patient protections under the Patient Protection and Affordable Care Act. It finalizes changes to the proposed and interim final rules based on comments from the public and incorporates subregulatory guidance issued since publication of the proposed and interim final rules.

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  
“FINAL RULES FOR GRANDFATHERED PLANS, PREEXISTING  
CONDITION EXCLUSIONS, LIFETIME AND ANNUAL LIMITS,  
RESCISSIONS, DEPENDENT COVERAGE, APPEALS, AND  
PATIENT PROTECTIONS UNDER THE AFFORDABLE CARE ACT”  
(RINs: 1545-BJ45; 1545-BJ50, 1545-BJ62, 1545-BJ57; 1210-AB72; 0938-AS56)

(i) Cost-benefit analysis

The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments) provided an assessment of the potential benefits and the costs associated with these final regulations. The Departments state that they expect these final regulations, when compared with the interim final regulations, to have marginal benefits and costs. They state that this is because they primarily provide clarifications of the previous interim final regulations issued in 2010 and 2011 and incorporate subregulatory guidance, including frequently asked questions and safe harbors issued by the Departments. The Departments stated that they do not have sufficient data to quantify these costs and benefits, but they are qualitatively discussed throughout the rule and are summarized in the accounting table, which was included in the rule. The Departments state that they have quantified where possible the costs associated with these final regulations. These costs include the burden that will be incurred to prepare and distribute required disclosures and notices, and to bring plan and issuers' policies and procedures into compliance with the new requirements. The Departments have not been able to quantify costs related to increased access to care but note that to the extent these patient protections increase access to health care services, increased health care utilization and costs could result.

The Departments included an accounting table that included a brief summary of the qualitative benefits. The Departments state that the final regulations help ensure the protections and benefits intended by Congress, many of which have a distributional component and promote equity, in the sense that they will benefit those who are especially vulnerable as a result of health problems and financial status. Other benefits noted include increased access to care and to information needed to protect consumers' rights, improved health outcomes for patients, and increased certainty for issuers, plans, and consumers. The Departments estimated that the total cost for these final regulations is \$169.9 million annually with a transfer from the plan and its participants to those whose claims are reversed of \$53.5 million annually. The Departments stated that due to the risk pooling nature of health insurance, the patient protections and other requirements create a transfer from those paying premiums to those individuals and families now obtaining increased protections, coverage, and service.

(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 are not likely to have a significant economic impact on a substantial number of small entities. The Departments' basis for this determination and their estimate of small entities affected by these final regulations were discussed in the final rule.

(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 these final regulations would not impose an unfunded mandate on state, local, or tribal governments or the private sector. These Departments stated that consistent with the policy embodied in UMRA, the final requirements described in the final rules were designed to be the least burdensome alternative for state, local, and tribal governments, and the private sector while achieving the objectives of the Patient Protection and Affordable Care Act (PPACA).

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

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

The Departments have issued regulations implementing the revised Public Health Service Act (PHS Act) sections 2701 through 2719A in several phases. Throughout 2010, the Departments issued interim final regulations (or temporary and proposed regulations), with requests for comment, implementing PPACA section 1251 (preservation of right to maintain existing coverage), and PHS Act sections 2704 (prohibition of preexisting condition exclusions), 2711 (prohibition on lifetime or annual limits), 2712 (prohibition on rescissions), 2714 (extension of dependent coverage), 2719 (internal claims and appeals and external review process), and 2719A (patient protections) (collectively, the 2010 interim final regulations). After consideration of comments in response to the 2010 interim final regulations, the Departments issued these final rules. The Departments responded to comments in the final rule.

On June 17, 2010, the Departments issued interim final regulations implementing section 1251 and requesting comment. 75 Fed. Reg. 34,538. On November 17, 2010, the Departments issued an amendment to the interim final regulations to permit certain changes in policies, certificates, or contracts of insurance without loss of grandfathered status. 75 Fed. Reg. 70,114. After consideration of the comments and feedback received from stakeholders, the Departments are publishing these final regulations. The final rules finalize the 2010 interim final regulations and amendments to the interim final regulations without substantial changes and incorporate the clarifications issued thus far in subregulatory guidance.

Treasury stated in a special analysis that it has been determined that for certain IRS regulations, including these final rules, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply.

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

According to DOL and Treasury, the final rules contain a notice of grandfather status and third-party disclosure, rescissions notice, and patient protection disclosures requirement for issuers and notice requirements related to internal claims and appeals and external review that are information collection requests (ICRs) subject to PRA. The Departments submitted an ICR to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the interim final regulations, for OMB's review under the emergency PRA procedures. OMB subsequently approved the ICRs. Contemporaneously with the publications of the emergency ICRs, the Departments published a separate *Federal Register* notice informing the public that it intended to request OMB to extend the approval for 3 years and soliciting comments on the ICRs. OMB approved the ICR extensions. According to the Departments, no public comments were received in response to the ICRs contained in the interim final regulations that specifically addressed the paperwork burden analysis of the information collections. The comments that were submitted contained information relevant to the costs and administrative burdens attendant to the proposals. The Departments took into account the public comments when analyzing the economic impact of the proposals and developing the revised paperwork burden analysis, which was summarized in the final rules. According to a table included that pertains to HHS, the annual reporting, recordkeeping, and disclosure burden will result in total costs of \$157,623,166.

## Statutory authorization for the rule

The Department of the Treasury's final regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the U.S. Code. The Department of Labor's final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1135, and 1191c; Secretary of Labor's Order 1-2011, 77 Fed. Reg. 1088 (Jan. 9, 2012). The Department of Health and Human Services' final 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 Departments concluded that these final regulations would have economic impacts of \$100 million or more in at least one year, thus meeting the definition of an "economically significant rule" under the Order. The final rules have been designated as "significant regulatory actions" under section 3(f) of Executive Order 12,866. Accordingly, the rule has been reviewed by OMB. Treasury stated in a special analysis that it has been determined that certain IRS regulations, including these final rules, are exempt from the requirements of Executive Order 12,866, as supplemented and reaffirmed by Executive Order 13,563, and a regulatory assessment by Treasury was not required.

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

In the view of DOL and HHS, 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. Under these final regulations, group health plans and health insurance issuers offering group or individual health insurance coverage, including non-federal governmental plans as defined in section 2791 of the PHS Act, would be required to follow the federal standards developed under PPACA section 1251 and PHS Act sections 2704, 2711, 2712, 2714, 2719, and 2719A, as added by PPACA. However, the Departments' state that the federalism implications of these final regulations are substantially mitigated because, with respect to health insurance issuers, the Departments state that they expect that the majority of states will enact laws or take other appropriate action resulting in their meeting or exceeding the federal standards.

DOL and HHS note that they 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. The Departments 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.

The Departments certified that the Employee Benefits Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13,132 for the final rules in a meaningful and timely manner.