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April 1, 2013

The Honorable Thomas R. Carper
Chairman
The Honorable Tom A. Coburn
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Darrell E. Issa
Chairman
The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Subject: *Office of Personnel Management; Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Office Personnel Management (OPM), entitled “Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges” (RIN: 3206-AM47). The rule was published in the *Federal Register* as a final rule on March 11, 2013. 78 Fed. Reg. 15,560.

The final rule establishes the Multi-State Plan Program (MSPP) pursuant to the Affordable Care Act. Through contracts with OPM, health insurance issuers will offer at least two multi-state plans (MSPs) on each of the Affordable Insurance Exchanges. One of the issuers must be non-profit. An MSPP issuer may phase in the states in which it offers coverage over 4 years, but it must offer MSPs on Exchanges in all states and the District of Columbia by the fourth year in which the MSPP issuer participates in the MSPP. With this rule, OPM aims to balance adhering to the statutory goals of MSPP while aligning its standards to those applying to qualified health plans to promote a level playing field across health plans.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the

rule, whichever is later. 5 U.S.C. § 801(a)(3)(A). This rule has a stated effective date of May 10, 2013.¹ The rule was published in the *Federal Register* on March 11. It was mailed to us postmarked March 13 and arrived thereafter. Therefore, this rule does not have the required 60-day delay in effective date under the CRA.

Enclosed is our assessment of OPM'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 OPM complied with the applicable requirements with the exception of the 60-day delay in the effective date.

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: John Berry
Director, Office of Personnel
Management

¹ This final rule did not establish an effective date for section 800.503 of this rule concerning external review of adverse benefit determinations. OPM will be publishing a notice announcing the effective date of section 800.503.

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
OFFICE OF PERSONNEL MANAGEMENT
ENTITLED
"PATIENT PROTECTION AND AFFORDABLE CARE ACT;
ESTABLISHMENT OF THE MULTI-STATE PLAN PROGRAM
FOR THE AFFORDABLE INSURANCE EXCHANGES"
(RIN: 3206-AM47)

(i) Cost-benefit analysis

The Office of Personnel Management (OPM) assessed the costs and benefits of this final rule. OPM found that one primary benefit of health insurance coverage would be an increase in longevity or health for newly-enrolled individuals. Improved access to health care services has been shown to lead to higher use of preventive services and health improvements, such as reduced hypertension, improved vision, and better self-reported health status, as well as better clinical outcomes and lower mortality. OPM also found that additional benefits would be generated for newly-enrolled individuals in the form of improved financial security. However, insurance coverage can lead to increased utilization of health services for individuals who become newly insured, a portion of which may be economically inefficient. OPM also expects this rule will generate administrative costs for OPM and issuers offering multi-state plans. OPM concluded that it lacks the data to quantify most of these benefits, costs, and transfers.

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

OPM determined that this final rule 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, 2 U.S.C. §§ 1532-1535

OPM determined that this final rule does not place any federal mandates on state, local, or tribal governments, or in the private sector.

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

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

On December 5, 2012, OPM published a proposed rule. 77 Fed. Reg. 72,582. OPM received approximately 350 comments on the proposed rule, including about 105 unique comment letters. OPM responded to the comments in the final rule.

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

OPM determined that this final rule does contain information collection requirements, but also determined that these information collection requirements are exempt from the requirements of the Act because OPM expects fewer than 10 responsible entities to respond to all of the collection requirements, among other possible reasons.

Statutory authorization for the rule

OPM promulgated this final rule under the authority of section 1334 of Public Laws 111-148 and 111-152.

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

OPM determined that this final rule is an economically significant rule under the Order because the economic impact will exceed the \$100 million threshold for at least one year.

Executive Order No. 13,132 (Federalism)

OPM determined that this final rule has federalism implications because it has direct effect 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. However, OPM concluded that the federalism implications of this rule are substantially mitigated because OPM expects the vast majority of states to have laws consistent with federal law.