



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

B-324899

July 11, 2013

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
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; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions*

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; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions” (RIN: 0938-AR68). We received the rule on June 26, 2013. It was published in the *Federal Register* as a final rule on July 1, 2013. 78 Fed. Reg. 39,494.

The final rule implements certain functions of the Affordable Insurance Exchanges (Exchanges). These specific functions include determining eligibility for and granting certificates of exemption from the individual shared responsibility payment described in section 5000A of the Internal Revenue Code. Additionally, this final rule implements the responsibilities of the Secretary of HHS, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage by providing that certain coverage be designated as minimum essential coverage. It also outlines substantive and procedural requirements that other types of individual coverage must fulfill in order to be certified as minimum essential coverage.

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 by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was received by Congress on June 26, 2013, and published on July 1, 2013. 159 Cong. Rec. H4169 (June 28, 2013); 78 Fed. Reg. 39,494. The stated effective date for this final rule is August 26, 2013. Therefore, this notice does not have the required 60-day delay.

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: Annie Lamb
Regulations Coordinator
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;
EXCHANGE FUNCTIONS: ELIGIBILITY FOR EXEMPTIONS;
MISCELLANEOUS MINIMUM ESSENTIAL COVERAGE PROVISIONS"
(RIN: 0938-AR68)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS) considered the effects of this final rule, including the benefits and costs. HHS did not attempt to quantify the benefits, costs, or transfers resulting from this rule. HHS expects the exemption provisions of this rule to generate exemption requests and affect the amount of shared responsibility payments and the number of individuals who enroll in health insurance plans to avoid shared responsibility payments. HHS expects the impact of the minimum essential coverage provisions to be similar.

For individuals seeking an exemption, HHS found that submissions would be associated with a variety of effects, including: costs to Exchanges to review the exemption requests; costs to applicants to request exemptions and retain documents; potential effects on enrollment in health coverage and its benefits; and a transfer from the federal government to individuals receiving exemptions in cases in which there is a foregone shared responsibility payment. HHS noted that the cost to an applicant of submitting a request and retaining documents is bounded by the expected shared responsibility payment; otherwise, he or she would not necessarily apply for the exemption. Though HHS lacks data to precisely characterize the effects of these provisions, it noted that the potential number of individuals seeking exemptions through the Exchange could place the overall impact of the final rule over \$100 million, even at a low economic cost per individual.

HHS also found that the minimum essential coverage provisions included in this final rule could lead to transfers from the federal government to affected individuals (in this case, individuals whose coverage is designated to be minimum essential coverage) and have effects on health coverage enrollment (for example, decreased switching between plans). Decreased switching between plans would entail time savings for affected individuals and uncertain effects on premium payments and use of medical services and products.

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

HHS 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

HHS determined that this final rule does not mandate expenditures by state, local, or tribal governments in the aggregate, or the private sector of \$100 million (\$141 million adjusted for inflation).

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

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

On February 1, 2013, HHS published a proposed rule. 78 Fed. Reg. 7348. HHS received approximately 220 public comments from state agencies, advocacy groups, health care providers, employers, health insurers, health care associations, and others. The comments ranged from general support or opposition to the proposed provisions to very specific questions or comments regarding the proposed rule. HHS responded to public comments in the final rule.

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

HHS determined that this final rule contains six information collection requirements under the Act. HHS estimated that five of the six information collection requirements would have fewer than 20 respondents and one requirement would have 12 million individual respondents. HHS estimated the total annual burden to be 3,223,255 hours. HHS submitted the rule to the Office of Management and Budget (OMB) for OMB's review of these information collection requirements.

Statutory authorization for the rule

HHS promulgated this final rule under the authority of sections 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083 of title 42, United States Code.

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

HHS determined that this final rule is a significant regulatory action under the Order, and it has been reviewed by OMB pursuant to the Order.

Executive Order No. 13,132 (Federalism)

HHS determined that, while this final rule does not impose substantial direct costs on states and local governments, it has federalism implications due to direct effects on the distribution of power and responsibilities among the state and federal governments relating to determining standards relating to health insurance coverage that is offered in the individual and small group markets. However, HHS anticipates that the federalism implications are substantially mitigated because states have choices regarding the structure and governance of their Exchanges.