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April 18, 2024

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services: Short-Term, Limited-Duration Insurance and Independent, Noncoordinated Excepted Benefits Coverage*

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 the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration (EBSA); and the Department of Health and Human Services (HHS) (collectively, the Agencies) entitled “Short-Term, Limited-Duration Insurance and Independent, Noncoordinated Excepted Benefits Coverage” (RINs: 1545-BQ28, 1210-AC12, & 0938-AU67). We received the rule from HHS on March 26, 2024, and from EBSA on April 3, 2024. It was published in the *Federal Register* as final rules on April 3, 2024. 89 Fed. Reg. 23338. The effective date is June 17, 2024.

The final rules, according to the Agencies, amend the definition of short-term, limited-duration insurance, which is excluded from the definition of individual health insurance coverage under the Public Health Service Act, Pub. L. No. 78-410, 58 Stat. 682 (July 1, 1944). The Agencies stated that the rules also set forth amendments to the regulations regarding the requirements for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit in the group and individual health insurance markets.

Enclosed is our assessment of the Agencies’ compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Samuel A. Shipley
Senior Policy and Regulations Coordinator
Department of Health and Human Services

Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE;
DEPARTMENT OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION;
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
ENTITLED
“SHORT-TERM, LIMITED-DURATION INSURANCE AND INDEPENDENT,
NONCOORDINATED EXCEPTED BENEFITS COVERAGE”
(RINs: 1545-BQ28, 1210-AC12, & 0938-AU67)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration (EBSA); and the Department of Health and Human Services (HHS) (collectively, the Agencies) stated that they estimate the one-time cost to review these final rules to be approximately \$438 per entity. The Agencies also noted that issuers will incur one-time costs to modify their products to comply with the provisions for short-term, limited-duration insurance (STLDI) and fixed indemnity excepted benefits coverage that are being finalized in these rules and filing amended marketing materials and plan documents with state departments of insurance. The Agencies stated these costs are expected to vary by issuer depending on the number of states in which they offer products, the number of products they offer, and the overall scale of their operations. According to the Agencies, issuers of STLDI and fixed indemnity excepted benefits coverage will incur costs associated with the notice provisions in the final rules, which they estimate to be approximately \$1,066 per issuer.

The Agencies also noted that the rules address specific issues that are critical to ensuring that consumers can clearly distinguish STLDI and fixed indemnity excepted benefits coverage from comprehensive coverage and make better informed decisions about the coverage they chose to purchase. The rules, according to the Agencies, will support the goals of the Affordable Care Act by increasing access to affordable and comprehensive health coverage, strengthening health insurance markets, and promote better consumer understanding of coverage options.

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

The Agencies prepared data and conclusions in these final rules that they stated amounted to their final regulatory flexibility analysis under RFA. The analysis included a discussion of the (1) need for regulatory action, objectives, and legal basis, (2) number of affected small entities as defined by RFA, (3) compliance requirements and costs, (4) duplication, overlap, and conflict with other rules and regulations, (5) significant alternatives, and (6) impact on small rural hospitals.

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

The Agencies concluded that these final rules are not expected to have a combined impact on state, local, or tribal governments and the private sector above the \$183 million threshold (\$100 million in 1995 dollars, updated annually for inflation).

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

These final rules do not address the Act. In their respective submissions to us, HHS and EBSA indicated that the Act is not applicable to the rules.

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

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

On July 12, 2023, the Agencies published proposed rules in the *Federal Register*. 88 Fed. Reg. 44596. The Agencies received comments, which they summarized and responded to in these final rules.

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

The Agencies determined that these final rules do not contain a collection of information as defined in PRA.

Statutory authorization for the rule

The Agencies promulgated these final rules pursuant to section 7805 of title 26, United States Code; sections 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c of title 29, United States Code; sections 300gg through 300gg-63, 300gg-91, 300gg-92, and 300gg-111 through 300gg-139 of title 42, United States Code; and Public Laws 104-191, 105-200, 110-343, 111-148 (as amended by Public Law 111-152), and 113-235.

Executive Order No. 12866 (Regulatory Planning and Review)

According to the Agencies, OMB's Office of Information and Regulatory Affairs determined these final rules are significant under the Order and the Agencies stated that OMB has reviewed the rules.

Executive Order No. 13132 (Federalism)

The Agencies determined that these final rules have federalism implications because they may 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. The Agencies noted that while developing the rules, they attempted to balance states' interests in regulating health insurance issuers and their health insurance markets with Congress's intent to establish a general federal framework for health insurance coverage, including the provisions of certain key, uniform minimum protections to consumers enrolled in comprehensive coverage in every state. The Agencies stated that by doing so, they complied with the requirements of the Order.