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April 26, 2024

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of the Treasury; Department of Health and Human Services, Centers for Medicare & Medicaid Services: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025; Updating Section 1332 Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan (CO-OP) Program; and Basic Health Program*

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; and the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (the Departments) titled “Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025; Updating Section 1332 Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan (CO-OP) Program; and Basic Health Program” (RIN: 0938-AV22). We received the rule on April 4, 2024. It was published in the *Federal Register* as a final rule on April 15, 2024. 89 Fed. Reg. 26218. The stated effective date is June 4, 2024.

According to the Departments, this final rule includes payment parameters and provisions related to the HHS-operated Risk Adjustment Program, as well as 2025 user fee rates for issuers offering qualified health plans through federally-facilitated exchanges (FFE) and state-based exchanges on the federal platform (SBE-FP). The Departments stated that the final rule also includes requirements related to the auto re-enrollment hierarchy; essential health benefits; failure to file federal income taxes to reconcile advance payments of the premium tax credit; non-standardized plan option limits in the FFEs and SBE-FPs and a related exceptions process; standardized plan options in the FFEs and SBE-FPs; special enrollment periods; direct enrollment (DE) entities supporting Exchange applications and enrollments; the Insurance Affordability Program enrollment eligibility verification process; requirements for agents, brokers, web-brokers, and DE entities assisting Exchange consumers; network adequacy; public notice procedures for section 1332 waivers; prescription drug benefits; updates to the Consumer

Operated and Oriented Plan Program; and state flexibility on the effective date of coverage in the Basic Health Program.

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). Both Houses of Congress received this final rule on April 4, 2024. Email from Regulations Coordinator, HHS, to Senior Staff Attorney, GAO, *Subject: Official Submission - RIN 0938-AV22* (Apr. 4, 2024). The final rule was published in the *Federal Register* on April 15, 2024. 89 Fed. Reg. 26218. The rule has a stated effective date of June 4, 2024. Therefore, the final rule does not have the required 60-day delay in its effective date.

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 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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
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 THE TREASURY;
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE & MEDICAID SERVICES
TITLED
“PATIENT PROTECTION AND AFFORDABLE CARE ACT,
HHS NOTICE OF BENEFIT AND PAYMENT PARAMETERS FOR 2025;
UPDATING SECTION 1332 WAIVER PUBLIC NOTICE PROCEDURES;
MEDICAID; CONSUMER OPERATED AND ORIENTED PLAN (CO-OP) PROGRAM;
AND BASIC HEALTH PROGRAM”
(RIN: 0938-AV22)

(i) Cost-benefit analysis

The Department of the Treasury; and the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (the Departments) prepared an accounting table for this final rule. The Departments estimate the annualized monetized benefit of the final rule to be \$25.79 million at a 7 percent discount rate or \$26.32 million at a 3 percent discount rate for the period of 2024 through 2028. The Departments noted several qualitative benefits including, for example, improved transparency and consumer experience. The Departments estimate the annualized monetized cost of the final rule to be \$10 million at both a 7 percent and 3 percent discount rate for the period covering 2024 through 2028. The Departments also noted qualitative costs, such as increased annual costs for consumers and increased administrative burden on states and issuers. Finally, the Departments estimate \$1.42 billion of estimated transfers from the federal government to states at a 7 percent discount rate or \$1.48 billion at a 3 percent discount rate for the period covering 2024 through 2028.

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

The Departments stated that the Secretary of HHS has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The Departments stated that the Secretary of HHS has certified that the rule will not have a significant impact on the operations of a substantial number of 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 Departments determined that this final rule will not have an effect, in the aggregate, on state, local, or tribal government, or on the private sector, of \$183 million (\$100 million, adjusted for inflation) or more.

(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.

The Departments did not discuss the Act in this final rule. In its submission to us, the Departments stated that the requirements of the Act do not apply because most of the costs noted in the rule are not direct federal spending.

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

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

On November 24, 2023, the Departments published a proposed rule. 88 Fed. Reg. 82510. The Departments stated that they received 29 comments from various interested parties, including states, health and disease advocacy organizations, general advocacy organizations, health care provider organizations, and research organizations. The Departments also stated that they summarized and responded to public comments received on the proposed amendments.

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

The Departments determined that this final rule contains information collection requirements (ICRs) under the Act. According to the Departments, there are 12 ICRs imposed by this rule. The Departments estimate the total burden hours of these ICRs to be 104,264 hours and the total cost to be \$9,832,523.

Statutory authorization for the rule

The Departments promulgated this final rule pursuant to section 36B of title 26; sections 18021–18024, 18031–18033, 18041–18042, 18044, 18051, 18054, 18061–18063, 18071, and 18081–18083 of title 42, United States Code, and sections 1331 and 1332 of Public Law 111-148 and Public Law 111-152.

Executive Order No. 12866 (Regulatory Planning and Review)

The Office of Information and Regulatory Affairs, OMB, determined that this final rule is significant under the Order and stated that OMB has reviewed the final rule.

Executive Order No. 13132 (Federalism)

The Departments determined that this final rule may have federalism implications due to potential direct effects on the distribution of power and responsibilities among the state and federal governments relating to determining standards concerning health insurance that is offered in the individual and small group (including merged) markets. The Departments provided an analysis of several mandates in the rule that might have federalism implications. But the Departments also discussed how it mitigated federalism implications or noted where states had discretion to implement certain actions that could have federalism implications.