



Office of the General Counsel

B-281397

December 8, 1998

The Honorable William V. Roth, Jr.
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable William F. Goodling
Chairman
The Honorable William L. Clay
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

The Honorable Bill Archer
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of the Treasury, Internal Revenue Service; Department of Labor, Pension and Welfare Benefits Administration; Department of Health and Human Services, Health Care Financing Administration: Group Health Plans and Health Insurance Issuers Under the Newborns' and Mothers' Health Protection Act

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, Pension and Welfare Benefits Administration; and the Department of Health and Human Services, Health Care Financing Administration; entitled "Group Health Plans and Health Insurance Issuers Under the Newborns' and Mothers' Health Protection Act" (RIN: 1545-AV52; 1210-AA63; 0938-AI17).

We received the rule on October 26, 1998, from the Department of the Treasury and on October 30, 1998, from the Department of Labor. The Department of Health and Human Services' submission of the rule was received by our Office on November 23, 1998. It was published in the Federal Register as interim rules with request for comments on October 27, 1998. 63 Fed. Reg. 57546. The announced effective date is January 1, 1999.

The interim rules provide guidance to employers, group health plans, health insurance issuers, and participants and beneficiaries concerning the new requirements for hospital lengths of stay in connection with childbirth.

The interim rules have an announced effective date of January 1, 1999. The Congressional Review Act requires that major rules have a 60-day delay in their effective date following publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A) Congress and our Office did not receive the rule from the Department of Health and Human Services until November 23, 1998, which means that the HHS rule will not have the required 60-day delay in its effective date.

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. Our review indicates that with the exception of the effective date problem discussed above, the agencies complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to this area is William Scanlon, Director, Health Financing and Systems Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Cynthia Grigsby
Chief, Regulations Unit
Internal Revenue Service
Department of the Treasury

Ms. Meredith Miller
Deputy Assistant Secretary for Policy
Pension and Welfare Benefits Administration
Department of Labor

The Honorable Donna E. Shalala
The Secretary of Health and Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE;
DEPARTMENT OF LABOR,
PENSION AND WELFARE BENEFITS ADMINISTRATION;
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
HEALTH CARE FINANCING ADMINISTRATION;
ENTITLED
"GROUP HEALTH PLANS AND HEALTH INSURANCE ISSUERS UNDER THE
NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT"
(RIN: 1545-AV52; 1210-AA63; 0938-AI17)

(i) Cost-benefit analysis

The Departments of Labor and Health and Human Services conducted a cost-benefit analysis of the impact of the interim rules. The estimated impact on insured costs of the Newborns' and Mothers' Health Protection Act, as implemented by the interim rules and which for the most part mirror the statutory provisions, range between \$130 million to \$200 million.

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

Since these rules are being issued as interim rules and were not previously published through a notice of proposed rulemaking, the Departments were not required to prepare an initial or final regulatory flexibility analysis under the act. However, the Departments have considered the likely impact of the rules on small entities and believe that the rules 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

Since the rules were issued as interim rules and not as general notices of proposed rulemaking, they are not subject to the Unfunded Mandates Reform Act of 1995. However, the Departments indicate that the rules have been designed to be the least burdensome alternative on state, local, and tribal governments and the private sector.

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

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

Section 9833 of the Internal Revenue Code, section 734 of the Employee Retirement Income Security Act of 1974, and section 2792 of the Public Health Service Act authorize the Secretaries to promulgate any interim final rules that they determine to be necessary to carry out the provisions of the Newborns' and Mothers' Health Protection Act. Therefore, the Secretaries have issued these rules on an interim final rule basis and have requested comments on the rules. Also, the agencies had requested comments on the statute on June 26, 1997, in a Request for Information. The comments were considered in promulgating the interim rules.

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

The interim rules contain no new information collections which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The Treasury rule was issued pursuant to the authority contained in section 7805 and in section 9833 of the Internal Revenue Code (26 U.S.C. 7805, 9833), as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and amended by Taxpayer Relief Act of 1997 (Pub. L. 105-34, 111 Stat. 788).

The Labor rule was issued pursuant to the authority contained in sections 505, 711, and 734 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1135, 1181, and 1194), as added by HIPAA and amended by Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) and Secretary of Labor's Order No. 1-87, 52 Fed. Reg. 13139, April 21, 1987.

The Health and Human Services rule was issued pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as added by HIPAA and amended by NMHPA.

Executive Order No. 12866

The interim rules were determined to be "economically significant" regulatory actions under Executive Order No. 12866. They were reviewed and approved by the Office of Management and Budget as complying with the requirements of the order on October 9, 1998.