



**United States
General Accounting Office
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Office of the General Counsel

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April 24, 1997

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

The Honorable James M. Jeffords, Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Labor and Human Resources
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 Treasury, Internal Revenue Service; Department of Labor,
Pension and Welfare Benefits Administration; and the Department of
Health and Human Services, Health Care Financing Administration:
Interim Rules for Health Insurance Portability for Group Health Plans**

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on major rules promulgated by Department of Treasury, Internal Revenue Service;

Department of Labor, Pension and Welfare Benefits Administration; and the Department of Health and Human Services, Health Care Financing Administration (the Departments) entitled, "Interim Rules for Health Insurance Portability for Group Health Plans" (RIN: 1545-AV05, 1210-AA54, and 0938-AI08). We received the rules on April 9, 1997. The rules were published in the Federal Register as interim rules with request for comments on April 8, 1997. 62 Fed. Reg. 16894.

The interim rules govern access, portability, and renewability requirements for group health plans and issuers of health insurance coverage in connection with a group health plan. The rules implement changes in the provisions of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act which were enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The group market provisions of HIPAA create concurrent jurisdiction for the Secretaries of Health and Human Services, Labor, and Treasury and include rules relating to preexisting conditions exclusions, special enrollment rights, and prohibition of discrimination against individuals based on health status-related factors. The shared group market provisions in each of the Department's rule, except as noted in the preamble, are substantially identical.

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 rules. Our review indicates that the Departments complied with the applicable requirements.

Our Office has recently performed work relating to this area including "Health Insurance Portability: Reform Could Ensure Continued Coverage for up to 25 Million Americans" (HEHS-95-257), "Private Health Insurance: Millions Relying on Individual Market Face Cost and Coverage Trade-offs" (HEHS-97-8), and "Health Insurance Regulation: Varying State Requirements Affect Cost of Insurance" (HEHS-96-161).

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 issue 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: The Honorable Olena Berg
Assistant Secretary for Pension and
Welfare Benefits
Department of Labor

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

The Honorable Donna E. Shalala
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 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
"INTERIM RULES FOR HEALTH INSURANCE PORTABILITY
FOR GROUP HEALTH PLANS"
(RIN: 1545-AV05; 1210-AA54; 0938-AI08)

(i) Cost-benefit analysis

The Departments have prepared a combined economic impact analysis for this interim final rule and the interim final rule issued by the Department of Health and Human Services, and published the same day in the Federal Register, concerning individual market provisions because the effects of the reforms and burdens imposed overlap the same group of issuers. 62 Fed. Reg. 16908-16920.

For group health plans coverage under these rules, the Departments cite estimates formulated by the Congressional Budget Office which shows the initial yearly cost (direct cost to the private sector) to be \$50 million with 300,000 people covered and \$200 million in subsequent years for limiting the length of preexisting conditions exclusions to 12 months. For creditable coverage, the CBO estimate is \$25 million for the first year and \$100 million per year thereafter.

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

Since the rules were issued as interim final rules and not as general notices of proposed rulemaking, the rules are not subject to the Regulatory Flexibility Act. However, the Departments, in the preamble, invite comments regarding the impact of the rules on small entities and ways to minimize that impact.

(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 final rules and not as general notices of proposed rulemaking, the rules are not subject to the Unfunded Mandates Reform Act of 1995. However, the Departments point out that the rules have been designed to be the least burdensome alternative for state, local, and tribal governments. Also, the Departments met and consulted with representatives of these

governments, including state insurance commissions, in drafting the rules to give the states considerable flexibility in complying with HIPAA.

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

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

Section 707 of ERISA, Section 9806 of the Internal Revenue code, and Section 2707 of the Public Health Service Act provide that the Secretaries may promulgate any interim final rules determined to be appropriate to carry out the provisions of Part B of the act. The Secretaries have determined that there is good cause under Section 553(b) of the Administrative Procedure Act to not issue a notice of proposed rulemaking because it would be impracticable, unnecessary, or contrary to the public interest. The Secretaries have found that without prompt guidance, some members of the regulated community would have difficulty complying with the requirements of the HIPAA and insured individuals will not understand the benefit to them of having a certificate of prior coverage to present upon entering the individual health insurance market.

However, the Departments are accepting comments on the interim final rule for a 90-day period for consideration in the development of the final rules to be issued implementing the HIPAA.

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

The interim final rules contain information collections subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

The Departments have requested emergency review of the collections because the collection of the information is needed before the expiration of the normal time limits of the act to assure guaranteeing availability of individual health insurance coverage to certain individuals with prior group coverage. The Departments are requesting that OMB provide a 30-day comment period with OMB approval by June 1, 1997, for a 180-day period. During the 180-day period, the Departments will publish a notice in the Federal Register initiating a 60-day agency review and public comment period with submittal to OMB for review and an extension of the emergency approval to follow.

The notice contained in the preamble to the interim final rule complies with the requirements of the Paperwork Reduction Act by explaining the need for the information, the parties affected, and the burden estimates related to the collections by each Department.

Statutory authorization for the rule

The Department of Labor's interim rule is adopted pursuant to the authority contained in Section 707 of the Employee Retirement Income Security Act (Pub. L. 93-406, 88 Stat. 894; 29 U.S.C. § 1135) as amended by HIPAA (Pub. L. 104-191; 101 Stat. 1936; 29 U.S.C. § 1181).

The Department of Health and Human Services' interim rule is adopted pursuant to the authority contained in Sections 2701, 2702, 2711, 2712, 2713, and 2792 of the Public Health Service Act, as established by HIPAA (Pub. L. 104-191; 42 U.S.C. §§ 300gg-1 through 300gg-13 and 300gg-92).

The Department of the Treasury's rule is adopted pursuant to 26 U.S.C. §§ 7805, 9801(c)(4), 9801(e)(3), and 9806.

Executive Order No. 12866

The interim rules were found to be "economically significant" regulatory actions by OMB under Executive Order No. 12866. As such, they were reviewed by OMB based on the information supplied by the Departments, which included planned regulatory action documents describing the reason for the rules and an assessment of the costs and budgetary impact of the rules. OMB approved the rules on March 27, 1997.