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January 13, 2005

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Bill Thomas
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, Employee Benefits Security Administration; and Department of Health and Human Services, Centers for Medicare and Medicaid Services: Federal Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers Under HIPAA Titles I & IV*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on major rules promulgated by the Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; and Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), entitled “Federal Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers Under HIPAA Titles I & IV” (RIN: 1545-AX84; 1210-AA54; 0938-AL43). We received the rules on December 30, 2004. It was published in the Federal Register as a final regulation on December 30, 2004. 69 Fed. Reg. 78720.

The final rules, issued jointly by the three agencies, govern portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The rules implement changes made to the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Enclosed is our assessment of the CMS's 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 CMS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rules is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Cynthia E. Grigsby
Acting Chief, Publications & Regulations Branch
Internal Revenue Service
Department of the Treasury

Assistant Secretary
Employee Benefits Security Administration
Department of Labor

Ann Stallion
Regulations Coordinator
Department of Health and
Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF MAJOR RULES
ISSUED BY THE
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE;
DEPARTMENT OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION;
AND DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"FEDERAL REGULATIONS FOR HEALTH COVERAGE PORTABILITY FOR
GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE ISSUERS
UNDER HIPAA TITLES I & IV"
(RIN: 1545-AX84; 1210-AA54; 0938-AL43)

(i) Cost-benefit analysis

A cost-benefit analysis was performed and the cost of the extended coverage is estimated at \$515 million annually. The administrative costs will be \$97 million per year for plans and issuers to prepare and distribute certifications and notices of prior coverage to individuals leaving coverage. The economic benefits include increased job mobility because of the portability of health coverage.

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

Since the final rules were not preceded by the issuance of a Notice of Proposed Rulemaking, the requirements of the Act do not apply. However, the agencies point out that the effects of the rules on small entities were considered during the drafting of the final rule.

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

The final rules do not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

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

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

The rules finalize the interim rules published on April 8, 1997, in the Federal Register. 62 Fed. Reg. 16894. On October 25, 1999, additional comments were solicited (64 Fed. Reg. 57520) based on the experience of plans and issuers operating under the 1997 interim rules.

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

The final rules do not contain either new or modified information collections that have not already been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The Department of Treasury final rule is adopted pursuant to the authority contained in sections 7805 and 9833 of the Internal Revenue Code (26 U.S.C. 7805 and 9833).

The Department of Labor final rule is adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161-1168, 1169, 1181-1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; section 101(g), Public Law 104-191, 101 Stat. 1936 and section 401(b), Public Law 105-200, 112 Stat 645 (42 U.S.C. 651 note).

The Department of Health and Human Services final rule is adopted 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 (Public Law 104-191, 110 Stat. 1936), and amended by Mothers' Health Protection Act and the Newborns' and Mothers' Health Protection Act of 1996 (Public Law 104-204, 110 Stat. 2935), and Women's Health and Cancer Rights Act (Public Law 105-277, 112 Stat. 2681-436).

Executive Order No. 12866

The final rules were reviewed by OMB and found to be an "economically significant" regulatory action for HHS and Labor under the order. However, Treasury's portion of the rule was found not to be "economically significant."

Executive Order No. 13132 (Federalism)

The final rules do have federalism implications under the order but the agencies believe the implications are lessened because the majority of states have enacted laws that meet or exceed the federal HIPAA portability standards. In addition, input was solicited and consultations held with state insurance regulators.