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Office of the General Counsel

B-276709

April 24, 1997

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

Subject: Department of Health and Human Services: Individual Market Health Insurance Reform: Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules

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 Health and Human Services (HHS), entitled "Individual Market Health Insurance Reform: Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules" (RIN: 0938-AH75). We received the rule on April 9, 1997. It was published in the Federal Register as a final rule on April 8, 1997. 62 Fed. Reg. 16985.

The rule implements section 111 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to improve access to the individual insurance market. Certain "eligible individuals" who lose group health insurance coverage are assured availability of coverage in the individual market, on a guaranteed issue basis, without preexisting condition exclusions. Also, all individual health insurance coverage must be guaranteed renewable. The rule also sets forth the procedures that apply to states that choose to implement a mechanism under state law, as an alternative to the federal requirements with respect to guaranteed availability for

eligible individuals and the rules that apply if a state does not substantially enforce the statutory requirements.

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

Our Office has performed work relating to this area recently, including "Health Insurance Portability: Reform Could Ensure Continued Coverage for up to 25 Million Americans" (HEHS-95-257).

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 the Department of Health and Human Services 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 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 HEALTH AND HUMAN SERVICES  
ENTITLED  
"INDIVIDUAL MARKET HEALTH INSURANCE REFORM:  
PORTABILITY FROM GROUP TO INDIVIDUAL COVERAGE;  
FEDERAL RULES FOR ACCESS IN THE INDIVIDUAL MARKET;  
STATE ALTERNATIVE MECHANISMS TO FEDERAL RULES"  
(RIN: 0938-AH75)

(i) Cost-benefit analysis

HHS, in conjunction with the Departments of Labor and Treasury, has prepared a combined economic impact analysis for this interim final rule and the interim final rule issued jointly by the three Departments, and published the same day in the Federal Register, concerning group market provisions because the effects of the reforms and burdens imposed overlap the same group of issuers. 62 Fed. Reg. 16908-16920.

For the portability from group to individual coverage under this rule, HHS cites estimates formulated by the Congressional Budget Office which shows the initial yearly cost (direct cost to the private sector) to be \$50 million with 45,000 people covered and \$200 million by the fifth year with 150,000 people covered. The analysis also discusses social welfare effects of the rule such as freeing people from "job lock," the inability to change jobs because of the possible loss of coverage.

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

Since the rule was issued as an interim final rule and not as a general notice of proposed rulemaking, the rule is not subject to the Regulatory Flexibility Act.

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

Since the rule was issued as an interim final rule and not as a general notice of proposed rulemaking, the rule is not subject to the Unfunded Mandates Reform Act of 1995.

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

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

Section 2792 of the Public Health Service Act (42 U.S.C. § 300gg-92) provides that the Secretary of HHS may promulgate any interim final rules determined to be appropriate to carry out the provisions of Part B of the act. The Secretary has 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 Secretary has 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, HHS is 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 rule contains information collections subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

HHS has 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. HHS is 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, HHS 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 estimate related to the collection.

HHS estimates that the total annual responses will be 3.5 million in 1997 and 3 million in 1998 and 1999 with the total annual burden hours estimated to range from 335,000 to 586,000 hours in 1997; 384,000 to 882,000 hours in 1998; and 377,000 to 882,000 in 1999. The total annual cost of complying with the information collection is estimated to range from \$4.9 million to \$6.8 million in 1997; \$5.1 million to \$8.7 million in 1998; and \$5.4 million to \$8.7 million in 1999.

### Statutory authorization for the rule

The rule is promulgated under authority of sections 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. §§ 300gg-41 through 300gg-63, 300gg-91, and 300gg-92).

### Executive Order No. 12866

The interim final rule was found to be an "economically significant" regulatory action by OMB under Executive Order No. 12866 and as such was reviewed by OMB based on the information supplied by HHS, including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule. OMB approved the rule on March 27, 1997.