



441 G St. N.W.  
Washington, DC 20548

B-336718

October 8, 2024

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Bobby Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services: Requirements Related to the Mental Health Parity and Addiction Equity 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 (IRS); the Department of Labor, Employee Benefits Security Administration (EBSA); and the Department of Health and Human Services (HHS) (collectively, the Departments) entitled "Requirements Related to the Mental Health Parity and Addiction Equity Act" (RINs: 1545-BQ29, 1210-AC11, 0938-AU93). We received a submission of this rule from HHS on September 18, 2024, from EBSA on September 23, 2024, and from IRS on September 24, 2024. It was published in the *Federal Register* on September 23, 2024. 89 Fed. Reg. 77586. The effective date of the rule is November 22, 2024.

According to the Departments, this rule amends implementing regulations for the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and implements MHPAEA's nonquantitative treatment limitation (NQTL) comparative analyses requirements, which prohibit certain health plans and health insurance issuers from using NQTLs that place greater restrictions on access to mental health and substance use disorder benefits as compared to medical and surgical benefits.

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 this 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

Lisa M. Gomez  
Assistant Secretary  
Employee Benefits Security Administration

Kalle Wardlow  
Federal Register Liaison  
Internal Revenue Service

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE;  
DEPARTMENT OF LABOR,  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION;  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
ENTITLED  
“REQUIREMENTS RELATED TO THE MENTAL HEALTH PARITY  
AND ADDICTION EQUITY ACT”  
(RINS: 1545-BQ29, 1210-AC11, 0938-AU93)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS); Department of Labor, Employee Benefits Security Administration (EBSA); and Department of Health and Human Services (HHS) (collectively, the Departments) prepared an analysis of the costs and benefits of this rule. See 89 Fed. Reg. 77586, 77669–89. The Departments stated that numerical estimation of benefits is not possible, but defined benefits qualitatively to include greater access to mental health and substance use disorder treatments, better health outcomes among those with mental health conditions and substance use disorders, and reduced adverse impacts on the communities of those with untreated or poorly managed mental health conditions and substance use disorders. See 89 Fed. Reg. 77586, 77669–77.

The Departments have quantified estimated costs across several categories. See 89 Fed. Reg. 77586, 77677–89. Estimated costs for the Association for Behavioral Health and Wellness to prepare the required comparative analyses result in a first-year cost burden of \$984.8 million and subsequent year cost burden of \$197 million. 89 Fed. Reg. 77586, 77678. Estimated costs for Blue Cross Blue Shield Association to prepare additional comparative analysis result in a cost burden ranging from \$957.4 million (lower bound) to \$2 billion (upper bound). 89 Fed. Reg. 77586, 77679. Estimated costs for plans and issuers to analyze nonquantitative treatment limitations (NQTLs) result in a first-year cost burden between \$656 million and \$984.3 million and subsequent year cost burdens between \$131.2 million and \$196.8 million. 89 Fed. Reg. 77586, 77684. The estimated annual cost to prepare comparative analysis upon participant request is \$12,219,302. 89 Fed. Reg. 77586, 77685. The estimated annual cost to distribute comparative analysis upon participant or beneficiary request is \$2,585,169. *Id.* The estimated annual cost of providing comparative analysis for audits is \$23,804. 89 Fed. Reg. 77586, 77686. First year estimated cost of rule familiarization is \$10,794,184. *Id.* The Departments also provide estimated costs of increased treatment and benefits resulting from decreased mortality among those receiving mental health and substance use treatment. See 89 Fed. Reg. 77586, 77688–89.

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

The Departments certified that this rule will not have a significant impact on a substantial number of small entities. See 89 Fed. Reg. 77586, 77699.

(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 rule will result in expenditures of \$100 million or more, adjusted annually for inflation, for state, local, and tribal governments, in the aggregate, or the private sector in any one year. See 89 Fed. Reg. 77586, 77702.

(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 rule or in their submissions to us.

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

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

On August 3, 2023, the Departments published a proposed rule. 88 Fed. Reg. 51552. The Departments stated that they received comments from various interested parties. See 89 Fed. Reg. 77586, 77589. The Departments responded to comments in this rule. *Id.*

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

The Departments determined that this rule contains information collection requirements under the Act. 89 Fed. Reg. 77693.

Statutory authorization for the rule

The Departments promulgated this rule pursuant to 42 U.S.C. §§ 300gg-1–5, 300gg-11–23, 300gg-91–92.

Executive Order No. 12866 (Regulatory Planning and Review)

HHS and EBSA stated that this rule is significant under the Order. See 89 Fed. Reg. 77586, 77656. The rule was submitted to OMB for review. *Id.*

Tax regulatory actions issued by the IRS are not subject to the Order's regulatory review procedures. See 89 Fed. Reg. 77586, 77702.

Executive Order No. 13132 (Federalism)

The Departments determined that this rule has federalism implications. See 89 Fed. Reg. 77586, 77702.