



MEMORANDUM

March 14, 2010

To: Committee on Finance, United States Senate
Attention: Stephanie Carlton

From: ; Specialist in American National Government,
Government and Finance Division,

Subject: **Final Rules Issued Pursuant to the Patient Protection and Affordable Care Act**

This memorandum responds to your request that CRS identify the final rules that have been issued pursuant to the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148, March 23, 2010).¹ Although federal agencies have published proposed rules and other documents related to PPACA,² you requested that we focus on final rules. To identify these rules, we searched the GPO Access electronic rulemaking database (<http://www.gpoaccess.gov/fr/advanced.html>) using the advanced search mechanism that permits identification of only final rules, and searched using such phrases as “Affordable Care Act,” “PPACA,” and “public law 111-148.” This approach identified a total of 23 substantive final rules that appear to have been issued pursuant to PPACA as of March 14, 2011.

It is possible that other final rules have been issued implementing PPACA (e.g., rules that did not mention “affordable care act” in the text). We did not include rules that mentioned PPACA, but did not implement provisions in the act,³ and we did not include rules that made minor technical corrections to previously issued final rules.⁴ We did, however, include final rules that made substantive changes to earlier final rules. Fifteen of the 23 rules were interim final rules, which were issued without a prior proposed rule,

¹ Following the enactment of PPACA, the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) amended PPACA and made other changes. Both P.L. 111-148 and P.L. 111-152 are collectively referred to as PPACA. A previous CRS report identified PPACA rules issued in the first four months of implementation (i.e., as of July 23, 2010). See CRS Report R41346, *PPACA Regulations Issued During the First Four Months of the Act's Implementation*, by Curtis W. Copeland.

² See, for example, U.S. Department of Health and Human Services, Office of Consumer Information and Insurance Oversight, “Planning and Establishment of State-Level Exchanges; Request for Comments Regarding Exchange-Related Provisions in Title I of the Patient Protection and Affordable Care Act,” *75 Federal Register* 45584, August 3, 2010.

³ For example, an April 15, 2010, final rule on the Medicare Advantage program noted that Section 3202 of PPACA will apply to Medicare Advantage plans offered in 2011, and discusses cost sharing for certain services. However, the rule itself does not implement PPACA. See U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, “Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs; Final Rule,” *75 Federal Register* 19678, April 15, 2010.

⁴ For example, a December 30, 2010, final rule made technical corrections to an interim final rule published on December 1, 2010. See U.S. Department of Health and Human Services, Office of Consumer Information and Insurance Oversight, “Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements Under the Patient Protection and Affordable Care Act; Corrections to the Medical Loss Ratio Interim Final Rule With Request for Comments,” *75 Federal Register* 82277, December 30, 2010.

but had a post-promulgation opportunity for comment.⁵ Three other final rules were also issued without a prior proposed rule.

Table 1 below lists the 23 PPACA final rules that had been published in the *Federal Register* as of March 13, 2011, along with other information about the rules. I trust that this information is helpful. If you have any other questions, please do not hesitate to call.

Table 1. Final Rules Pursuant to PPACA as of March 14, 2011

| Publication Date/Citation | Department/Agency or Office | Summary | Dates |
|---|--|--|---|
| May 5, 2010 75 <i>Federal Register</i> 24437 | Department of Health and Human Services (HHS)/Centers for Medicare & Medicaid Services (CMS) | Interim final rule implementing the requirement in Section 6402(a) of PPACA that providers of medical or other items or services to include their National Provider Identifier (NPI) on all applications to enroll and on all claims for payment. The rule also (among other things) adds a requirement to provide documentation on referrals to programs at high risk of waste and abuse. | Effective on July 6, 2010. Comment period ended on July 7, 2010. |
| May 5, 2010 75 <i>Federal Register</i> 24470 | HHS/Office of the Secretary | Interim final rule implementing the requirement in Section 1103(a) of PPACA to establish a website through which individuals and small businesses can obtain information about the insurance coverage options available in their state. The rule adopts the categories of information that will be collected and displayed, and the data required from issuers and requested from states, associations, and high risk pools. | Effective on May 10, 2010. Comment period ended on June 4, 2010. The initial version of the website became available July 1, 2010. |

⁵ Interim final rulemaking is a particular application of the “good cause” exception to notice-and-comment rulemaking in the Administrative Procedure Act (5 U.S.C. §553(b)(3)(B)). In interim final rulemaking, the issuing agency publishes a final rule without a prior notice of proposed rulemaking, but offers a post-promulgation opportunity to comment. Interim final rules may take effect immediately, or their effective dates may be delayed until a certain period after the date the rules are published.

| Publication Date/Citation | Department/Agency or Office | Summary | Dates |
|---|---|--|---|
| May 5, 2010 <i>75 Federal Register</i> 24450 | HHS/Office of the Secretary | Interim final rule implementing the Early Retiree Reinsurance Program in Section 1102 of PPACA. This temporary program (ends by January 1, 2014) provides reimbursement to participating employment-based plans for a portion of the cost of health benefits for early retirees and their spouses/dependents (certain claims between \$15,000 and \$90,000). | Effective on June 1, 2010. Comment period ended on June 4, 2010. |
| May 13, 2010 <i>75 Federal Register</i> 27122 | Department of the Treasury (Treasury)/Internal Revenue Service (IRS); Department of Labor (DOL)/Employee Benefits Security Administration (EBSA); HHS | Interim final rule implementing the requirements in Section 1001 of PPACA for group health plans and health insurance coverage in the group and individual markets regarding dependent coverage of children who have not attained age 26. | Effective on July 12, 2010. The requirements generally apply for plan years beginning on or after September 23, 2010. Comment period ended on August 11, 2010. |
| May 26, 2010 <i>75 Federal Register</i> 29447 | HHS | Interim final rule (required by Section 10501(l) of PPACA) defining "underserved rural community" for purposes of the Rural Physician Training Grant Program in section 749B of the Public Health Service Act. | Effective on June 25, 2010. Comment period ended on July 26, 2010. |
| June 15, 2010 <i>75 Federal Register</i> 33683 | Treasury/IRS | Final and temporary rules providing guidance on the indoor tanning services excise tax imposed by Section 10907 of PPACA. | Effective on June 15, 2010 The tax applies to payments after June 30, 2010. No comments were requested. IRS said it had been "determined" that notice and comment requirements did not apply to the rule, but published a proposed rule the same day. |
| June 17, 2010 <i>75 Federal Register</i> 34538 | Treasury/IRS; DOL/EBSA; HHS | Interim final rule implementing the requirements for group health plans and health insurance coverage in the group and individual markets regarding status as a "grandfathered" health plan (Section 1251 of PPACA). | Effective on June 14, 2010, except that certain amendments were effective July 12, 2010. Comment period ended on August 10, 2010. |

| Publication Date/Citation | Department/Agency or Office | Summary | Dates |
|---|---|---|--|
| June 28, 2010 <i>75 Federal Register</i> 37188 | Treasury/IRS; DOL/EBSA; HHS | Interim final rule implementing the rules for group health plans and health insurance coverage in the group and individual markets regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, and patient protections (Sections 2704, 2711, 2712, and 2719A of PPACA). | Effective on August 27, 2010. Some of the requirements apply for plan years starting on or after September 23, 2010, while other requirements begin for plan years starting on or after January 1, 2014. Comment period ended on August 27, 2010. |
| July 19, 2010 <i>75 Federal Register</i> 41726 | Treasury/IRS; DOL/EBSA; HHS | Interim final rule implementing the requirements for coverage of preventive services by group health plans and health insurance coverage in the group and individual markets (Section 2713 of the Public Health Service Act as revised by PPACA). | Effective on September 17, 2010. Applicable to group health plans and group health insurers for plan years beginning on or after September 23, 2010, unless "grandfathered." Comment period ended on September 17, 2010. |
| July 23, 2010 <i>75 Federal Register</i> 43330 | Treasury/IRS; DOL/EBSA; HHS | Interim final rule implementing the requirements regarding internal claims and appeals and external review processes for group health plans and health insurance coverage in the group and individual markets (Section 2719 of the Public Health Service Act as revised by PPACA). | Effective on September 21, 2010. Applicable to group health plans and group health insurers for plan years beginning on or after September 23, 2010. Comment period ended on September 21, 2010. |
| July 30, 2010 <i>75 Federal Register</i> 45014 | HHS/Office of Consumer Information and Insurance Oversight (OCIO) | Interim final rule implementing the requirement in Section 1101 of the act that the Secretary establish a temporary high risk health insurance pool program to provide affordable health insurance coverage to uninsured individuals with pre-existing conditions. | Effective on September 30, 2010. The program will continue until 2014, when exchanges established under Sections 1311 and 1321 of the act will be available. Comment period ended on September 28, 2010. |

| Publication Date/Citation | Department/Agency or Office | Summary | Dates |
|---|-------------------------------------|--|--|
| August 16, 2010 <i>75 Federal Register</i> 50042 | HHS/CMS | Final rule and interim final rule revising the Medicare inpatient prospective payment systems (IPPS) for operating and capital-related costs of acute care hospitals to (in part) "implement certain provisions in the Affordable Care Act and other legislation." The PPACA portion of the rule implemented a supplemental proposed rule published on June 2, 2010. | Effective on October 1, 2010. Comments on the interim final rule portion ended on September 28, 2010. |
| November 15, 2010 <i>75 Federal Register</i> 69591 | HHS/CMS | Final rule implementing Section 2503(a) of PPACA by withdrawing provisions on upper reimbursement limits and other matters. | Effective on December 15, 2010. (Proposed rule was published September 3, 2010.) |
| November 17, 2010 <i>75 Federal Register</i> 70114 | Treasury/IRS; DOL/EBSA; HHS/OCIO | Interim final rule amending the above-mentioned June 17, 2010, interim final rule on "grandfathered" health plans. The amendment permits certain changes in policies, certificates, or contracts of insurance without loss of "grandfathered" status. | Effective on November 15, 2010. Comment period ended December 17, 2010. |
| November 17, 2010 <i>75 Federal Register</i> 70372 | HHS/CMS | Final rule that (among other things) updated the Home Health Prospective Payment System outlier policy in accordance with Section 3131 of PPACA. | Effective on January 1, 2011. (Proposed rule was published July 23, 2010.) |
| November 24, 2010 <i>75 Federal Register</i> 71800 | HHS/CMS | Final rule implementing PPACA provisions regarding (1) the Medicare hospital outpatient prospective payment system, (2) the Medicare ambulatory surgical center payment system, (3) payments to hospitals for direct graduate medical education and indirect medical education costs, and (4) limitations on certain physician referrals to hospitals in which they have a financial interest. | Effective on January 1, 2011, except certain provisions effective on December 2, 2010. Various applicability dates. Comment period ended January 3, 2011. |

| Publication Date/Citation | Department/Agency or Office | Summary | Dates |
|---|--------------------------------------|--|---|
| November 29, 2010 <i>75 Federal Register 73170</i> | HHS/CMS | Final rule with comment period addressing changes to the physician fee schedule and other Medicare Part B policies. Among other things, the rule “addresses, implements, or discusses” provisions in PPACA. | Effective on January 1, 2011. Comment period ended January 3, 2011. |
| December 1, 2010 <i>75 Federal Register 74864</i> | HHS/OCIIO | Interim final rule implementing medical loss ratio requirements for health insurers under Section 2718(a)-(c) of the Public Health Service Act as amended by PPACA. | Effective on January 1, 2011. Comment period ended January 31, 2011. |
| December 7, 2010 <i>75 Federal Register 75884</i> | Social Security Administration (SSA) | Interim final rule describing the rules SSA will apply to determine the income-related monthly adjustment amount for Medicare prescription drug coverage premiums. | Effective December 7, 2010. Comment period ended February 7, 2011. |
| January 10, 2011 <i>76 Federal Register 1366</i> | HHS/CMS | Amendment to payment policy rescinding the addition and definition of voluntary advance care planning as a specified element of the annual wellness visit that was finalized in the above November 29, 2010, final rule. | Effective on January 10, 2011. (Used “good cause” to waive requirement for prior proposed rule and delay in effective date.) |
| February 2, 2011 <i>76 Federal Register 5861</i> | HHS/CMS | Final rule with comment period implementing various PPACA provisions (e.g., that establish procedures under which screening is conducted for providers of medical or other services and suppliers in the Medicare program; an application fee imposed on institutional providers and suppliers; guidance for States regarding termination of providers from Medicaid and Children’s Health Insurance Program (CHIP) if terminated by Medicare or another Medicaid State plan or CHIP). | Effective on March 24, 2011. Comment period ends April 4, 2011. |

| Publication Date/Citation | Department/Agency or Office | Summary | Dates |
|--|-----------------------------|--|---|
| February 17, 2011 76 <i>Federal Register</i> 9233 | HHS/CMS | Final rule describing the implementation of funding provisions under Title XXI of the Social Security Act, for the CHIP, as amended by PPACA. The rule addresses methodologies and procedures for determining States' fiscal years 2009 through 2015 allotments and payments. | Effective April 18, 2011. (Used "good cause" to waive prior NPRM.) |
| February 18, 2011 76 <i>Federal Register</i> 9503 | HHS/CMS | Interim final rule implementing Section 6113 of PPACA to require, in the case of a long-term care facility closure, that administrators provide written notification of the impending closure and a plan for the relocation of residents at least 60 days prior to the closure or, if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate. | Effective March 23, 2011. Comment period ends April 19, 2011. |

Source: CRS, based on searches of the *Federal Register* through GPO Access.
