

**Summary of U.S. Chamber of Commerce's
Critique of Regulatory Impact Analysis Presented by the
Department of Health and Human Services
for Proposed Rule Regarding
Non-discrimination in Health Programs and Activities**

April 19, 2016

This summary addresses only procedural and analytical flaws in the regulatory impact analysis presented pursuant to Executive Orders 12866 and 13563 and relevant statutes.

The NPRM as proposed by the Department has not been sufficiently informed by research and analysis. It omits two salient compliance cost elements, which are detailed below. For those cost elements that the Department *does* identify, the cost calculations contain notable errors or unsupported assumptions that tend to underestimate the likely cost; and these are also detailed below. The Department failed to present an adequate analysis of regulatory alternatives. Alternatives should be examined in as thorough detail as the approach selected for proposal.

The Department estimates that the NPRM will impose aggregate costs of \$939.4 million over the first five years, much of which will be concentrated in the first year of implementation.¹ Consideration of the notable omissions, errors, and questionable assumptions found in the Department's analysis suggests that the actual cost may be several times higher. Costs of this magnitude are a burden that may sensibly affect the cost and availability of health insurance and of health care services, adversely impacting achievement of the Affordable Care Act's goals of expanding access to health insurance and of improving the health of citizens. The Department has not adequately considered these indirect, derivative impacts of the NPRM.

The following items highlight the errors and omissions in the Department's present regulatory analysis.

- 1. Omitted Regulatory Compliance Familiarization Costs**
- 2. Omitted Litigation Cost Impact**
- 3. Erroneous Calculation of Overhead Costs**
- 4. Unfounded Assumptions Regarding Compliance Staff Level**
- 5. Unfounded Assumption Regarding Training Incidence**
- 6. Failure to Establish a Credible Pre-Regulation Compliance Baseline**
- 7. Inadequate Analysis of Alternatives**
- 8. Inadequate Analysis of Benefits**

Each of these items is fully discussed in the comments that the Chamber submitted to the regulatory docket.

¹ NPRM, at 54,208.