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July 26, 2007

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

The Honorable John Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Health and Human Services; Centers for Medicare and Medicaid Services: Medicaid Program; Citizenship Documentation Requirements*

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; Centers for Medicare and Medicaid Services (CMS), entitled “Medicaid Program; Citizenship Documentation Requirements” (RIN: 0938-AO51). We received the rule on July 9, 2007. It was published in the *Federal Register* as a final rule on July 13, 2007. 72 Fed. Reg. 38,662.

The final rule implements the statutory requirement that states obtain satisfactory documentary evidence of a Medicaid applicant’s or recipient’s citizenship and identity. This final rule provides states with guidance on the types of documentary evidence that may be accepted.

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 rule. Our review indicates that CMS complied with the applicable requirements.

The final rule has an announced effective date of July 13, 2007. GAO received the rule on July 9, 2007, and it was published in the *Federal Register* on July 13, 2007. The Congressional Review Act requires 60 days between the effective date of a major

rule and the later of the date of publication of the rule in the *Federal Register* or receipt of the rule by Congress. 5 U.S.C. § 801(a)(3)(A). The Act also provides that where an agency for “good cause” finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the rule is to take effect at such time as the agency promulgating the rule determines. 5 U.S.C. § 808(2). CMS determined that the delay for notice and public procedures would be contrary to the public interest because this rule identified additional documentary evidence beyond that contained in the interim final rule to which a comment period applied. Therefore, this final rule provides additional relief to potential restrictions on the receipt of Medicaid, and, without immediate effectiveness, states would not have immediate authority to accept this additional documentary evidence.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7114.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ann Stallion
Regulations Coordinator
Department of Health and
Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES;
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICAID PROGRAM; CITIZENSHIP
DOCUMENTATION REQUIREMENTS"
(RIN: 0938-AO51)

(i) Cost-benefit analysis

CMS concluded that this rule will result in \$80 million less spent by the federal government and \$60 million less spent by state governments per year for the next 5 years. Because the total is greater than \$100 million per year, this is a significant rule. The regulatory impact statement did not account for the administrative costs on the states. With respect to administrative costs, CMS states that it provides federal match for administrative expenditures. CMS expects states to experience higher administrative costs during the first year of implementation as they adjust to the new requirements and expects these costs to decrease in later years as current recipients meet the requirements and only new applicants are required to submit documentation.

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

CMS did not prepare an analysis under the Regulatory Flexibility Act because it determined that this rule would not have a significant economic impact on a substantial number of small entities.

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

CMS concluded that this rule will have no consequential effect on state, local, or tribal governments or on the private sector.

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

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

This final rule was preceded by an interim final rule and a comment period. The interim final rule was published on July 12, 2006. 71 Fed. Reg. 39,214. CMS received over 1,400 comments on the interim final rule. CMS summarized and responded to

the major issues raised by the comments in the final rule. 72 Fed. Reg. 38,666 – 38,686 (July 13, 2007). CMS maintained the majority of provisions from the interim final rule, but did make some changes to the rule based on the comments.

CMS found “good cause” under section 553 of title 5 to make this regulation effective immediately because to delay implementation of this final rule would be contrary to the public interest as states would not have immediate authority to accept additional documentary evidence and, therefore, some applicants might be denied Medicaid.

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

CMS solicited comments on the information collection requirements of this final rule. CME determined that sections 435.406 and 436.406 will each take individuals 10 minutes to complete and states 5 minutes to verify.

Statutory authorization for the rule

The Deficit Reduction Act of 2005 created the requirement that states obtain satisfactory documentary evidence of a Medicaid applicant or recipient’s citizenship and identity. Pub. L. No. 109-171, § 6036, 120 Stat 4, 80 (Feb. 8, 2006). CMS promulgated this final rule under the authority of section 1396b(x)(3) of title 42 of the United States Code.

Executive Order No. 12,866

CMS concluded that this rule will result in \$80 million less spent by the federal government and \$60 million less spent by state governments per year for the next 5 years. Because the total is greater than \$100 million per year, this is a significant rule.

Executive Order No. 13,132 (Federalism)

CMS states that some states are already reviewing documents as would be required by this rule and concludes that this rule would create little or no burden for those states. CMS concludes that this rule will not overburden other states, although it will result in some increase in the burden on eligibility workers, because Medicaid eligibility workers are trained and skilled in the review of documents related to income and identification.