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United States General Accounting Office  
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B-290718

June 28, 2002

The Honorable Max Baucus  
Chairman  
The Honorable Chuck Grassley  
Ranking Minority Member  
Committee on Finance  
United States Senate

The Honorable W.J. "Billy" Tauzin  
Chairman  
The Honorable John D. Dingell  
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; Medicaid Managed Care: New Provisions

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; Medicaid Managed Care: New Provisions" (RIN: 0938-AK96). We received the rule on June 13, 2002. It was published in the Federal Register as a final rule on June 14, 2002. 67 Fed. Reg. 40989.

The final rule amends CMS's Medicaid regulations to implement provisions of the Balanced Budget Act of 1997 that allow states greater flexibility by permitting them to amend their state plan to require certain categories of Medicaid beneficiaries to enroll in managed care entities without obtaining waivers if beneficiary choice is provided. The rule also establishes new beneficiary protections in the areas of quality assurance, grievance rights, and coverage of emergency services. Finally, the rule eliminates certain requirements viewed by state agencies as impediments to the growth of managed care programs, such as the enrollment composition requirement, the right to disenroll without cause at any time, and the prohibition against enrollee cost-sharing.

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 the CMS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is William Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Ann Stallion  
Regulations Coordinator  
Department 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,  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
ENTITLED  
"MEDICAID PROGRAM; MEDICAID MANAGED CARE:  
NEW PROVISIONS"  
(RIN: 0938-AK96)

(i) Cost-benefit analysis

According to CMS, the estimated cost of the final rule will be between \$221 million and \$295 million annually.

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

CMS has certified that the final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals in comparison to the total revenues of these entities.

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

CMS has determined that the final rule will not impose either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million (adjusted annually for inflation) in any one year.

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

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

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553.

On September 29, 1998, a proposed rule was published in the Federal Register. 63 Fed. Reg. 52022. A final rule was published on January 19, 2001, but after its effective date was delayed several times, a new proposed rule was published in the Federal Register on August 20, 2001. 66 Fed. Reg. 43613. In response to this proposed rule, CMS received 387 comments, which are discussed in the preamble to the final rule.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The preamble to the final rule contains the information required under the act, such as the purposes and estimated annual burdens of the 37 collections that are being forwarded to OMB for review and approval. There is a 30-day public comment period regarding the collections.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in section 1102 of the Social Security Act (42 U.S.C. 1302) and various provisions of the Balanced Budget Act of 1997 (Pub. L. 105-33).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

CMS has determined that the final rule will not significantly affect states’ rights, roles, and responsibilities. The final rule supercedes existing state laws regulating managed care, unless state laws are more restrictive.

The preamble to the final rule describes the actions taken by CMS in involving the states in the development of the final rule.