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Office of the General Counsel

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September 30, 1997

The Honorable William V. Roth
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Department of Health and Human Services, Health Care Financing
Administration: Medicaid Program; Coverage of Personal Care Services

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, Health Care Financing Administration (HCFA), entitled "Medicaid Program; Coverage of Personal Care Services" (RIN: 0938-AH00). We received the rule on September 15, 1997. It was published in the Federal Register as a final rule on September 11, 1997. 62 Fed. Reg. 47896.

The final rule revises the requirements for Medicaid coverage of personal care services furnished in a home or other location as an optional benefit, effective for services furnished on or after October 1, 1994. This rule conforms the Medicaid regulations to the provisions of section 13601(a)(5) of the Omnibus Budget Reconciliation Act of 1993.

Enclosed is our assessment of HCFA'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 HCFA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Health and Human Services, Health Care Financing Administration, is William Scanlon, Director, Health Financing and Systems Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Bruce C. Vladeck
Administrator
Health Care Financing Administration

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,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICAID PROGRAM; COVERAGE OF PERSONAL CARE SERVICES"
(RIN: 0938-AH00)

(i) Cost-benefit analysis

HCFA performed a cost-benefit analysis of the final rule. HCFA notes in the preamble to the final rule that it is difficult to predict the exact cost increases or economic impact of the rule because the exact number and type of personal care services furnished by individual states or how much these services currently cost are unknown. Also, it is unknown how many of the 32 states that currently offer coverage for personal care services will choose to cover services furnished outside the home and if any other states may opt to offer the services.

HCFA estimates that the total additional Medicaid program expenditures associated with furnishing these services outside the home as:

FY 1998	\$195 million
FY 1999	\$455 million
FY 2000	\$560 million
FY 2001	\$700 million
FY 2002	\$875 million

HCFA estimates the costs to the states of the final rule to be:

FY 1998	\$145 million
FY 1999	\$340 million
FY 2000	\$425 million
FY 2001	\$535 million
FY 2002	\$665 million

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

For purposes of the Regulatory Flexibility Act, HCFA does not consider states and individuals to be small entities but providers are considered small entities. HCFA points out that the major provisions of the rule are required by statute and that the rule, in and of itself, has little or no independent effect or burden.

The preamble to the final rule does contain a discussion of the impact of the final rule on recipients, providers, states, and Medicaid expenditures. HCFA labels this discussion "a voluntary regulatory flexibility analysis."

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

The final rule does not impose a federal intergovernmental or private sector mandate, as defined in the Unfunded Mandates Reform Act of 1995. The provision of the personal care services is optional with the states.

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

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

HCFA promulgated the final rule under the notice and comment procedures of 5 U.S.C. § 553 and section 1871(b) of the Social Security Act, 42 U.S.C. § 1395hh(b).¹ On March 8, 1996, HCFA published a notice of proposed rulemaking in the Federal Register (61 Fed. Reg. 9405) and requested comments. The final rule was published on September 11, 1997, 62 Fed. Reg. 47896, and the preamble to the final rule contains a discussion of the 73 comments received and the actions taken by HCFA in response.

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

The final rule contains an information collection requirement subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The collection requires states to amend their plans to specify whether they will cover personal care services and where it will be provided. HCFA has estimated the burden hours of this requirement to be 1 hour per state. HCFA has submitted the requirement with the necessary information to OMB for its approval and HCFA will publish a notice in the Federal Register when approval of the requirement is obtained.

Statutory authorization for the rule

The final rule cites the Secretary's broad authority to promulgate regulations necessary for the efficient administration of the Medicaid program, Section 1102 of the Social Security Act, 42 U.S.C. § 1302. In addition, the preamble notes that the

¹Section 1871(b) states that, with exceptions not pertinent here, before issuing any final rule, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a comment period of at least 60 days.

rule is required by section 13601(a)(5) of the Omnibus Budget Reconciliation Act of 1993, which added section 1905(a)(24) to the Social Security Act.

Executive Order No. 12866

The final rule has been determined to be an "economically significant regulatory action" and was reviewed by the Office of Management and Budget. The Office of Information and Regulatory Affairs of OMB approved the final rule as complying with the requirements of the order based on the information supplied by HCFA, including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

In its submission, HCFA did not identify any other statute or executive order imposing procedural requirements relevant to the final rule.