



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-309549

June 12, 2007

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

The Honorable John D. 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; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership*

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; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership” (RIN: 0938-AO57). We received the rule on May 25, 2007. It was published in the Federal Register as a “final rule with comment period” on May 29, 2007. 72 Fed. Reg. 29,748.

The final rule clarifies that entities involved in the financing of the non-federal share of Medicaid payments must be a unit of government; clarifies the documentation required to support a Medicaid expenditure; limits the amount of Medicaid reimbursement for health care providers that are operated by units of government; requires all health care providers to receive and retain the full amount of total computable payments for services furnished under the approved Medicaid state plan; and makes conforming changes to provisions governing the State Child Health Insurance Program. The final rule is effective on July 30, 2007. There is a comment period, until July 13, 2007, only on issues related to the “unit of government” definition.

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.

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) 512-7101.

signed

Robert J. Cramer
Managing 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; COST LIMIT FOR PROVIDERS OPERATED BY
UNITS OF GOVERNMENT AND PROVISIONS TO ENSURE THE
INTEGRITY OF FEDERAL-STATE FINANCIAL PARTNERSHIP"
(RIN: 0938-AO57)

(i) Cost-benefit analysis

This rule was a result of findings that Medicaid state financing arrangements across the country were inconsistent with the Medicaid statute. For example, certain financing arrangements were allowing Medicaid payments in excess of Medicaid costs; the final rule would limit health care providers operated by units of government to Medicaid reimbursement that does not exceed the cost of providing covered services to eligible Medicaid recipients. CMS estimates that this final rule will result in \$120 million in savings during the first year and \$3.87 billion in savings over 5 years.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609 and Section 1102(b) of the Social Security Act

CMS prepared a regulatory flexibility analysis required by both the Regulatory Flexibility Act and Section 1102(b) of the Social Security Act (regarding rules having a significant impact on the operations of a substantial number of small rural hospitals). CMS concluded that because the final rule requires states to allow governmentally operated health care providers to receive and retain their Medicaid payments, and the fact that there is an allowance for governmentally operated health care providers to receive a Medicaid rate up to cost, there is no need for regulatory relief under these statutes. In addition, the rule is intended to ensure that Medicaid payments to governmentally operated health care providers are based on actual costs of providing services to Medicaid individuals and that the financing arrangements are consistent with the statute.

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

CMS certified that this final rule does not contain either an intergovernmental or private sector mandate, as defined in Title II, of more than \$120 million 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.

CMS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. CMS published a proposed rule on January 18, 2007. 72 Fed. Reg. 2236. CMS received over 1,000 comments to which they responded in the final rule.

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

According to CMS, there are two provisions of the rule that contain a collection of information requirement, Sections 443.51 (documentation to certify public expenditure) and 447.206 (health care provider's cost report). CMS is soliciting public comment on these provisions, as required by the Paperwork Reduction Act. 44 U.S.C. § 3506(c)(2)(A). CMS also provided a copy of this final rule to the Office of Management and Budget (OMB) for its review.

Statutory Authorization for the Rule

CMS promulgated this final rule under the authority of Sections 1902, 1903, and 1905 of the Social Security Act, as amended. *See* 42 U.S.C. § 1396b.

Executive Order No. 12,866

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

Executive Order No. 13,132 (Federalism)

CMS concluded that the final rule does not have federalism implications, *i.e.*, CMS determined that this final rule will not have a substantial impact on the rights, roles, and responsibilities of state, local, or tribal organizations.