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November 19, 2012

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration Under the Vaccines for Children Program*

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 & Medicaid Services (CMS), entitled “Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration Under the Vaccines for Children Program” (RIN: 0938-AQ63). We received the rule on November 2, 2012. It was published in the *Federal Register* as a final rule on November 6, 2012. 77 Fed. Reg. 66,670.

The final rule implements Medicaid payment for primary care services furnished by certain physicians in calendar years 2013 and 2014 at rates not less than the Medicare rates in effect in those calendar years or, if greater, the payment rates that would be applicable in those years using the calendar year 2009 Medicare physician fee schedule conversion factor.

Enclosed is our assessment of 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 of the procedural steps taken indicates that CMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager
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 & MEDICAID SERVICES
ENTITLED
"MEDICAID PROGRAM; PAYMENTS FOR SERVICES FURNISHED
BY CERTAIN PRIMARY CARE PHYSICIANS AND CHARGES FOR
VACCINE ADMINISTRATION UNDER THE VACCINES
FOR CHILDREN PROGRAM"
(RIN: 0938-AQ63)

(i) Cost-benefit analysis

CMS performed a cost-benefit analysis in conjunction with the final rule. CMS stated that the estimated economic impacts result from the final rule providing states the ability to increase payment for primary care services without incurring additional costs (with the exception of states that did or would have reduced primary care physician service reimbursement rates in their Medicaid programs between 2009 and 2014). CMS anticipates higher payment will result in greater participation by primary care physicians, including primary care subspecialists, in Medicaid thereby helping to promote overall access to care.

CMS estimated the aggregate economic impact of the final rule to be an estimated \$5.600 billion in calendar year (CY) 2013 and \$5.745 billion in CY 2014 (measured in constant 2012 dollars). In CY 2013, the federal cost is approximately \$5.835 billion with \$235 million in state savings. In CY 2014, the federal cost is approximately \$6.055 billion with \$310 million in state savings. The state savings are derived from the projected increases in reimbursement rates expected to occur between 2009 and 2013 through 2014, in the absence of the Affordable Care Act, which will now be paid for by the federal government. CMS stated that the aggregate economic impact estimate includes the requirement that states reimburse specified physicians for vaccine administration at the lesser of the Medicare rate or the Vaccines for Children program (VFC) regional maximum during CYs 2013 and 2014, which is estimated at \$975 million in federal costs. The federal costs for funding that increase, in state payments during CYs 2013 and 2014, are estimated at \$495 million and \$480 million, respectively. This also includes the impact on Medicaid-expansion Children's Health Insurance Program (CHIP) expenditures; total CHIP expenditures are estimated to increase by \$145 million in CY 2013 and again in CY 2014, reflecting an increase in federal CHIP expenditures of \$155 million and a decrease in state CHIP expenditures of \$10 million in each year.

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

CMS determined that the final rule will not have a significant impact on a substantial number of small entities. In addition, CMS determined that the final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

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

CMS determined that the final rule does not contain mandates that will impose spending costs on state governments in the aggregate of \$139 million.

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

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

On May 11, 2012, CMS published a notice of proposed rulemaking in the *Federal Register*. 77 Fed. Reg. 27,671. CMS received a total of 171 comments on the proposed rule, and responded to those comments in the final rule.

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

The final rule contains information collection requirements under the Paperwork Reduction Act. The collections have been given Office of Management and Budget Control Numbers 0938-1170 and 0938-1148. CMS estimated the burden related to the time and effort it would take each of the 37 state Medicaid programs and the District of Columbia (38 total respondents with managed care delivery systems) to develop both methodologies, as well as managed care capitation rates which reflect the increased payments to implement the final rule, as a total one time burden of \$223,473. States will also be required by the final rule to submit a State Plan Amendment, and CMS estimates that this requirement will result in a total one-time burden of \$89,426.12, and an ongoing burden of \$38,468.28 in total.

Statutory authorization for the rule

The final rule is authorized by sections 1902(a)(13), 1902(jj), 1905(dd), and 1932(f) of the Social Security Act, as amended.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule is an economically significant rule under the Executive Order. The rule has been reviewed by the Office of Management and Budget, and CMS prepared a regulatory impact analysis, as required by the Order.

Executive Order No. 13,132 (Federalism)

CMS determined that the final rule will not have a substantial effect on state and local governments.