



441 G St. N.W.
Washington, DC 20548

B-334316

May 31, 2022

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicaid Program; Reassignment of Medicaid Provider Claims*

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; Reassignment of Medicaid Provider Claims" (RIN: 0938-AU73). We received the rule on May 13, 2022. It was published in the *Federal Register* as a final rule on May 16, 2022. 87 Fed. Reg. 29675. The effective date is June 15, 2022.

The final rule, according to CMS, reinterprets the scope of the general requirement that state payments for Medicaid services under a state plan must generally be made directly to the individual practitioner or institution providing services or to the beneficiary, in the case of a class of practitioners for which the Medicaid program is the primary source of revenue. Specifically, CMS stated that the rule explicitly authorizes states to make payments to third parties on behalf of individual practitioners, for individual practitioners' health insurance and welfare benefits, skills training, and other benefits customary for employees, if the individual practitioner consents to such payments on their behalf.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress,

whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* on May 16, 2022. The *Congressional Record* does not yet reflect receipt of the rule by either the House of Representatives or the Senate. The rule has a stated effective date of June 15, 2022. Based on the date of publication, the rule does not have the required 60-day delay in its effective date.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
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 & MEDICAID SERVICES
ENTITLED
“MEDICAID PROGRAM; REASSIGNMENT OF MEDICAID PROVIDER CLAIMS”
(RIN: 0938-AU73)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) included an accounting statement in this final rule. For 2022, CMS estimates transfers from states to third parties on behalf of individual practitioners of \$0 to \$71.3 million, in 2021 dollars, at the three and seven percent discount rate.

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

The Secretary of HHS certified that this final rule would not have a significant economic impact on a substantial number of small entities. The Secretary also certified that the rule would not have a significant 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 stated that this final 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.*

On August 3, 2021, CMS published a proposed rule. 86 Fed. Reg. 41803. CMS received 32 public comments, and responded to the comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CMS stated that this final rule does not have any collection of information implications that are subject to the PRA.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to sections 1302 and 1396r-8 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this final rule is economically significant under the Order and reviewed the rule.

Executive Order No. 13132 (Federalism)

CMS stated that this final rule does not impose any costs on state or local governments, so the requirements of the Order are not applicable.