



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

B-331581

November 20, 2019

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Greg Walden
Ranking Member
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:
Basic Health Program; Federal Funding Methodology for Program Years 2019 and
2020*

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 "Basic Health Program; Federal Funding Methodology for Program Years 2019 and 2020" (RIN: 0938-ZB42). We received the rule on November 5, 2019. It was published in the *Federal Register* as final methodology on November 5, 2019. 84 Fed. Reg. 59529. The effective date of the rule is January 6, 2020.

The final rule provides the methodology and data sources necessary to determine federal payment amounts for program years 2019 and 2020 to states that elect to establish a Basic Health Program (BHP). According to the rule, in the states that elect to operate a BHP, the BHP will make affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the federal poverty level who are not otherwise eligible for Medicaid, the Children's Health Insurance Program, or affordable employer-sponsored coverage, or for individuals whose income is below these levels but are lawfully present non-citizens ineligible for Medicaid. In addition, the rule provides that for those states that have expanded Medicaid coverage, the lower income threshold for BHP eligibility is

effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

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
“BASIC HEALTH PROGRAM; FEDERAL FUNDING METHODOLOGY
FOR PROGRAM YEARS 2019 AND 2020”
(RIN: 0938-ZB42)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimates that this final rule will result in an annualized transfer between the states operating Basic Health Programs (BHPs) to the federal government of \$73 million, assuming a 7 percent discount rate, and of \$74 million, assuming a 3 percent discount rate.

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

CMS determined that this final rule will not have a significant economic impact on a substantial number of small entities. CMS also determined that this final rule will 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 determined that this final rule does not mandate expenditures by state governments, local governments, or tribal governments.

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

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

On April 2, 2019, CMS published a proposed rule. 84 Fed. Reg. 12552. CMS received 47 timely comments from individuals and organizations, including, but not limited to, state Medicaid agencies, health plans, health care providers, advocacy organizations, and research groups. CMS responded to comments in this final rule.

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

CMS determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

Section 1331 of the Patient Protection and Affordable Care Act, as amended, provides CMS the authority to establish a BHP and, if CMS finds that a state meets the requirements of the

program, to transfer to the state federal BHP payments. Pub. L. No. 111-148, § 1331, 10104(o), 124 Stat. 119, 199–203, 902 (March 23, 2010), *codified at* 42 U.S.C. § 18051.

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

CMS estimates that this final rule is economically significant under the Order and submitted it to the Office of Management and Budget for review.

Executive Order No. 13,132 (Federalism)

CMS stated that this final rule is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state.