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May 2, 2011

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; Federal Funding for Medicaid Eligibility Determination and Enrollment Activities*

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; Federal Funding for Medicaid Eligibility Determination and Enrollment Activities” (RIN: 0938-AQ53). We received the rule on April 14, 2011. It was published in the *Federal Register* as a final rule on April 19, 2011. 76 Fed. Reg. 21,950.

The final rule revises Medicaid regulations for Mechanized Claims Processing and Information Retrieval Systems. The final rule also modifies CMS’s regulations so that the enhanced federal financial participation is available for design, development, and installation or enhancement of eligibility determination systems until December 31, 2015. The final rule also imposes certain defined standards and conditions in terms of timeliness, accuracy, efficiency, and integrity for mechanized claims processing and information retrieval systems in order to receive enhanced federal financial participation.

The final rule has an effective date of April 19, 2011. 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). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). Accordingly, CMS determined that it would be both unnecessary and contrary to the public interest to delay the effective date of the final rule. CMS determined that it would be unnecessary because, even with an immediate effective date, states will have a period of time to come into compliance with the terms and conditions in the final rule. CMS determined that since the final rule will provide enhanced funding to states that seek to alter their systems or have already altered their systems, it would be contrary to the public interest to delay the 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. 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; FEDERAL FUNDING FOR
MEDICAID ELIGIBILITY DETERMINATION
AND ENROLLMENT ACTIVITIES"
(RIN: 0938-AQ53)

(i) Cost-benefit analysis

CMS performed a cost-benefit analysis in conjunction with the final rule. CMS estimates that the total net federal cost impact is approximately \$3.3 billion for fiscal year (FY) 2011 through 2015, and approximately \$2.3 billion for FY 2011 through 2020. CMS expects to see lower costs over the 10-year budget window due to the increased savings to the Medicaid management information system over time. CMS estimates that states will see a corresponding decrease in their net state share due to the enhanced federal match for eligibility systems that they will receive through calendar year 2015 and the benefits accrued to their systems by putting in place the set of standards and conditions contained in the final rule. Combining the impact of the final rule, CMS estimates that the total net state budget impact is approximately \$792.5 million in savings for FY 2011 through 2015, and approximately \$1.9 billion in savings for FY 2011 through 2020.

CMS states that its projections are subject to considerable uncertainty as they reflect projected costs based on technology and innovation, and that additional uncertainty exists because CMS cannot project the rate of adoption for states to make the changes in the final rule.

(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 economic impact on a substantial number of small entities, because the final rule will affect states, which are not considered small entities.

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

CMS states that that final rule does not mandate expenditures by the state governments, local governments, tribal governments, in the aggregate, or the private sector, of \$136 million or more.

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

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

On November 8, 2010, CMS published a notice of proposed rulemaking in the *Federal Register*. 75 Fed. Reg. 68,583. CMS received 40 timely comments on the proposed rule. CMS responded to major issues in the comments in the final rule. 76 Fed. Reg. 21,950.

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

The final rule contains information collection requirements under the Paperwork Reduction Act. CMS developed an Expedited Eligibility and Enrollment–APD checklist for states that participate in Early Innovator grants or Establishment grants to complete and submit to CMS for review and prior approval in order to receive enhanced federal funding for Medicaid Information Technology systems projects related to eligibility and enrollment functions. CMS sought review and approval of the checklist from the Office of Management and Budget (OMB), and is soliciting comments on the information collections and associated burden contained in the final rule. CMS estimates that there are 56 state Medicaid programs (including the District of Columbia and 5 territories), that it will take each program approximately 5 hours to complete the checklist, and that each program will complete 3 such responses per year. In total, CMS estimates there will be an annual burden of 840 hours with a total cost of \$34,188.

Statutory authorization for the rule

The final rule is authorized by section 1102 of the Social Security Act, codified at 42 U.S.C. 1302.

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

The final rule is an economically significant rule under the Order and was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that the final rule does not impose substantial direct requirement costs on state and local governments, preempt state law, or otherwise have federalism implications.