



United States Government Accountability Office
Washington, DC 20548

B-323482

May 22, 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 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; Community First Choice Option*

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; Community First Choice Option" (RIN: 0938-AQ35). We received the rule on May 1, 2012. It was published in the *Federal Register* as a final rule on May 7, 2012. 77 Fed. Reg. 26,828.

The final rule implements section 2401 of the Affordable Care Act, which establishes a new state option to provide home and community-based attendant services and supports. These services and supports are known as Community First Choice (CFC). The final rule sets forth the requirements for implementation of CFC, but it does not finalize the section concerning the CFC setting.

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; COMMUNITY FIRST
CHOICE OPTION"
(RIN: 0938-AQ35)

(i) Cost-benefit analysis

CMS prepared a cost-benefit analysis in conjunction with the final rule. CMS determined that the CFC option implemented in the final rule will increase state and local accessibility to services which in turn improves, through a person-centered plan of service with various quality assurances, the quality of life for individuals, and reduces the financial strain on states and Medicaid participants. CMS estimates annualized monetized transfers from the federal government to Medicaid qualified providers to be \$1.87 billion (using a 7 percent discount rate) or \$1.92 billion (using a 3 percent discount rate) during FY 2012-2016. CMS estimates annualized monetized transfers from state governments to Medicaid qualified providers to be \$1.09 billion (using a 7 percent discount rate) or \$1.12 billion (using a 3 percent discount rate) during FY 2012-2016.

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

The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. CMS has determined that the final rule will not have a significant impact on a substantial number of small entities. Furthermore, section 1102(b) of the Social Security Act requires CMS to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. CMS determined that the 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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately \$139 million. CMS

stated that there is no obligation for a state to make any change to its Medicaid program, because the rule does not mandate state participation in section 1915(k) of the Social Security Act. Therefore, CMS estimated that the final rule will not mandate expenditures in the threshold amount of \$139 million in any 1 year.

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

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

CMS published a notice of proposed rulemaking in the *Federal Register* on February 25, 2011. 76 Fed. Reg. 10,736. CMS received a total of 141 timely items of correspondence from home care provider representatives and other professional associations, state Medicaid directors, unions, beneficiaries, and other individuals. The correspondence contained hundreds of individual comments, which ranged from general support or opposition to the proposed rule, to specific questions and detailed comments and recommendations regarding the proposed changes. CMS summarized and responded to the comments in the final rule. 77 Fed. Reg. 26,828.

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

The final rule contains information collection and recordkeeping requirements, and was reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). In each instance, CMS determined that the information collection requirement would affect less than 10 entities on an annual basis and was therefore exempt from the PRA in accordance with 5 C.F.R. § 1320.3(c).

Statutory authorization for the rule

The final rule is authorized by section 1915(k) of the Social Security Act, as added by section 2401 of the Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010.

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

The final rule has been determined to be “economically significant” under the Executive Order and has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

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