



441 G St. N.W.  
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May 20, 2016

The Honorable Orrin G. Hatch  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Fred Upton  
Chairman  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Kevin Brady  
Chairman  
The Honorable Sander M. Levin  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability*

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 and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability" (RIN: 0938-AS25). We received the rule on April 29, 2016. It was published in the *Federal Register* as a final rule on May 6, 2016. 81 Fed. Reg. 27,498.

This final rule amends the Medicaid managed care regulations to reflect changes in the usage of managed care delivery systems. The final rule aligns, where feasible, many of the rules governing Medicaid managed care with those of other major sources of coverage, including coverage through Qualified Health Plans and Medicare Advantage plans; implements statutory provisions; changes actuarial soundness payment provisions to promote the accountability of Medicaid managed care program rates; and promotes the quality of care and strengthens efforts to reform delivery systems that serve Medicaid and CHIP beneficiaries. It also provides beneficiary protections and enhances policies related to program integrity. This final rule also

implements provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) and addresses third party liability for trauma codes.

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 has a stated effective date of July 5, 2016, for most of its provisions. However, the provisions regarding the amount of federal financial participation available for the cost of external quality review and related activities performed in connection with managed care plans that are not Medicaid managed care organizations have a stated effective date of May 6, 2016. The rule was received by GAO on April 29, 2016, and was published in the *Federal Register* on May 6, 2016. Therefore, those provisions of the final rule do not have the full required 60-day delay in its effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(d)(3), 808(2). CMS found that if these provisions did not have immediate effect, the agency would make payments at higher rates than authorized by statute, which would be contrary to the public interest. Therefore CMS found good cause to waive the delay in effective date for these provisions.

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: Agnes Thomas  
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 AND CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)  
PROGRAMS; MEDICAID MANAGED CARE, CHIP DELIVERED IN  
MANAGED CARE, AND REVISIONS RELATED TO THIRD PARTY LIABILITY"  
(RIN: 0938-AS25)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) described the costs and benefits of this final rule. CMS stated that the benefits will be improved health outcomes, reduced unnecessary services, improved beneficiary experience, improved access, and improved program transparency which CMS expects to facilitate better decision making. CMS estimates that this final rule will have annualized costs of \$126.8 million per year for years 2016 through 2020 at a 7 percent discount rate and \$127.3 million at a 3 percent discount rate. CMS also identified the rule's non-quantifiable costs as those costs, other than for information collection requirements described below, that will be necessary for generating the rule's benefits.

CMS also calculated low and high estimates of the transfers resulting from this final rule at 7 and 3 percent discount rates. CMS's low estimate is that the rule will result in annualized transfers from the federal government to managed care organizations (MCOs), pre-paid inpatient health plans (PIHPs), and pre-paid ambulatory health plans (PAHPs) of \$428.7 million per year and from state governments to MCOs, PIHPs, and PAHPs of \$259.6 million per year for 2016 to 2020 at a 7 percent discount rate and \$446.4 million from the federal government and \$271.4 million from state governments at a 3 percent discount rate. CMS's high estimate is that the rule will result in annualized transfers from MCOs, PIHPs, and PAHPs to the federal government of \$1277.2 million per year and from MCOs, PIHPs, and PAHPs to state governments of \$701.9 million per year for 2016 to 2020 at a 7 percent discount rate and \$1335.1 million to the federal government and \$734.6 million to state governments at 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 or a significant impact on the operations of a substantial number of small rural hospitals in comparison to total revenues of these entities.

(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 will not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$144 million (\$100 million adjusted for inflation) or more.

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

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

On June 1, 2015, CMS published a proposed rule. 80 Fed. Reg. 31,097. CMS received 879 timely comments from state Medicaid agencies, health care providers and associations, health insurers, managed care plans, and the general public. CMS responded to comments that were within the scope of the proposed rule in the final rule. CMS found good cause to waive the 30-day delay in effective date for certain provisions of the final rule regarding the amount of federal financial participation available for the cost of external quality review and related activities performed in connection with managed care plans that are not Medicaid managed care organizations. CMS found that if these provisions did not have immediate effect, the agency would make payments at higher rates than authorized by statute, which would be contrary to the public interest. Therefore CMS found good cause to waive the delay in effective date for these provisions.

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

CMS determined that this final rule contains information collection requirements under the Act. These information collection requirements have been assigned Office of Management and Budget (OMB) Control Numbers 0938-0920, 0938-NEW, and 0938-0786. CMS estimates the total annualized costs for these information collection requirements will be \$113,813,088.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of section 1102 of the Social Security Act. 42 U.S.C. § 1302.

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

CMS determined that this final rule is an economically significant rule under the Order because it will surpass the threshold of \$100 million in effect in any one year.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not significantly affect states' rights, roles, and responsibilities.