



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-310919

December 19, 2007

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Charles Rangel
Chairman
The Honorable Jim McCrery
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicaid Program; Optional State Plan Case Management Services*

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 and Medicaid Services (CMS), entitled “Medicaid Program; Optional State Plan Case Management Services” (RIN: 0938-AO50). We received the rule on December 4, 2007. It was published in the *Federal Register* as an interim final rule with comment period on December 4, 2007. 72 Fed. Reg. 68,077.

The interim final rule with comment period revises current Medicaid regulations concerning case management and targeted case management services. The interim final rule with comment period clarifies the situations in which Medicaid will pay for case management activities and when payment will not be available.

Enclosed is our assessment of the 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 indicates that CMS complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7114.

signed

Robert J. Cramer
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 AND MEDICAID SERVICES
ENTITLED
"MEDICAID PROGRAM; OPTIONAL STATE PLAN
CASE MANAGEMENT SERVICES"
(RIN: 0938-AO50)

(i) Cost-benefit analysis

Centers for Medicare & Medicaid Services (CMS) prepared a cost-benefit analysis in conjunction with the interim final rule with comment period. CMS estimates that between fiscal year (FY) 2008 and FY 2012, the regulation will reduce federal Medicaid spending on case management and targeted case management services by \$1,280 million and increase federal spending on title IV-E foster care services by \$369 million.

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

CMS certifies that the interim final rule with comment period will not have a significant economic impact on a substantial number of 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 the interim final rule with comment period will not have any consequential effects 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.*

CMS waived notice and comment rulemaking under the Administrative Procedure Act. The Secretary is authorized by section 6052(b) of the Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 4, to promulgate regulations to carry out the statutory provisions and have the regulations be effective and final on an interim basis immediately on the date of the interim final regulation. This interim final rule with comment period has an effective date of March 3, 2008.

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

The interim final rule with comment period contains collections of information under the Paperwork Review Act. In this interim rule with comment period, CMS provides 30-day notice and solicits public comments on the sections of the interim final rule that contain information collection requirements. CMS will submit the collection of information requirements to the Office of Management and Budget (OMB) for review and approval after the 30-day comment period.

Statutory authorization for the rule

The interim final rule with comment period is authorized by sections 1905 and 1915 of the Social Security Act.

Executive Order No. 12,866

CMS states that the interim final rule with comment period will reduce federal Medicaid costs by \$1,280 million between fiscal years 2008 and 2012 and therefore is a major rule under the Executive Order. OMB reviewed this regulation as required under the order.

Executive Order No. 13,132 (Federalism)

CMS states that the interim final rule with comment period will not have federalism implications under the order.