



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

B-336198

April 17, 2024

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicaid Program; Streamlining the Medicaid, Children's Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes*

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; Streamlining the Medicaid, Children's Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes" (RIN: 0938-AU00). We received the rule on March 25, 2024. It was published in the *Federal Register* as a final rule on April 2, 2024. 89 Fed. Reg. 22780. The effective date is June 3, 2024.

CMS states that the final rule is the second part of a two-part final rule that simplifies the eligibility and enrollment processes for Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program (BHP). CMS further states that the final rule aligns enrollment and renewal requirements for most individuals in Medicaid; establishes beneficiary protections related to returned mail; creates timeliness requirements for redeterminations of eligibility; makes transitions between programs easier; eliminates access barriers for children enrolled in CHIP by prohibiting premium lock-out periods, benefit limitations, and waiting

periods; and modernizes recordkeeping requirements to ensure proper documentation of eligibility determinations.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Samuel A. Shipley
Senior Policy and Regulatory 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 PROGRAM; STREAMLINING THE MEDICAID,
CHILDREN’S HEALTH INSURANCE PROGRAM,
AND BASIC HEALTH PROGRAM APPLICATION, ELIGIBILITY DETERMINATION,
ENROLLMENT, AND RENEWAL PROCESSES”
(RIN: 0938-AU00)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) conducted a cost-benefit analysis of the final rule. According to CMS, the aggregate economic impact of the final rule is estimated to be \$45.15 billion (in real FY 2024 dollars) over 5 years. CMS stated that this figure represents additional health care spending made by the Medicaid program and Children’s Health Insurance Program (CHIP) on behalf of Medicaid and CHIP beneficiaries, with \$37.39 billion paid by the federal government and \$23.20 billion paid by the states, and a reduction of \$15.44 billion in federal marketplace subsidies.

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

CMS stated that because the final rule will only impact states and individuals, CMS does not believe that the final rule will have a significant economic impact on a substantial number of small businesses. Additionally, CMS certified 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

CMS stated that the Act requires agencies to assess anticipated costs and benefits before issuing a rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. According to CMS, the final rule would have such an effect on spending by state, local, or tribal governments but not by private sector entities. Accordingly, CMS assessed the costs and benefits of the final rule for state, local, and tribal governments.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant

exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

CMS noted that the aggregate direct federal spending of this final rule is estimated to be \$55.64 billion over a 10-year period.

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

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

On September 7, 2022, CMS published a proposed rule. 87 Fed. Reg. 54760. CMS stated that it received 7,055 timely comments from State Medicaid and CHIP agencies, advocacy groups, health care providers and associations, health insurers and plans, and the general public. CMS addressed those comments in the final rule.

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

CMS stated the final rule implicates information collection requirements under the Act. In total, CMS expects the final rule to result in a one-time administrative burden of 53,409 labor hours for states and savings of minus 7,207,971 labor hours for beneficiaries, as well as \$2,589,410 in one-time spending for states and one-time savings of minus \$158,431,203 for beneficiaries. However, CMS also stated that it expects the final rule to result in annual reductions of administrative burden of minus 3,048,036 labor hours for states and minus 21,859,547 labor hours for beneficiaries, as well as an annual reduction of minus \$66,014,177 in spending by states and minus \$480,472,849 by beneficiaries.

CMS stated that it referenced OMB control numbers in the proposed rule that it now believes to not cover the information collection requirements contained in the final rule. Accordingly, CMS stated that it will be publishing separate *Federal Register* notices to allow public comment on CMS's estimates of the final rule's impact in view of those information collection requirements.

Statutory authorization for the rule

CMS promulgated the final rule pursuant to sections 1302 and 1396r-8 of title 42, United States Code, as well as section 1331 of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1026 (Mar. 30, 2010).

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that OMB's Office of Information and Regulatory Affairs (OIRA) determined that the final rule was significant under the Order. Accordingly, CMS stated that it prepared a Regulatory Impact Analysis.

Executive Order No. 13132 (Federalism)

CMS stated that it had examined the impact of this rule as required by the Order.