



441 G St. N.W.
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May 24, 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; Ensuring Access to Medicaid 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 & Medicaid Services (CMS) entitled “Medicaid Program; Ensuring Access to Medicaid Services” (RIN: 0938-AU68). We received the rule on April 17, 2024. It was published in the *Federal Register* as a final rule on May 10, 2024. 89 Fed. Reg. 40542. The effective date of the rule is July 9, 2024.

According to CMS, this final rule takes a comprehensive approach to improving access to care, quality and health outcomes, and better addressing health equity issues in the Medicaid program across fee-for-service, managed care delivery systems, and in home and community-based services programs. CMS additionally stated these improvements increase transparency and accountability, standardize data and monitoring, and create opportunities for states to promote active beneficiary engagement in their Medicaid programs, with the goal of improving access to care.

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

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 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
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 PROGRAM; ENSURING ACCESS TO MEDICAID SERVICES”
(RIN: 0938-AU68)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated this final rule to have several costs. CMS estimated the annualized monetary regulatory review costs to be \$0.112 million at the seven percent discount rate and \$0.117 million at the three percent discount rate. Additionally, CMS estimated the annualized monetary costs to states to be \$75.12 million at the seven percent discount rate and \$75.22 million at the three percent discount rate. CMS further estimated the annualized monetary costs to beneficiaries to be \$0.47 million at the seven percent discount rate and \$0.49 million at the three percent discount rate. Also, CMS estimated the annualized monetary costs to providers to be \$102.05 million at the seven percent discount rate and \$106.44 million at the three percent discount rate. Finally, CMS estimated the annualized monetary costs to managed care plans to be \$6.84 million at the seven percent discount rate and \$7.13 million at the three percent discount rate.

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

CMS certified this final rule would not have a significant economic impact on a substantial number of small entities in the Direct Health and Medical Insurance Carriers and Elderly and Persons with Disabilities industries. CMS stated it could not make the certification for the Home Health Care Services industry. CMS additionally certified the final rule would not have a significant economic impact on 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 determined this final rule will impose a mandate that will result in the expenditure by the private sector, of more than \$177 million in at least one year. CMS provided a brief analysis as required by the Act in the rule.

(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 did not discuss the Act in this final rule. In its submission to us, CMS stated the Act was not applicable to the rule as it did not increase direct spending.

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

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

On May 5, 2023, CMS published a proposed rule. 88 Fed. Reg. 27960. CMS received 2,123 public comments from individuals and organizations, including, but not limited to, individuals, state government agencies, non-profit health care organizations, advocacy groups, associations, law firms, managed care plans, academic groups, and tribal organizations. CMS addressed the comments in this final rule.

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

CMS determined this final rule contained information collection requirements (ICRs) subject to PRA. CMS provided a description and estimate of the burden for each ICR. In total, CMS estimates all ICRs in the rule would have a burden of 2,200,901 hours at a cost of \$327,156,264.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to sections 1302 and 1396r-8 of title 42, United States Code, as well as Public Law 111-148.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated this final rule had been reviewed by OMB.

Executive Order No. 13132 (Federalism)

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