U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

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December 12, 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 Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP*

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 Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP" (RIN: 0938-AS27). We received the rule on November 28, 2016. It was published in the *Federal Register* as a final rule on November 30, 2016, with an effective date of January 20, 2017. 81 Fed. Reg. 86,382.

The final rule codifies in regulation certain statutory eligibility provisions; changes regulatory requirements to provide states more flexibility to coordinate Medicaid and the Children's Health Insurance Program (CHIP) eligibility notices, appeals, and other related administrative procedures with similar procedures used by other health coverage programs; modernizes and streamlines existing rules, eliminates obsolete rules, and updates provisions to reflect the various Medicaid eligibility pathways; and codifies certain CHIP eligibility-related provisions, including eligibility for newborns whose mothers were eligible for and receiving Medicaid or CHIP coverage at the time of birth.

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

ENCLOSURE

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 PROGRAMS:
ELIGIBILITY NOTICES, FAIR HEARING AND APPEAL PROCESSES
FOR MEDICAID AND OTHER PROVISIONS RELATED TO
ELIGIBILITY AND ENROLLMENT FOR MEDICAID AND CHIP"
(RIN: 0938-AS27)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) discussed the costs and benefits of this final rule. CMS estimates that this rule will result in annualized monetized transfers from the federal government to states on behalf of beneficiaries of $143 million from 2016 to 2018 and annualized monetized transfers from states on behalf of beneficiaries of $54 million over the same time period. CMS states that the net increase in the Medicaid program will produce several benefits, including improved access to medical care, improved health outcomes, and greater financial security for newly covered individuals and families.

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

For the purposes of the regulatory flexibility analysis, CMS does not expect small entities to be directly affected by this final rule. CMS expects the additional options for Medicaid eligibility and streamlined eligibility and enrollment processes finalized in this rule to improve access to coverage, which CMS views as likely to have a positive indirect impact on small entities. Additionally, CMS determined that this final rule will not have a direct economic 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 determined that this final rule does not mandate expenditures by state governments, local governments, tribal governments, in the aggregate, or the private sector, of $146 million ($100 million adjusted for inflation).

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

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

On January 22, 2013, CMS published a proposed rule. 78 Fed. Reg. 4594. CMS received a total of 741 timely comments to the proposed rule from individuals, state Medicaid agencies, advocacy groups, health care providers, employers, health insurers, and health care associations. CMS responded to comments in the final rule.

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

CMS identified seven sets of provisions of this final rule that impose information collection requirements under the Act, all which currently have Office of Management and Budget (OMB) Control Number 0938-New. CMS estimates that these requirements will have a total annual burden of 11,023 hours at a cost of $898,288.

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)

OMB determined that this final rule is economically significant under the Order because it is likely to have an annual effect of $100 million in any one year.

Executive Order No. 13,132 (Federalism)

CMS certified that it complied with the requirements of Order. CMS consulted with states to receive input on how the various provisions codified in this final rule will affect states. CMS stated that it continues to engage in ongoing consultations with Medicaid and CHIP Technical Advisory Groups, which serve as a staff level policy and technical exchange of information between CMS and the states.