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United States General Accounting Office
Washington, DC 20548

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February 27, 2001

The Honorable Chuck Grassley
Chairman
The Honorable Max Baucus
Ranking Member
Committee on Finance
United States Senate

The Honorable W. J. (Billy) Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: Department of Health and Human Services, Health Care Financing Administration: Medicaid Program; Medicaid Managed Care

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, Health Care Financing Administration (HCFA), entitled "Medicaid Program; Medicaid Managed Care" (RIN: 0938-AI70). We received the rule on February 13, 2001. It was published in the Federal Register as a final rule with comment period on January 19, 2001. 66 Fed. Reg. 6228.

The final rule implements provisions of the Balanced Budget Act of 1997 that, among other changes, allow states greater flexibility by permitting them to amend their state plan to require certain categories of Medicaid beneficiaries to enroll in managed care entities without obtaining waivers, if beneficiary choice is provided.

Enclosed is our assessment of the HCFA'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 HCFA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Bill Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Ms. Catherine P. Beck
Deputy Executive Secretary to
the Department
Department of Health and Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICAID PROGRAM; MEDICAID MANAGED CARE"
(RIN: 0938-A170)

(i) Cost-benefit analysis

HCFA prepared a cost-benefit analysis of the final rule and notes that it is extremely difficult to accurately quantify the overall impact of the rule because of the variation among states and the regulated entities regarding their current regulatory and contractual requirements.

The cost of the 6-month guaranteed eligibility option is quantified for 6 years. The total estimated federal and state costs are \$70 million for Fiscal Year (FY) 2000, \$100 million for FY 2001, \$140 million for FY 2002, \$205 million for FY 2003, \$290 million for FY 2004, and \$405 million for FY 2005.

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

HCFA prepared a Final Regulatory Flexibility Analysis concerning the impact of the final rule on small entities. HCFA notes that most of the entities impacted by the final rule do not qualify as small.

In discussing the alternatives considered to reduce the impact, HCFA states that it is not imposing any additional requirements on primary care case managers beyond those specified in the Balanced Budget Act of 1997. Also, HCFA has not applied all managed care organization requirements to all prepaid health plans.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As defined in title II, the final rule does not contain either an intergovernmental or private sector mandate of more than \$100 million in any one year.

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On September 29, 1998, HCFA published a Notice of Proposed Rulemaking in

the Federal Register. 63 Fed. Reg. 52022. HCFA discusses the 305 comments it received in response to the Notice in the preamble to the final rule.

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

According to the report forwarded to our Office by HCFA, the final rule contains information collections that are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority of sections 1102, 1871, 1905, 1932, 1932(b), 1932(c), and 1932(d) of the Social Security Act.

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

HCFA has determined that the final rule does not have federalism implications under the order because it will not significantly affect states’ rights, roles, and responsibilities. The final rule gives states more flexibility because it removes certain requirements that they viewed as impediments to the growth of managed care. The preamble to the final rule also contains a discussion of HCFA’s consultation with the states in developing the final rule.