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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; Change in Application of Federal Financial Participation Limits

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; Change in Application of Federal Financial Participation Limits" (RIN: 0938-AJ96). We received the rule on February 13, 2001. It was published in the Federal Register as a final rule on January 11, 2001. 66 Fed. Reg. 2316.

The final rule changes the current requirement that limits on Federal Financial Participation (FFP) must be applied before states use less restrictive income methodologies than those used by related cash assistance programs in determining eligibility for Medicaid. According to HCFA, the change is necessary because the current interpretation of how the FFP limits apply to income methodologies under section 1902(r)(2) of the Social Security Act unnecessarily restricts the states' abilities to take advantage of the authority to use less restrictive income methodologies under that section of the statute.

We note that the final rule has an announced effective date of March 12, 2001. Section 801(a)(3) of the Congressional Review Act (5 U.S.C. 801(a)(3)) generally requires that a major rule take effect no earlier than 60 days after the later of

congressional receipt of the rule or publication in the Federal Register. Here, the rule was published on January 11, 2001, but was not received by Congress until February 13, 2001. Therefore, the final rule, as issued, does not have the required 60-day delay in its effective date. However, we have been advised by an official at Health and Human Services that a notice will be published shortly in the Federal Register extending the effective date.

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, except for the failure to allow the 60-day delay, 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; CHANGE IN APPLICATION OF
FEDERAL FINANCIAL PARTICIPATION LIMITS"
(RIN: 0938-AJ96)

(i) Cost-benefit analysis

HCFA prepared a regulatory impact analysis which included a discussion of the costs and benefits of the final rule. HCFA notes that determining the Medicare and Medicaid costs are difficult because the implementation of the option is entirely at the discretion of the states. HCFA estimates that the cost of removing the Federal Financial Participation Limits for the fiscal years 2001-2005 to total \$860 million for federal Medicaid, \$680 million for state Medicaid, or total Medicaid costs of \$1.540 billion. Medicare costs for the same period are estimated to rise by \$100 million.

The benefits are expected to be the easing of administrative burdens on the states in counting certain types of income and allowing more individuals to meet eligibility requirements.

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

HCFA has concluded that the final rule will only indirectly impact small entities and that any impact will be positive as small entities may receive additional Medicaid payments as a result of their service to the increased number of individuals who would be eligible.

(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 impose 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 contained at 5 U.S.C. 553. On October 31, 2000, HCFA published a Notice of Proposed

Rulemaking in the Federal Register. 65 Fed. Reg. 64919. In response to the notice, HCFA received 37 comments that are responded to in the preamble to the final rule.

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

The final rule does not contain any information collections that require review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in section 1102 of the Social Security Act (42 U.S.C. 1302).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

HCFA has noted that the final rule imposes no requirement costs on governments, nor does it preempt state law or otherwise have federalism implications.