



**Office of the General Counsel**

B-280888

September 11, 1998

The Honorable William V. Roth  
Chairman  
The Honorable Daniel Patrick Moynihan  
Ranking Minority Member  
Committee on Finance  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

The Honorable Bill Archer  
Chairman  
The Honorable Charles B. Rangel  
Ranking Minority Member  
Committee on Ways and Means  
House of Representatives

**Subject: Department of Health and Human Services, Administration for Children and Families and Health Care Financing Administration: Medicaid and Title IV-E Programs; Revision to the Definition of an Unemployed Parent**

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 (HHS), Administration for Children and Families and Health Care Financing Administration, entitled "Medicaid and Title IV-E Programs; Revision to the Definition of an Unemployed Parent" (RIN: 0938-AH79). We received the rule on August 27, 1998. It was published in the Federal Register as a final rule on August 7, 1998. 63 Fed. Reg. 42270.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 eliminated the Aid to Families with Dependent Children program and replaced it with the Temporary Assistance for Needy Families program. Many states are using

the flexibility of the new program to provide welfare-to-work assistance to two-parent families, which was more difficult to do under the old welfare rules.

However, pre-existing regulations regarding the definition of "unemployed parent" prevent some states from providing intact families with health insurance to help them stay employed. Among other things, this final rule amends these regulations to give states the additional flexibility to provide Medicaid coverage to two-parent families.

Enclosed is our assessment of HHS' 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 HHS complied with the applicable requirements with the following exception.

As noted in the enclosure regarding HHS' compliance with the Administrative Procedure Act, the exception found at 5 U.S.C. § 808(2) of the Congressional Review subtitle to the Small Business Regulatory Enforcement Fairness Act requiring a 60-day delay in the effective date of a major rule was properly invoked because there was no notice or public comment period involved in the issuance of the final rule. However, the final rule has an announced effective date of August 7, 1998, the date of publication in the Federal Register. Section 801(a)(1)(A) of title 5 states that "Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of Congress and to the Comptroller General a report containing a copy of the rule . . . ." HHS' report containing the rule was not received by our Office or the Congress until August 27, 1998.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Administration for Children and Families is Cynthia Fagnoni, Director, Income Security Issues. William Scanlon, Director, Health Financing and Systems Issues, is responsible for GAO evaluation work relating to the Health Care Financing Administration. Ms. Fagnoni can be reached at (202) 512-7215 and Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy  
General Counsel

Enclosure

cc: The Honorable Donna E. Shalala  
The Secretary 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,  
ADMINISTRATION FOR CHILDREN AND FAMILIES AND  
HEALTH CARE FINANCING ADMINISTRATION  
ENTITLED  
"MEDICAID AND TITLE IV-E PROGRAMS; REVISION TO THE  
DEFINITION OF AN UNEMPLOYED PARENT"  
(RIN: 0938-AH79)

(i) Cost-benefit analysis

HHS conducted a cost-benefit analysis regarding the final rule and found that the change in the definition of unemployed parent would result in an increased number of individuals who would be eligible for Medicaid coverage. The additional costs to federal and state governments are estimated to be:

<u>Year</u>	<u>Federal</u>	<u>State</u>
1999	\$35 million	\$25 million
2000	\$85 million	\$60 million
2001	\$140 million	\$105 million
2002	\$160 million	\$125 million
2003	\$175 million	\$135 million

The analysis found that the change in definition should not have a cost impact on foster care or adoption assistance programs.

The benefits of the rule, while not quantified, are the increased family unity and administrative simplification of state Medicaid programs.

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

Since the final rule affects only states and individuals, which are not defined as small entities, the Secretary of Health and Human Services has determined and certified that it will not have a significant economic impact on a substantial number of small entities.

Also, the Secretary has certified that the final rule will not have a significant impact on the operations of a substantial number of rural hospitals pursuant to the requirements of section 1102(b) of the Social Security Act.

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

The final rule does not impose either an intergovernmental or private sector mandate of over \$100 million per year as defined in the Unfunded Mandates Reform Act of 1995.

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

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

This rule was issued as a final rule with comment period because the Secretary of HHS found "good cause" that notice and comment were impracticable. 5 U.S.C. § 553(b)(B). The Secretary found that it would be against the public interest to delay allowing states flexibility in implementing the welfare reform legislation. There will be no delay for states to align the eligibility requirements of the Medicaid program with the Temporary Assistance for Needy Families program, thereby aiding administrative simplification and eliminating any disincentive to family unity on the part of the recipients.

For the same reason regarding the statutorily mandated effective date, the 30-day delay in the effective date of a rule required by 5 U.S.C. § 553(d) was also waived.

Since there was neither a proposed rule nor the receipt of public comments, HHS has properly invoked the exception found at 5 U.S.C. § 808(2) to the 60-day delay in the effective date of a major rule normally required under the Congressional Review Act subtitle of the Small Business Regulatory Enforcement Fairness Act of 1996.

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

The final rule contains an information collection which is subject to review by the Office of Management and Budget under the Paperwork Reduction Act. The preamble to the final rule contains the information required by the Act, including the reason for the collection and the annual burden hours imposed by the collection.

The collection is required by section 233.101 of the rule whereby states must amend their plans to specify a reasonable standard for measuring unemployment, and the annual burden is estimated to be 1 hour per state. Comments on the collection are requested and the collection need not be complied with until approved by OMB.

**Statutory authorization for the rule**

**The final rule was issued under the authority of sections 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note) of Title 42 of the United States Code.**

**Executive Order No. 12866**

**The final rule was determined to be an "economically significant" regulatory action and was reviewed and approved by the Office of Management and Budget as complying with the requirements of the Order.**