



441 G St. N.W.
Washington, DC 20548

B-336098

March 18, 2024

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Health and Human Services: Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)*

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) entitled “Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)” (RIN: 0970-AD02). We received the rule on February 28, 2024. It was published in the *Federal Register* as a final rule on March 1, 2024. 89 Fed. Reg. 15366. The effective date is April 30, 2024.

According to HHS, this final rule makes regulatory changes to the CCDF. HHS stated that these changes lower child care costs for families participating in CCDF, improve the program’s child care provider payment rates and practices, and simplify enrollment in the child care subsidy program. Additionally, HHS noted that the rule includes technical and other changes to improve clarity and program implementation.

Enclosed is our assessment of HHS’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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

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
ENTITLED
“IMPROVING CHILD CARE ACCESS, AFFORDABILITY, AND STABILITY
IN THE CHILD CARE AND DEVELOPMENT FUND (CCDF)”
(RIN: 0970-AD02)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS) conducted a cost-benefit analysis of this final rule. HHS stated that the rule will have the most direct benefit for the nearly 800,000 families and 1.3 million children who use Child Care and Development Fund (CCDF) assistance to pay for child care. According to HHS, families who receive CCDF assistance will benefit from lower parent co-payments, more parent choice in care arrangements, and simplified eligibility determination processes, which will increase child care access and affordability. HHS explained that greater access and affordability will improve the ability of families to participate in the labor market and benefit the overall economy. Additionally, HHS explained that providers will benefit from the rule’s payment practice requirements that support providers’ financial stability, including prospective payments based on enrollment and payments that more closely reflect the cost of providing high-quality care, which could lead to higher wages for providers and their staff. HHS stated that the rule will also yield benefits in terms of child development outcomes by expanding child care access, and some children who might not have received subsidized care previously would receive subsidized care under the rule.

According to HHS, the cost of implementing changes made by the rule would vary depending on a Lead Agency’s specific situation and implementation choices. HHS stated that it conducted a regulatory impact analysis to estimate costs, transfers, and benefits of provisions in the rule, considering current state and territory practices. HHS clarified that it evaluated major areas of policy change, including reduced parent co-payments, paying providers based on enrollment, paying providers prospectively, paying providers the full subsidy rate, presumptive eligibility for families, and streamlined family eligibility processes. Additionally, in response to public comments, HHS stated that it further refined its estimates for the rule, making key changes including adding a systems’ cost to account for necessary information technology changes and updating calculations to use the most recent CCDF administrative data. Based on its calculations, HHS estimated the quantified annualized impact of the rule to be about \$206.6 million in transfers, \$13.1 million in costs, and \$15.3 million in benefits.

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

HHS certified that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

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

HHS discussed the Act in this final rule. According to HHS, several of the changes in the rule are at the option of states, territories, and tribes. HHS stated that states, territories, and tribes receive over \$11 billion annually in federal funding to implement the program.

(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.

HHS did not discuss the Administrative Pay-As-You-Go Act of 2023 in the rule. In its submission to us, HHS indicated that it considered preparation of a statement regarding compliance with the Act to be not applicable.

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

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

On July 13, 2023, HHS published a proposed rule. 88 Fed. Reg. 45022. HHS stated that it received 1,796 comments, of which 1,639 were unique comments, on the proposed rule, including comments from state human services and educational agencies, tribal nations and organizations, national, state, and local early childhood and family-focused organizations, including, child care resource and referral agencies, faith-based organizations, provider organizations, as well as labor unions, child care providers, parents, individual members of the public, and members of the U.S. Congress. According to HHS, it received comments from 29 state and local governments and 13 tribes and tribal organizations. HHS explained that some commenters coordinated comments and policy recommendations so that their comments were signed by multiple entities, and there were some member organizations that each submitted the same comments separately. HHS also noted that it processed form comments from hundreds of individuals, including parents and child care staff. HHS expressed that public comments informed the development of content for this final rule. HHS responded to comments in the rule.

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

HHS determined that this final rule contains information collection requirements under the Act. HHS stated that the rule modifies several previously approved information collections, but that it has not yet initiated the OMB approval process to implement these changes. HHS explained that it will publish *Federal Register* notices soliciting public comment on specific revisions to those information collections and the associated burden estimates and will make available the proposed forms and instructions for review. In the rule, HHS provided a table displaying the affected information collections as well as a separate table providing the current approved annual burden hours and estimated annual burden hours for the existing information collections that are modified by the rule.

Statutory authorization for the rule

HHS promulgated this final rule pursuant to sections 618 and 9858 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

HHS stated that it has examined the impacts of this final rule under the Order. According to HHS, its regulatory impact analysis for the rule identifies economic impacts that exceed the threshold for significance within the meaning of the Order.

Executive Order No. 13132 (Federalism)

HHS stated that this final rule will not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Additionally, HHS explained that the rule does not preempt state law.