



Week in Regulation

Medicaid Streamlining Rule Brings Notable Paperwork Cuts

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Last week was a relatively busy one in the pages of the Federal Register. There were 17 rulemakings with some quantifiable economic impact. Topics ranged from procedural matters on interstate highway funding to safety standards for “button batteries” to changes in permitting definitions for critical mineral mines. The most significant action of the week was a final rule from the Department of Health and Human Services (HHS) that would streamline the enrollment process for certain Medicaid recipients. Across all rulemakings, agencies published \$7 billion in total costs but cut 19.8 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 33
- Final Rules: 64
- 2023 Total Pages: 65,477
- 2023 Final Rule Costs: \$108.1 billion
- 2023 Proposed Rule Costs: \$421.3 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was the HHS [rule](#) regarding “Streamlining Medicaid; Medicare Savings Program Eligibility Determination and Enrollment.” At its core, the rule seeks to simplify the enrollment process for Medicare Savings Programs (MSPs) that directs Medicaid funds toward Medicare premiums for eligible individuals. As noted when the [proposed version](#) of the rule arrived roughly one year ago, the rulemaking would bring sizable reductions in administrative burdens but the intrinsic increase in enrollment would represent a cost to state governments. HHS estimates that the administrative streamlining aspects of the rule will cut annual paperwork burdens by approximately 21.2 million hours. The increased enrollment, however, would result in an additional \$7.9 billion in state Medicaid spending over a five-year window.

TRACKING THE ADMINISTRATIONS

As we have already seen from [executive orders and memos](#), the Biden Administration will surely provide plenty of contrasts with the Trump Administration on the regulatory front. And while there is a general expectation that the current administration will seek to broadly restore Obama-esque regulatory actions, there will also be areas where it charts its own course. Since the AAF RegRodeo data extend back to 2005, it is possible to provide weekly updates on how the top-level trends of President Biden’s regulatory record track with those of his two most recent predecessors. The following table provides the cumulative totals of final rules containing some quantified economic impact from each administration through this point in their respective terms.

TRACKING THE ADMINISTRATIONS

REGULATORY ACTIVITY FROM INAUGURATION DAY TO SEPTEMBER 22nd (Year 3)

| | FINAL RULES | FINAL RULE COSTS | PAPERWORK HOURS |
|----------------------|-------------|------------------|-----------------|
| BIDEN 2021 | 668 | \$426.2B | 215.2M |
| TRUMP 2017 | 748 | \$36.5B | 55.8M |
| OBAMA 2009 | 986 | \$264.7B | 162.3M |

LAST UPDATED: SEPTEMBER 22ND, 2023

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The Streamlining Medicaid rule discussed above provided most of the action for the Biden Administration's final rule totals this week. With that rule's roughly 21.2 million-hour decrease in annual paperwork, the Biden total in that category now stands at roughly 215.3 million hours. As such, the combined total new paperwork of the Trump and Obama Administrations – through this point in their respective terms – now exceeds the Biden total. In an interesting point of coincidence, the most significant action promulgated around this time in either of those administrations was an Obama-era rule involving Medicaid that brought [\\$910 million](#) in increased costs for state governments.

THIS WEEK'S REGULATORY PICTURE

This week, the Federal Permitting Improvement Steering Council (Permitting Council) makes some adjustments to the permitting process for those involved in the extraction of critical minerals.



Source: Photo by [Artyom Korshunov](#) on [Unsplash](#)

The Permitting Council is not a regular contributor to the Federal Register. As of this past week, only [eight documents](#) emanating from it have landed in “The Daily Journal of the Federal Government.” This is likely due to A) the Council’s relative youth, having been formed in 2015 and B) its mission being primarily focused on managing aspects of the permitting process instead of setting regulatory standards. Last Friday, however, the Permitting Council published a [proposed rule](#) on “Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act.”

This proposed rule comes under the auspices of “the Fixing America’s Surface Transportation Act (FAST–41).” In short:

FAST–41 provides for timely Federal agency review, enhanced interagency coordination, predictability, and accountability in the Federal decision-making process for covered projects, and the option to transfer funds to Federal, state, local, and tribal governments to facilitate timely and efficient environmental reviews and authorizations of covered projects.

With this proposed rule, the Permitting Council seeks to “(1) revise the FAST–41 ‘mining’ sector to apply solely to critical minerals mining projects; and (2) expand the scope of the sector to include infrastructure constructed to support critical minerals supply chain activities, including critical minerals beneficiation, processing, and recycling.” As such, the proposal would represent both a narrower definition of “mining” (currently defined as “the process of extracting ore, minerals, or raw materials from the ground”) while also expanding it somewhat to include non-extraction aspects of the critical mineral mining process.

The Council’s accompanying economic analysis is largely qualitative, noting that “quantifying any potential economic benefits that might result from revising the FAST–41 mining sector is speculative.” And while it does not believe that this will represent a massive expansion in the scope of FAST-41, it does believe that the rulemaking “could result in reduced costs for any critical minerals mining and supply-chain project sponsor” that successfully attains FAST-41 status.

Interested parties have until October 23 to submit comments on the matter.

TOTAL BURDENS

Since January 1, the federal government has published \$529.4 billion in total net costs (with \$108.1 billion in new costs from finalized rules) and 161.1 million hours of net annual paperwork burden increases (with 2.1 million hours in decreases from final rules).

Year

[Select All]

2023

2022

2021

2020

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

Total Number of
Regulations
Finalized

159

Total Finalized Cost

\$108.1b

Paperwork Hours

-2,140,514