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April 15, 2008

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

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Ways and Means
House of Representatives

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

Subject: *Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Modification to the Weighting Methodology Used To Calculate the Low-Income Benchmark Amount*

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, Centers for Medicare and Medicaid Services (CMS), entitled “Medicare Program; Modification to the Weighting Methodology Used To Calculate the Low-Income Benchmark Amount” (RIN: 0938-AP25). We received the rule on March 31, 2008. It was published in the *Federal Register* as a final rule on April 3, 2008, with a stated effective date of May 31, 2008. 73 Fed. Reg. 18,176.

The final rule changes the weighing methodology used to calculate the low-income benchmark premium amount for 2009 and thereafter. Under this final rule, the low-income benchmark premium amount will reflect the distribution of beneficiaries eligible for the low-income subsidy in each plan. The new methodology calculates

the benchmark using the relative weights of the Medicare Advantage Prescription Drug plan premiums and Prescription Drug Plan premiums.

Enclosed is our assessment of the CMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. The Congressional Review Act requires major rules to take effect no earlier than 60 days from the later of the rule's publication in the *Federal Register* or receipt by Congress. 5 U.S.C. § 801(a)(3)(A). This rule was published on April 3, 2008. Although the rule will impact the low-income benchmark premium amount for 2009, the rule has a stated effective date of May 31, 2008. Therefore, this rule does not have the required 60-day delay in the effective date. Our review indicates that CMS complied with all other applicable requirements.

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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager
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
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; MODIFICATION TO THE
WEIGHTING METHODOLOGY USED TO CALCULATE THE
LOW-INCOME BENCHMARK AMOUNT"
(RIN: 0938-AP25)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) estimates that this final rule will result in a cost to the federal government of \$90 million in calendar year 2009 and \$1.68 billion over the next ten fiscal years. CMS predicts that the costs will increase each year. CMS states that the benefit of this final rule will be to reduce reassignments, which will increase program stability and continuity of care. CMS estimates that if the rule had been in place in 2008, there would have been approximately 850,000 fewer reassignments.

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

CMS determined that this final rule will not have a significant impact on a substantial number of small entities. Further, CMS determined that this final rule will not have a significant impact on a substantial number of small rural hospitals.

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

CMS determined that this final rule will have no consequential effect on state, local, or tribal governments in the aggregate, or by the private sector.

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

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

CMS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. CMS published a proposed rule on January 8, 2008. 73 Fed. Reg. 1301. CMS received 32 comment letters to which it responded in the final rule. 73 Fed. Reg. 18177-79.

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

CMS determined that this final rule does not impose any information collection requirements under the Act.

Statutory authorization for the rule

CMS promulgated this final rule under section 1102, 1860D-1 through 1860D-42, and 1871 of the Social Security Act. 42 U.S.C. §§ 1302, 1395w-101 to 1395w-152, 1395hh.

Executive Order No. 12,866

CMS determined that this final rule surpasses the \$100 million threshold after 2010 and, therefore, is a significant rulemaking under the Order.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule does not impose any costs on state or local governments under the Order.