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United States Government Accountability Office  
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B-316674

July 3, 2008

The Honorable Max Baucus  
Chairman  
The Honorable Charles 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 Energy and Commerce  
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: State Children's Health Insurance Program (SCHIP); Retrospective Adjustment for Additional Allotments To Eliminate Fiscal Year (FY) 2007 Funding Shortfalls; Final SCHIP Allotments for FYs 2008 and 2009; Redistribution of Unused SCHIP FY 2005 Allotments To Eliminate FY 2008 Funding Shortfalls; Additional Allotments To Eliminate FY 2008 Funding Shortfalls; and Provisions for Continued Authority for Qualifying States To Use a Portion of Certain SCHIP Funds for Medicaid Expenditures*

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 "State Children's Health Insurance Program (SCHIP); Retrospective Adjustment for Additional Allotments To Eliminate Fiscal Year (FY) 2007 Funding Shortfalls; Final SCHIP Allotments for FYs 2008 and 2009; Redistribution of Unused SCHIP FY 2005 Allotments To Eliminate FY 2008 Funding Shortfalls; Additional Allotments To Eliminate FY 2008 Funding Shortfalls; and Provisions for Continued Authority for Qualifying States To Use a

Portion of Certain SCHIP Funds for Medicaid Expenditures” (RIN: 0938-AO99 and 0938-AP07). We received the rule on June 23, 2008. It was published in the *Federal Register* as a notice on May 23, 2008. 73 Fed. Reg. 30,112.

The notice describes the implementation of certain funding under SCHIP as amended. The funding provisions include retrospective adjustment of the additional allotments to eliminate fiscal year (FY) 2007 SCHIP funding shortfalls; the final FYs 2008 and 2009 SCHIP allotments; the redistribution of the amounts of states’ unused FY 2005 allotments to eliminate FY 2008 SCHIP funding shortfalls; the provision of additional allotments to eliminate FY 2008 SCHIP funding shortfalls; and the provision for “qualifying States” to elect to use a portion of their available SCHIP allotments as increased federal matching funds for certain expenditures in their Medicaid programs under title XIX of the Act.

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. Our review indicates that CMS complied with the applicable requirements.

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. sect. 801(a)(3)(A). An exception is provided when an agency for good cause finds that such delay would be contrary to the public interest. 5 U.S.C. sect. 808(2). CMS made such a finding for this notice, and this notice took effect on June 23, 2008.

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  
"STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP);  
RETROSPECTIVE ADJUSTMENT FOR ADDITIONAL ALLOTMENTS TO  
ELIMINATE FISCAL YEAR (FY) 2007 FUNDING SHORTFALLS; FINAL SCHIP  
ALLOTMENTS FOR FYS 2008 AND 2009; REDISTRIBUTION OF UNUSED SCHIP  
FY 2005 ALLOTMENTS TO ELIMINATE FY 2008 FUNDING SHORTFALLS;  
ADDITIONAL ALLOTMENTS TO ELIMINATE FY 2008 FUNDING SHORTFALLS;  
AND PROVISIONS FOR CONTINUED AUTHORITY FOR QUALIFYING STATES TO  
USE A PORTION OF CERTAIN SCHIP FUNDS FOR MEDICAID EXPENDITURES"  
(RIN: 0938-AO99 AND 0938-AP07)

(i) Cost-benefit analysis

CMS did not prepare a cost-benefit analysis because the notice is based on methodologies specified in statute and does not include any discretionary administrative policies.

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

CMS did not prepare a regulatory flexibility analysis because it determined that this notice will not have a significant economic impact on a substantial number of small entities or 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 has determined that this notice will not create an unfunded mandate on states, tribal, or local governments.

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

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

CMS waived both the notice of proposed rulemaking and the 30-day delay in effective date for this notice. CMS finds good cause for the waivers because otherwise the required delays could result in disruption of program operations and would be contrary to the public interest.

Statutory authorization for the rule

This notice is authorized by title XXI of the Social Security Act (SCHIP) as amended by the Medicare, Medicaid, and SCHIP Extension Act of 2007 and other related SCHIP legislation.

Executive Order No. 12,866

The notice was reviewed by the Office of Management and Budget as required by Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice does not significantly affect states' rights, roles, and responsibilities.