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January 11, 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: Medicaid Program; Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School*

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 “Medicaid Program; Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School” (RIN: 0938-AP13). We received the rule on December 28, 2007. It was published in the *Federal Register* as a final rule on December 28, 2007. 72 Fed. Reg. 73,635.

The final rule eliminates the federal Medicaid payment for the costs of certain school-based administrative and transportation activities because the Secretary of Health and Human Services has found that these activities are not necessary for the

proper and efficient administration of the Medicaid state plan and are not within the definition of the optional transportation benefit. Based on these determinations, federal Medicaid payments will no longer be available for administrative activities performed by school employees or contractors, or anyone under the control of a public or private educational institution, or for transportation from home to school.

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.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7114.

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
"MEDICAID PROGRAM; ELIMINATION OF REIMBURSEMENT UNDER
MEDICAID FOR SCHOOL ADMINISTRATION EXPENDITURES
AND COSTS RELATED TO TRANSPORTATION OF
SCHOOL-AGE CHILDREN BETWEEN HOME AND SCHOOL"
(RIN: 0938-AP13)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) estimated that the final rule will reduce federal Medicaid outlays by \$635 million in fiscal year 2009 and by a total of \$3.6 billion over the first 5 years.

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

CMS certified that both the proposed and final rules would “not have a significant economic impact on a substantial number of small entities.”

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

CMS concluded that the final rule contains no mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or the private sector of \$127 million.

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

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

CMS published a proposed rule in the *Federal Register* on September 7, 2007. 72 Reg. 51,397. CMS received 1,240 timely public comments on the proposed rule, but after considering these comments, adopted the rule as final without change. CMS addressed the comments in the final rule.

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

The final rule does not contain any information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority in 42 U.S.C. 1302.

Executive Order No. 12,866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13,132 (Federalism)

CMS concluded that the final rule will not have a substantial effect on state or local government policy discretion. While this final rule would eliminate the ability of states to claim federal Medicaid funding for school-based administrative and certain transportation costs, it will not impose any requirement as to how states or localities administer or pay for such activities, or interfere in any way with the ability of states to determine school transportation policy.