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Washington, DC 20548

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B-317539

December 10, 2008

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

The Honorable John 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; Premiums and Cost Sharing*

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; Premiums and Cost Sharing” (RIN: 0938-AO47). We received the rule on November 20, 2008. It was published in the *Federal Register* as a final rule on November 25, 2008. 73 Fed. Reg. 71,828.

The final rule implements and interprets the provisions of sections 6041, 6042, and 6043 of the Deficit Reduction Act of 2005 (DRA), Pub. L. No. 109-171, 120 Stat. 4 (Feb. 8, 2006), and section 405(a)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA), Pub. L. No. 109-432 (Dec. 20, 2006). The DRA was amended by TRHCA, which revised sections 6041, 6042, and 6043 of the DRA, including limitations on cost sharing for individuals with family incomes at or below 100 percent of the federal poverty line. These sections amended the Social Security Act to provide state

Medicaid agencies with increased flexibility to impose premium and cost sharing requirements on certain Medicaid recipients. The DRA provisions also address cost sharing for non-preferred drugs and non-emergency care furnished in a hospital emergency department. The final rule is effective 60 days after the date of publication in the *Federal Register*.

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 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  
"MEDICAID PROGRAM; PREMIUMS AND COST SHARING"  
(RIN: 0938-AO47)

(i) Cost-benefit analysis

CMS performed a cost-benefit analysis of the final rule. CMS estimates the impact for Medicaid enrollees as a cost increase of \$105 million in 2007, \$155 million in 2008, \$255 million in 2009, \$375 million in 2010, and \$455 million in 2011. CMS states that although these estimates reflect an increase of costs on beneficiaries, the final rule will not pose a barrier to accessing health care. This is because the law provides that states can impose alternate cost sharing. CMS also expects that the final rule will promote the modernization of the Medicaid program.

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

CMS certified that the final rule would not have a significant impact on a substantial number of small entities, and therefore, did not prepare a Final Regulatory Flexibility Analysis.

(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 the final rule would likely result in new spending by Medicaid enrollees in excess of the threshold of approximately \$130 million in the Unfunded Mandates Reform Act. The final rule outlines the total increase in Medicaid enrollees cost sharing as a result of all the provisions of the Deficit Reduction Act of 2005. This includes an estimated cost increase to Medicaid recipients of \$105 million in 2007, \$155 million in 2008, \$255 million in 2009, \$375 million in 2010, and \$455 million in 2011.

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. CMS published a proposed rule in the *Federal Register* on February 22, 2008.

73 Fed. Reg. 9727. In response to the proposed rule, CMS received approximately 50 items of correspondence. Many of the commenters represented state and local advocacy groups, national associations that represent various aspects of beneficiary groups, physician and provider groups, medical associations and hospitals, and state Medicaid agency senior officials. The remaining comments were from individuals and human services agencies. CMS responds to the comments in the final rule.

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

The final rule contains information collection requirements that were submitted for review by the Office of Management and Budget (OMB) as required by the Act. OMB approved these information collections under OMB number 0938-0993. In response to comments on the proposed rule, however, CMS revised the information collection requirements and has submitted these revisions to OMB for approval. Moreover, CMS has requested comments on the revisions to the information collection requirements in the final rule.

#### Statutory authorization for the rule

The final rule implements and interprets the provisions of sections 6041, 6042, and 6043 of the Deficit Reduction Act of 2005, Pub. L. No. 109-171 (Feb. 8, 2006), and section 405(a)(1) of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432 (Dec. 20, 2006).

#### 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 determined that the final rule would not impose substantial direct requirements costs on state and local governments.