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January 24, 2012

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Health and Human Services, Office of the Secretary:
Administrative Simplification: Adoption of Standards for Health Care
Electronic Funds Transfers (EFTs) and Remittance Advice*

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 (HHS), Office of the Secretary, entitled “Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice” (RIN: 0938-AQ11). We received the rule on January 6, 2012. It was published in the *Federal Register* as an interim final rule with comment period on January 10, 2012. 77 Fed. Reg. 1556.

The interim final rule with comment period implements parts of section 1104 of the Affordable Care Act which requires the adoption of a standard for electronic funds transfers (EFT). The rule defines EFT and explains how the adopted standards support and facilitate health care EFT transmissions.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This interim final rule with comment period was received on January 6, 2012, and published on January 10, 2012. The rule has a stated effective date of January 10, 2012, and a

compliance date of January 1, 2014. HHS explains the distinction between the effective date and the compliance date by stating, in part:

“The effective date of standards, implementation specifications, modifications, or operating rules that are adopted in a rule, however, is different than the effective date of the rule. The effective date of standards, implementation specifications, modifications, or operating rules is the date on which covered entities must be in compliance with the standards, implementation specifications, modifications, or operating rules. Here, the [Affordable Care] Act requires that the standard for electronic funds transfers be effective not later than January 1, 2014. This means that covered entities must be in compliance with the standards by January 1, 2014.”

To the extent this rule takes effect on January 10, 2012, rather than January 1, 2014, it does not have the required 60-day delay in effective date under the CRA. However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and comment are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. §§ 553(d)(3), 808(2). Although HHS did not discuss the 60-day delay requirement in the rule, the agency did find good cause to waive the 30-day delay under the Administrative Procedure Act.

Enclosed is our assessment of HHS’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 of the procedural steps taken indicates that HHS 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing 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,
OFFICE OF THE SECRETARY
ENTITLED
"ADMINISTRATIVE SIMPLIFICATION: ADOPTION OF
STANDARDS FOR HEALTH CARE ELECTRONIC FUNDS
TRANSFERS (EFTS) AND REMITTANCE ADVICE"
(RIN: 0938-AQ11)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS) analyzed the costs and benefits of this interim final rule with comment period. HHS's estimates for the total costs over 10 years range from \$28 million to \$38 million. HHS's estimates for the benefits over 10 years range from \$3,166 million to \$4,559 million.

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

HHS determined that this interim final rule with comment period will not have a significant economic impact on a substantial number of small entities. Further, HHS determined that this rule will not have a significant impact on the operations of 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

HHS determined that this interim final rule with comment period will not impose spending costs on states, local, or tribal governments, in the aggregate, or on the private sector of \$100 million (\$136 million adjusted for inflation).

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

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

HHS determined that there is good cause to waive normal rulemaking notice and comment procedures, as they are impractical. HHS also found good cause to waive the 30-day delay in the effective date. Although this rule has a stated effective date of January 10, 2012, its compliance date is January 1, 2014.

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

HHS determined that this final rule contains information collection requirements under the Act. In the rule HHS solicited comment on the information collection requirements regarding third party health care EFT enrollment forms. HHS estimates that the total burden of this rule under the Act to be \$9.7 million for 2014 through 2018 (\$18 million in 2014, \$1.9 million in 2015, \$1.9 million in 2016, \$2 million in 2017, and \$2.1 million in 2018).

Statutory authorization for the rule

HHS promulgated this interim final rule with comment period under the authority of section 1104 of the Affordable Care Act.

Executive Order No. 12,866 (Regulatory Planning and Review)

HHS determined that this interim final rule with comment period is economically significant under the Order as it will have an effect of over \$100 million on the economy in any one year.

Executive Order No. 13,132 (Federalism)

HHS determined that this interim final rule with comment period will not have a substantial direct effect on state or local governments, preempt states, or otherwise have a federalism implication.