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United States Government Accountability Office
Washington, DC 20548

B-317629

January 5, 2009

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; Fiscal Year Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits*

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; Fiscal Year Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits” (RIN: 0938-AP09). We received the rule on December 19, 2008. It was published in the *Federal Register* as a notice on December 19, 2008. 73 Fed. Reg. 77,704.

The notice announces the final federal share disproportionate share hospital (DSH) allotments for federal fiscal year 2007 and the preliminary federal share disproportionate share hospital allotments for federal fiscal year 2009. This notice

also announces the final federal fiscal year 2007 and preliminary federal fiscal year 2009 limitations on aggregate disproportionate share hospital payments that states may make to institutions for mental disease and other mental health facilities.

Finally, the notice also explains the methodology for determining the amounts of states' federal fiscal year disproportionate share hospital allotments.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager
Department of Health and
Human Services

ENCLOSURE

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; FISCAL YEAR DISPROPORTIONATE
SHARE HOSPITAL ALLOTMENTS AND DISPROPORTIONATE
SHARE HOSPITAL INSTITUTIONS FOR MENTAL DISEASE LIMITS"
(RIN: 0938-AP09)

(i) Cost-benefit analysis

CMS determined that the total preliminary FY 2009 DSH allotments are about \$385 million greater than the total preliminary FY 2008 DSH allotments. The change in allotments is a result of the application of the explicit provisions in the Medicaid statute.

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

The Secretary of Health and Human Services certified that this notice will not have a significant economic impact on a substantial number of small entities and that it 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

CMS has determined that this notice will have no consequential effect on state, local, or tribal governments or on the private sector.

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

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

The notice does not address the requirements of the Administrative Procedure Act.

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

This notice does not impose information collection and recordkeeping requirements; therefore, the Paperwork Reduction Act does not apply, and there was no corresponding review by the Office of Management and Budget (OMB).

Statutory authorization for the rule

The notice is authorized by section 1923 of the Social Security Act.

Executive Order No. 12,866

The notice is an economically significant major rule under the Executive Order, and CMS prepared a regulatory impact analysis in conjunction with the notice. In accordance with the Executive Order, this notice was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice does not have federalism implications.