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United States General Accounting Office  
Washington, DC 20548

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B-289880

April 5, 2002

The Honorable Edward M. Kennedy  
Chairman, Committee on Health,  
Education, Labor, and Pensions  
United States Senate

Dear Mr. Chairman:

This is in response to your letter of March 26, 2002, regarding the effective date under the Congressional Review Act (5 U.S.C. 801 et seq.) of a major rule promulgated by the Department of Health and Human Services, Centers for Medicare and Medicaid Services.

On January 18, 2002, HHS published in the Federal Register a final rule entitled "Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals." As published, the final rule had an announced effective date of March 19, 2002.

The Congressional Review Act (CRA) requires that an agency promulgating a major rule must delay the effective date for 60 days 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).

The House of Representatives did not receive the Medicaid rule submission until February 14, 2002. Therefore, the final rule did not have the required 60-day delay in its effective date to permit review of the rule by Congress under the CRA. On March 19, 2002, HHS published a notice in the Federal Register delaying the effective date of the Medicaid rule until April 15, 2002, in an attempt to comply with the CRA.

In your letter, you note that the Senate did not receive the Medicaid rule until March 15, 2002. Therefore, you request confirmation of your view that because of the March 15, 2002, receipt by the Senate, the Medicaid rule cannot become effective until May 14, 2002, 60 days following the Senate's receipt.

While section 801(a)(3)(A) uses the phrase "receipt of the rule by Congress" in beginning the computation of the 60-day delay provision, section 801(a)(1)(A) requires that "Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of Congress and the Comptroller General a report ...."

Section 801(a)(1)(A) makes clear that compliance with the requirements of the CRA necessitates submission of a rule to both Houses of Congress. Therefore, in this instance, the start of the 60-day delay period would have been March 15, 2002, the date of receipt by the Senate. Accordingly, we find that the Medicaid rule should not be effective under the provisions of the CRA until May 14, 2002.

Sincerely yours,

signed

Anthony H. Gamboa  
General Counsel