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August 27, 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: Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems*

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 “Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems” (RIN: 0938-AN79). We received the rule on August 8, 2008. It was published in the *Federal Register* as a final rule on August 13, 2008, and has a stated effective date of October 14, 2008. 73 Fed. Reg. 47,075.

The final rule requires all long term care facilities to be equipped with sprinkler systems by August 13, 2013, and for those systems to be maintained once installed. CMS has historically adopted the Life Safety Code published by the National Fire Protection Association. The 2006 edition of the Life Safety Code includes a requirement for automatic sprinkler systems in all long term care facilities. CMS

decided to adopt this part of the 2006 Life Safety Code without waiting for the adoption of the full 2006 code to avoid further delay in requiring an automatic sprinkler system. This rule also phases out regulations applicable to long term care facilities without sprinkler systems because once this final rule is completely phased in, all long term care facilities will be required to have sprinkler systems.

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
"MEDICARE AND MEDICAID PROGRAMS;
FIRE SAFETY REQUIREMENTS FOR LONG TERM CARE FACILITIES,
AUTOMATIC SPRINKLER SYSTEMS"
(RIN: 0938-AN79)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) analyzed the costs and benefits of this final rule. CMS considered the installation and maintenance costs of this rule. CMS determined that the total estimated cost of installing automatic sprinkler systems to be about \$847 million over the 5-year phase-in period, or about \$169 annually. Additionally, there will be approximately \$2.5 million in annual maintenance costs. CMS evaluated the benefits of this rule, which include decreasing loss of life, decreasing loss of property, decreasing fire recovery disruption and time, decreasing legal liability and insurance costs, and reducing major medical care costs. Over the 20-year useful life of the sprinkler systems, CMS estimates the total benefits of this final rule to be \$991.4 million at a 3-percent discount rate and \$722.4 million at a 7-percent discount rate. Over the same time period, CMS estimates that the total costs to be \$806.4 million at a 3-percent discount rate and \$715 million at a 7-percent discount rate.

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

CMS determined that this final rule will not have a significant impact on a substantial number of small entities. Further, CMS determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Although CMS determined that a regulatory flexibility analysis was not required, CMS voluntarily prepared such an 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 this final rule does contain mandates that impose annual costs on private long term care facilities of \$154 million and on public long term care facilities of \$16 million. Therefore, CMS conducted an analysis under the Act.

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

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

CMS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On October 27, 2006, CMS published a proposed rule. 71 Fed. Reg. 62,957. CMS received 107 comments on the proposed rule, which they considered in the final rule. 73 Fed. Reg. 47,077–81.

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

CMS determined that this final rule does contain information collection requirements under the Act and has submitted them to the Office of Management and Budget (OMB) for review. CMS estimates that it will take affected facilities approximately 1 hour each, or 2,446 hours in total, to comply with these requirements.

Statutory authorization for the rule

CMS promulgated this rule under the authority of sections 1102 and 1871 of the Social Security Act. 42 U.S.C. §§ 1302, 1395hh.

Executive Order No. 12,866

CMS determined that this final rule is significant under the Order because it will have an effect on the economy of \$100 million or more in any one year. The rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not impose substantial direct compliance costs on state or local governments and therefore has no federalism implications under the Order.