



GAO

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

---

B-321405

January 14, 2011

The Honorable Max Baucus  
Chairman  
The Honorable Charles E. Grassley  
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, Centers for Medicare & Medicaid Services: Medicaid Program; Final FY 2009 and Preliminary FY 2011 Disproportionate Share Hospital Allotments, and Final FY 2009 and Preliminary FY 2011 Institutions for Mental Diseases Disproportionate Share Hospital 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 & Medicaid Services (CMS), entitled “Medicaid Program; Final FY 2009 and Preliminary FY 2011 Disproportionate Share Hospital Allotments, and Final FY 2009 and Preliminary FY 2011 Institutions for Mental Diseases Disproportionate Share Hospital Limits” (RIN: 0938-AQ44). We received the rule on January 3, 2011. It was published in the *Federal Register* as a notice on January 3, 2011, with a stated effective date of March 4, 2011. 76 Fed. Reg. 148.

The notice announces the final federal share disproportionate share hospital (DSH) allotments for fiscal year (FY) 2009 and the preliminary federal share DSH allotments for FY 2011. This notice also announces the final FY 2009 and the preliminary FY 2011 limitations on aggregate DSH payments that states may make to institutions for mental disease and other mental health facilities.

Enclosed is our assessment of 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 of the procedural steps taken 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  
Managing 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 & MEDICAID SERVICES  
ENTITLED  
"MEDICAID PROGRAM; FINAL FY 2009 AND PRELIMINARY FY 2011  
DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS, AND  
FINAL FY 2009 AND PRELIMINARY FY 2011 INSTITUTIONS FOR MENTAL  
DISEASES DISPROPORTIONATE SHARE HOSPITAL LIMITS"  
(RIN: 0938-AQ44)

(i) Cost-benefit analysis

In its submission to us, the Centers for Medicare & Medicaid Services (CMS) indicated that it did not prepare an analysis of the costs and benefits of this notice.

CMS does state in the notice that there are no changes between the revised preliminary and final fiscal year (FY) 2009 disproportionate share hospital (DSH) allotments and FY 2009 institutions for mental diseases (IMD) disproportionate share hospital limits. Also, according to CMS, the preliminary FY 2011 DSH allotments being published in this notice are about \$365 million less than the preliminary FY 2010 DSH allotments published in the *Federal Register* on April 23, 2010. 75 Fed. Reg. 21,314. CMS further stated that the preliminary FY 2011 IMD DSH Limits being published in this notice are about \$23 million less than the preliminary FY 2010 IMD DSH Limits published in the April 23, 2010, notice.

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

CMS determined that this notice will not have a significant economic impact on a substantial number of small entities. In addition, CMS determined that this notice 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 determined that this notice will have no consequential effect on state, local, or tribal governments, in the aggregate, 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.

CMS published a notice in the *Federal Register* on December 19, 2008, which included the announcement of the preliminary FY 2009 DSH allotments based on estimates, and the preliminary FY 2009 IMD DSH limits. 73 Fed. Reg. 77,704. A correction notice published in the *Federal Register* on January 26, 2009, provided a correction to the chart of preliminary FY 2009 DSH allotments published in the December 2008 notice. 74 Fed. Reg. 4439. Finally, CMS published a notice on April 23, 2010, which included the announcement of the revised preliminary FY 2009 DSH allotments to reflect increases in the amount of the states' DSH allotments for FY 2009 and FY 2010. 75 Fed. Reg. 21,314.

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

CMS determined that this notice does not contain any information collection requirements under the Act.

Statutory authorization for the rule

CMS promulgated this notice under the authority of section 1923 of the Social Security Act, 42 U.S.C. § 1396r-4.

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

CMS determined that this notice is economically significant under the Order because it will have an effect of \$100 million or more in a single year.

Executive Order No. 13,132 (Federalism)

CMS determined that because this notice does not impose any costs on state or local governments, the requirements of the Order are not applicable.