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March 3, 2011

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

The Honorable Dave Camp
Chairman
The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Years 2009 Through 2015 CHIP Allotments*

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 "Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Years 2009 Through 2015 CHIP Allotments" (RIN: 0938-AP53). It was published in the *Federal Register* as a final rule on February 17, 2011. We received the rule on February 18, 2011. It has a stated effective date of April 18, 2011. 76 Fed. Reg. 9233.

The final rule describes the implementation of funding provisions for the Children's Health Insurance Program (CHIP). Specifically, the rule addresses methodologies and procedures for determining states' allotments and payments for fiscal years 2009 through 2015.

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: Annie Lamb
Regulations Coordinator
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
"CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP);
ALLOTMENT METHODOLOGY AND STATES'
FISCAL YEARS 2009 THROUGH 2015 CHIP ALLOTMENTS"
(RIN: 0938-AP53)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) estimates that approximately \$74 billion in additional federal funds may be made available for fiscal years 2009 through 2016 for the Children's Health Insurance Program (CHIP) in addition to the amount of funds previously appropriated. This rule describes the methodologies and procedures for determining states' allotments of these funds. CMS believes that this rule will have an overall positive impact by informing states of the extent to which they are permitted to expend funds under their child health plans using additional funds provided by the fiscal year 2009 allotment amounts.

(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 economic impact on a substantial number of small entities. CMS also determined that this final 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

CMS determined that this final rule will not create an unfunded mandate on states, tribal, or local governments in the aggregate, or by the private sector in the amount of \$100 million (\$136 million adjusted for inflation) in any one year.

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

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

On September 16, 2009, CMS issued a proposed rule to which it received two comments. 74 Fed. Reg. 47,517. However, after the proposed rule was published, Congress enacted technical changes to the statute governing CHIP funding. CMS

determined that these changes did not constitute a fundamental change to the funding mechanism and did not reopen the rule for public comment and therefore found good cause to waive notice-and-comment procedures for this final rule.

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

CMS determined that this final rule will not impose any information collection requirements under the Act.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of section 1102 of the Social Security Act, 42 U.S.C. § 1302.

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

CMS determined that this final rule is economically significant under the Order. The rule was reviewed by the Office of Management and Budget (OMB).

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not significantly affect states' rights, roles, and responsibilities.