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United States Government Accountability Office
Washington, DC 20548

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October 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

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicaid Program; Recovery Audit Contractors*

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; Recovery Audit Contractors” (RIN: 0938-AQ19). We received the rule on September 14, 2011. It was published in the *Federal Register* as a final rule on September 16, 2011. 76 Fed. Reg. 57,808.

The final rule implements section 6411 of the Patient Protection and Affordable Care Act and provides guidance to states related to the federal/state funding of state start-up costs of Medicaid Recovery Audit Contractors (RACs) and the payment methodology for state payments to Medicaid RACs. The final rule directs states to assure that adequate appeal processes are in place for providers to dispute adverse determinations by Medicaid RACs, and directs states to coordinate with other contractors and entities auditing Medicaid providers and with state and federal law enforcement agencies.

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

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; RECOVERY AUDIT CONTRACTORS"
(RIN: 0938-AQ19)

(i) Cost-benefit analysis

CMS performed a cost-benefit analysis in conjunction with the final rule. CMS estimated the Medicaid impact resulting from the expansion of the Recovery Audit Contractor program for Fiscal Years (FY) 2012-2016 to be a savings of \$2.13 billion, with the federal share being \$1.22 billion and the state share of the savings being \$910 million. CMS also prepared an accounting statement in which it estimated that the final rule would result in estimated net savings over FYs 2012-2016 of \$233.9 million using a 7-percent discount rate (\$239.6 million using a 3-percent discount rate) in transfers from the federal government to providers, and an estimated net savings over FYs 2012-2016 of \$174.5 million using a 7-percent discount rate (\$176.7 million using a 3-percent discount rate) in transfers from state governments to providers.

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

CMS determined that the final rule will not have a significant economic impact on a substantial number of small entities. CMS also determined that the 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 the final rule is not anticipated to have an effect on state, local, or tribal governments in the aggregate, or by the private sector of \$136 million or more.

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

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

On November 10, 2010, CMS published a proposed rule in the *Federal Register*. 75 Fed. Reg. 69,037. CMS received 76 timely comments on the proposed rule from state associations, hospitals, medical associations, providers, managed care organizations, and contingency fee contractors. CMS summarized and responded to the comments in the final rule. 76 Fed. Reg. 57,808.

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

The final rule contains four new information collection requirements for which CMS solicited public comments. CMS estimates that the requirements will result in a total annual burden of 8,008 hours with total annual labor costs of \$362,574.24 and total annual capital/maintenance costs of \$14,200.

Statutory authorization for the rule

The final rule is authorized by section 6411 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010).

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

CMS determined the final rule was economically significant under the Executive Order and the final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that the final rule will not have substantial direct effects on the rights, roles, and responsibilities of states, local, or tribal governments.