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May 26, 2014

Information Quality
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Request for Correction of CMS Document: CMS Letter to State Health Officials and State Medicaid Directors dated September 27, 2013 re: *United States v. Windsor*

Dear CMS:

This letter and the attached *Report*[1] are a Request for Correction ("RFC") of specified portions of the above-captioned letter, which is disseminated by CMS at www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-006.pdf.

This RFC is a refiling of an RFC that CRE initially filed with CMS on Veterans Day last year. The RFC was mishandled though, most likely because of the disruption in services caused by the government shutdown. Although receipt of CRE's RFC was acknowledged by HHS, no action was taken by CMS.

CRE is filing this RFC because CMS's *Windsor* directive includes permission for state Medicaid programs to decide which federally-recognized marriage licenses they choose to accept. CMS's directive effectively denies the Congressionally-created spousal impoverishment protections to Medicaid beneficiaries with same-sex spouses living in states without marriage equality laws.

Our RFC asserts that because (1) half of skilled nursing facilities have received mortgage assistance from HUD and (2) HUD issued a regulation prohibiting residential facilities that receive HUD assistance from even inquiring into a resident's sexual orientation or gender identity, anyone trying to determine the status of a Medicare beneficiary's federally-recognized marriage under state law may be violating the beneficiary's rights under federal fair housing laws.

CRE is refiling its RFC at this time because CMS's sister agency, the FDA, has released its own guidance on implementing *Windsor*, which contains a definition of "spouse" that could serve as a model for CMS. The data quality flaws in the CMS Directive, which undermine the civil rights of same-sex couples, would be resolved if CMS were to replace the statement in its directive—that CMS "permit[s] states and territories to apply their own choice-of-law rules in deciding" whether a couple is lawfully married—with FDA's statement that "spouse" includes "individuals of the same sex who are lawfully married and whose marriage is valid in the state, territory or foreign nation where it took place."

Because this RFC involves a major policy question that is likely to be of strong interest to multiple agencies, OIRA requires that it be sent a copy of the RFC. OIRA also requires that RFCs be posted online for public inspection.

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[1] Center for Regulatory Effectiveness, *Report Establishing an Information Quality Deficiency in CMS's Letter Explaining the Agency's Implementation of the Supreme Court's Windsor Decision* ("Report").

The CRE and I are the affected persons filing this RFC. We may be reached at Levinson@TheCRE.com.

Thank you.

Respectfully,

/S/

Bruce Levinson
Senior Vice President—Regulatory Intervention

Attachment: *A Report Establishing an Information Quality Deficiency in CMS's Letter Explaining the Agency's Implementation of the Supreme Court's Windsor Decision*

cc:

The Honorable Carol J. Galante, Assistant Secretary for Housing/Federal Housing Commissioner
Mr. Frank Baitman, Chief Information Officer, Department of Health and Human Services

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November 11, 2013

Information Quality
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Request for Correction of CMS Document: CMS Letter to State Health Officials and State Medicaid Directors dated September 27, 2013 re: *United States v. Windsor*

Dear CMS:

This letter and the attached *Report Establishing an Information Quality Deficiency in CMS's Instructions to State Officials Implementing the Supreme Court's Windsor Decision* constitute a Request for Correction (RFC) of specified portions of the above-captioned letter. The letter is disseminated by CMS on Medicaid.gov at www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-006.pdf.

This RFC is being submitted pursuant to the HHS/CMS's *Guidelines for Ensuring the Quality of Information Disseminated to the Public*[1] which provide departmental and agency-specific implementation of the Office of Management and Budget's (OMB) government-wide guidelines[2] implementing the Data Quality Act (DQA).[3]

The name and contact information for the affected person and organization filing this RFC is:

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202.265.2383
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Thank you.

Respectfully,

/s/
Bruce Levinson
Senior Vice President –
Regulatory Intervention

cc: The Honorable Carol J. Galante, Assistant Secretary for Housing/Federal Housing Commissioner

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[1] See, HHS Information Quality Web Site, *Guidelines for Ensuring the Quality of Information Disseminated to the Public*; E. Centers for Medicare & Medicaid Services, ("HHS/CMS Guidelines") available at, http://aspe.hhs.gov/infoquality/Guidelines/CMS-9-20.shtml#vi.

[2] 67 Fed Reg 8452-60, February 22, 2002, ("OMB Government-Wide Guidelines") available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/reproducible2.pdf.

[3] See, Wikipedia entry for Data Quality Act, http://en.wikipedia.org/wiki/Data_Quality_Act.

A Report Establishing an Information Quality Deficiency in CMS's Instructions to State Officials Implementing the Supreme Court's Windsor Decision

A Request for Correction

November 2013

Bruce Levinson
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A Report Establishing an Information Quality Deficiency in CMS's Instructions to State Officials Implementing the Supreme Court's Windsor Decision: A Request for Correction

The CMS information that is the subject of this Request for Correction (RFC) is a letter sent to state Medicaid officials instructing them on how to implement the Supreme Court's *Windsor* decision with respect to several CMS-funded programs.[1] More specifically, this document focuses on the portion of CMS's letter which explains that the agency is permitting states without marriage equality laws to allow nursing care facilities to refuse to honor the out-of-state marriage licenses of same-sex Medicaid beneficiaries. In some cases, CMS's permission would lead to violations of federal fair housing regulations. It would also lead to depriving same-sex couples of Medicaid's *spousal impoverishment* protection.

1. What are information quality standards?

Each federal department/agency has its own set of information quality standards, specified in agency guidelines, that comply with the Office of Management and Budget's (OMB) government-wide quality standards. Guidelines implementing the Data Quality Act (DQA) set requirements for the *quality*, *objectivity*, *utility,* and *integrity* of virtually all information disseminated by federal agencies.

2. What would be the implications of CMS violating federal information quality standards?

Unless states receive adequate information from CMS explaining that nursing care facilities which have received financial assistance from HUD are prohibited from inquiring into the sexual orientation or gender identity of Medicaid beneficiaries, many beneficiaries will find that the fair housing protections established by the department's 2012 regulations[2] are ignored.

3. Why does HUD financial assistance to nursing care facilities matter to CMS?

HUD regulations prohibit residential care facilities that have benefitted from FHA insurance or any other departmental program from inquiring into anyone's sexual orientation or gender identity for housing purposes. Since only married couples are eligible for Medicaid's spousal impoverishment protection, state decisions on whether to recognize the out-of-state marriage licenses of same-sex married couples control whether those couples are covered by the protections and thus determine the share of assets the couple has available for the long term care of both partners. By permitting states to refuse to honor the out-of-state marriage licenses of same-sex couples, CMS is also permitting adverse financial treatment of married Medicaid beneficiaries in HUD-assisted nursing care facilities because of their sexual orientation.

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[1] Disseminated by CMS at http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-006.pdf.

[2] Department of Housing and Urban Development, *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*; Final Rule, 77 Fed Reg 5662; February 3, 2012.

4. What analytic framework are we using to assess whether CMS's letter complies with its Information Quality Guidelines?

In this report, we apply the US GAO's *Government Auditing Standards, Field Work Standards for Performance Audits* to assess CMS's compliance with its own information quality standards.[3] We have used GAO's analytic framework because GAO is the watchdog charged by Congress with responsibility for independently assessing executive agency programs and investigating "how the federal government spends taxpayer dollars."[4]

5. What does GAO's framework look like in brief?

GAO's audit methodology includes three core elements: *criteria*, *condition*, and *effect*. These three elements, plus a *cause* if a deficiency is found, are the basis of a *finding*. The finding is a logical conclusion drawn from analyzing data to understand why the condition differs from the criteria. In developing a finding, the importance of GAO's imperative that evidence "should be sufficient, competent, and relevant to support a sound basis for audit findings, conclusions, and recommendations" cannot be overemphasized.

6. If agency-disseminated information has been demonstrated not to comply with quality standards, what can be done about it?

The DQA grants persons affected by the demonstrably incorrect information the right to "seek and obtain" correction of the mistakes.

7. How is the rest of this document organized?

Following this overview, we will discuss what Medicaid and HHS say about the Medicaid spousal impoverishment protection. Since HHS's explanation makes clear that there are substantial adverse financial consequences for same-sex spouses whose marriage licenses are not honored, we request that CMS treat the statements in its letter as *influential* financial information—which means that these statements are subject to the most stringent quality standards. Following the section on influential information, we present an overview of the GAO audit process that we used in our analysis. Next comes the central portion of the report, testing three specific statements in the letter using GAO's framework to see whether these statements comply with CMS's quality standards. Our finding is based on the results of these tests. Based on this finding, we request that CMS make certain corrections to its letter.

[3] These standards are available from GAO at http://www.gao.gov/govaud/yb/2003/html/chap75.html.

[4] "About GAO," http://www.gao.gov/about/.

Medicaid and HHS explain that federal regulations help to protect the spouses of nursing home residents from "financial devastation," so that they "are able to live out their lives with independence and dignity."

Medicaid and HHS both have websites dedicated to discussing the spousal impoverishment protection enacted by Congress in 1988.[5] CMS explains that after the assets protected by the Medicaid rules are deducted from the "institutionalized individual's income, any remaining income is contributed toward the cost of his or her care in the institution" and further notes that when a married person enters a nursing home, the expenses "can rapidly deplete the lifetime savings of elderly couples. . . . leaving the spouse who is still living at home in the community with little or no income or resources." HHS explains that while the levels of assets protected may seem modest, "they far exceed the income and asset levels that may be retained in the case of unmarried recipients of Medicaid long-term care services." The spousal impoverishment protection law also has estate planning benefits in addition to income protections. HHS explains that the planning benefits occur because "states are required to recover Medicaid long-term care expenses from the estates of deceased recipients," but that "when there is a surviving spouse, the recipient's estate often escapes this outcome."

The federal spousal impoverishment protection applies only to married couples. As a result, a state's decision on whether to recognize the marriage of a same-sex couple affects their available assets, and thus the access of both to long-term care.

The CMS letter should be classified as *influential* financial information by the agency, because it permits states to cause financially devastating consequences for married Medicaid beneficiaries and their spouses.

OMB's government-wide information quality guidelines explain that the more important an information dissemination is, the more stringent the quality standards which are to be applied—a principle that is concordant with the GAO concept of Program Significance. OMB applies the most stringent quality standards to information that is influential. HHS/CMS Guidelines state that "'Influential' means that CMS can reasonably determine that dissemination of the information will have a substantial impact on important public policies or important private sector decisions or will have important consequences for specific health practices...."

Because the spousal impoverishment benefit "far exceed[s] the income and asset levels that may be retained in the case of unmarried recipients of Medicaid long-term care services" and because the consequences of the lack of asset protection could include stripping spouses of the ability to live in independence and dignity and limit their future residential care options, the agency should treat its letter as influential financial information for information quality purposes.

[5] See CMS's spousal impoverishment protection page here, http://www.medicaid.gov/Medicaid-CHIP-Prgram-Information/By-Topics/Eligibility/Spousal-Impoverishment-Page.html and HHS's spousal impoverishment protection page here, http://aspe.hhs.gov/daltcp/reports/spouses.htm.

GAO's Performance Audit standards provide an objective way of evaluating whether or not an agency document complies with quality standards.

GAO's generally accepted government auditing standards (GAGAS) are publicly available,[6] peer-reviewed, internationally-accepted guides intended to promote "improved government management, decision making, and oversight." The GAO standards provide an objective framework for analyzing the question of whether certain specific statements in the CMS letter comply with the quality criteria specified in CMS's information quality guidelines.

The part of the audit that gets the most attention is the *finding*. GAO explains that audit findings generally contain the elements of *criteria*, *condition*, and *effect*. When the condition is found to deviate from the criteria, the question of *cause* is also addressed.

Criteria is defined by GAO as "the standards, measures, expectations of what should exist, best practices, and benchmarks against which performance is compared or evaluated."[7] In short, CMS's information quality guidelines are the audit criteria for our purposes. By selecting the CMS guidelines as the evaluation criteria, this report is in keeping with GAO's statement that "auditors have a responsibility to use criteria that are reasonable, attainable, and relevant to the objectives of the performance audit."[8]

Condition is simply "a situation that exists."[9] In our case, the condition is the letter that CMS sent to state officials providing the agency's instructions on how to implement the Supreme Court's *Windsor* decision in various programs.

Effect is defined by GAO as a measure of the consequences that occur when the situation that exists (the condition) is found to have deviated from the criteria. GAO explains that effect is used by auditors to "to demonstrate the need for corrective action in response to identified problems."[10]

If auditors find that the situation that does exist is different from the situation that should exist, they seek to find the *cause* of the discrepancy. GAO notes that identifying "the cause of problems can assist auditors in making constructive recommendations for correction," in our case, a Request for Correction.

We can see, therefore, that the auditor's job includes (1) determining what standards should be applied to evaluating a specific situation, (2) assessing the situation that actually exists, and (3) evaluating the effect of any deviation of the situation that exists from the situation that should exist. Thus, in our

[6] United States General Accounting Office, *Government Auditing Standards: 2003 Revision*, GAO-03-673G, *available at* http://www.gao.gov/govaud/yb2003.pdf.

[7] Government Auditing Standards, Sec. 7.28.

[8] Id.

[9] Government Auditing Standards, Sec. 7.63.

[10] Government Auditing Standards, Sec. 7.64.

case, the auditor's job is to assess whether the CMS letter implementing *Windsor* is in accord with the standards set by CMS's information quality guidelines.

GAO's auditing standards include extensive material on how an auditor should plan and prepare for conducting an audit. Of particular note, GAO states that auditors "should determine which" regulations "are significant to the audit objectives and assess the risk that illegal acts or violations of provisions of contracts or grant agreements could occur.[11]

One of the regulations that is relevant to assessing the risk that CMS's letter could lead to illegal acts is HUD's rule providing equal access to housing regardless of sexual orientation or gender identity.[12]

HUD's rule ensuring that federally-assisted housing is equally open to all persons irrespective of sexual orientation or gender identity is particularly strict.

HUD's rule is particularly stringent in its scope and requirements in two ways. First, the requirements apply to all residential care facilities that have directly or indirectly received benefits from the department, including but not limited to FHA mortgage insurance. About half of the nursing care facilities in the United States have received FHA benefits.[13]

The second way the regulation is particularly strict is that it prohibits nursing care facilities from making "inquiries regarding sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available...."[14] The rule further specifies that inquiries about a person's gender by a facility owner or administrator are allowed only for very limited purposes primarily pertaining to temporary emergency shelter. In short, what the HUD rule means is that nursing homes that have received any assistance from the department are not, by law, permitted to determine whether a married person's spouse is of the same or the opposite gender.

If CMS's letter conflicts with a HUD rule, is the DQA the right way to seek redress?

Yes. Agencies have received guidance on how to implement the law, directing them to report to the White House when they receive substantive correction requests of various types, including "Complaints relating to major policy questions that are likely to be of strong interest to two or more Federal agencies,"[15] in this case CMS and HUD.

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[11] Government Auditing Standards, Sec. 7.17.

[12] 77 Fed Reg 5662; February 3, 2012.

[13] HUD states that "Since 1959, over 7,000 Section 232 mortgage insurance commitments have been issued in all 50 states."[http://portal.hud.gov/hudportal/HUD?src=/federal_housing_administration/healthcare_facilities.] In a recent rule on Medicare payments, CMS states that there are 15,380 skilled nursing facilities. 78 Fed Reg 47967; August 6, 2013.

[14] 77 Fed Reg 5663, col. 1.

[15] John D. Graham, Ph.D., Memorandum for the Presidents Management Council, *Executive Branch Implementation of the Information Quality Law*, October 4, 2002,

GAO's audit procedures include evidentiary standards.

GAO specifies detailed sets of evidentiary standards, many of them tailored to specific audit purposes. Of key significance for our purposes is GAO's requirement that "in determining the sufficiency of evidence, auditors should ensure that enough evidence exists to persuade a knowledgeable person of the validity of the findings."[16]

Testing the CMS letter's compliance with information quality requirements.

We test three statements from the CMS letter according to a five-phase protocol based on GAO's audit standards. First, for each test, the report identifies the CMS statement—the *condition* being evaluated. Second, the report discusses the CMS information quality standard the statement is being tested against. Third, we evaluate the condition to see if it meets the *criteria, i.e.*, determine whether the CMS statement complies with the information quality standard. Fourth, we discuss the *effect* of any information quality deficiencies. Fifth, we describe the immediate *cause* of any deficiency we identify.

Test 1: CMS's giving permission to states to establish the same-sex marriage recognition policy of their choice for Medicaid benefits

Condition: The situation that exists is that CMS sent a letter to state Medicaid officials informing them that "*...we are permitting states and territories to adopt a different same-sex marriage recognition policy if they do not recognize same-sex marriages consistent with their laws.*"[17] The letter further explains that "a state is permitted and encouraged, but not required, to recognize same-sex couples who are legally married under the laws" of another state.

Criteria: Completeness. One of the basic components of information quality is *objectivity*, which is defined by CMS's guidelines to include ensuring "that information products are presented in an accurate, clear, complete and unbiased manner."[18] Our test will focus on the completeness portion of the criteria. For our purposes, a statement in the letter will not meet quality standards if the statement is so materially incomplete that it could reasonably be expected to lead to unlawful conduct.

Evaluation: For the purpose of determining Medicaid benefits, the CMS statement permits states without marriage equality laws to refuse to recognize the out-of-state marriage licences of same-sex couples. The question arises, however, as to how a nursing facility would know if a married person with an out-of-state license has a same-sex or opposite sex spouse. If the facility has received HUD benefits, any inquiries regarding sexual orientation or gender identity are unlawful. Thus, the only way that nursing facilities can comply with HUD's equal access requirements is by treating the

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http://www.whitehouse.gdov/sites/default/files/omb/assets/omb/inforeg/pmc_graham_100402.pdf.

[16] Government Auditing Standards, Sec. 7.52(a).

[17] Medicaid *Windsor* letter, beginning on the last line of page 1.

[18] See, CMS guidelines, Sec. V. Agency Quality Assurance Policies, Standards and Processes, para B. Objectivity. http://aspe.hhs.gov/infoquality/Guidelines/CMS-9-20.shtml#v.

marriage licenses of all couples equally without consideration of whether they were issued to same-sex or opposite-sex couples. CMS's letter, however, makes no mention of HUD's fair housing regulations. By not informing state officials that many skilled nursing facilities are prohibited by law from distinguishing between same-sex and opposite-sex marriages, the statement materially misrepresents applicable law.

Effect: The effect of CMS's incomplete communication is that it permits residential facilities to inquire into whether a married person's spouse is of the same or opposite gender. Under some circumstances, such inquiries violate federal fair housing laws.

Cause: CMS's letter violates information quality standards because it does not inform its readers that HUD equal access requirements apply to nursing facilities that have received benefits from HUD. CMS could correct this problem by adding a statement to the letter discussing the importance of HUD's 2012 fair housing regulation to Medicaid beneficiaries.

Test 2: CMS's reason for permitting states to deny the spousal impoverishment protection to married same-sex couples.

Condition: The CMS statement "*the unique federal-state relationship that characterizes the Medicaid and CHIP programs....*" is cited by CMS as its reason for permitting states to contravene HHS's policy of treating "same-sex marriages on the same terms as opposite-sex marriages, to the greatest extent possible."[19]

Criteria: Utility. CMS's information quality guidelines require that agency information be useful to its intended users.[20] For the purpose of this report, a statement in the letter will not meet quality standards if the statement does not succeed in communicating useful information regarding its topic.

Evaluation. The meaning of the term "the unique federal-state relationship" is opaque. On one hand, every federal program that provides federal funds to states is unique, based on its specific statutory text. On the other hand, there are many federal programs that involve states combining federal and state funds under state direction while subject to federal requirements.[21] CMS first states that it is HHS's policy to provide equal treatment of same-sex and opposite-sex marriages "to the greatest extent possible," then establishes a different policy for Medicaid benefits. The agency's decision to permit differential treatment of same-sex and opposite-sex marriages for Medicaid benefits implies that CMS has a specific, compelling reason for its decision. The agency's reference to a unique federal-state relationship to explain its marriage recognition decision, however, does not provide any useful information as to what the compelling reason might be.

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[19] Medicaid letter, p. 1.

[20] See, CMS guidelines, Sec. V(A) Utility. http://aspe.hhs.gov/infoquality/Guidelines/CMS-9-20.shtml#v.

[21] *Rust v. Sullivan*, 500 U. S. 173, 195, n. 4 (1991) ("Congress' power to allocate funds for public purposes includes an ancillary power to ensure that those funds are properly applied to the prescribed use.").

Effect: The effect of the statement's lack of utility is to deprive the public of an informative explanation for a financially significant agency decision.

Cause: CMS's letter violates the agency's *utility* standard for information quality, because it does not provide the useful information it purports to. CMS could correct this deficiency by providing a cogent reason for its decision to permit states to refuse to recognize same-sex marriage licenses.

Test 3: CMS's stated intent to collect information to facilitate a policy of differential treatment of same-sex and opposite-sex marriages.

Condition: The situation is that the CMS letter informs state Medicaid and health officials that the agency "*will provide state plan amendment preprints for Medicaid and CHIP, which states will be required to complete, indicating whether or not the state recognizes same-sex marriages for purposes of Medicaid and CHIP.*"

Criteria: Completeness.

Evaluation. CMS says that it will be requiring each state to provide the agency with information regarding its marriage recognition policy for Medicaid and CHIP benefits. CMS, however, will be unable to collect marriage recognition data without OMB approval under the Paperwork Reduction Act ("PRA").[22] Under the PRA, CMS would need to *certify* that collecting information for the purpose of facilitating differential treatment of same-sex married couples in accessing federal benefits is "necessary for the proper performance" of CMS functions. Since facilitating differential treatment of same-sex and opposite-sex marriages is contrary to the HHS policy stated earlier in the letter and also contrary to administration policy in implementing *Windsor*;[23] CMS may need to revise its information collection plans based on public comments received during the PRA process.

If CMS were to initiate an Information Collection Request (ICR) to collect data on state marriage recognition policies, it would have to open a two-part public process seeking comments and other input. An extensive public input process is an essential part of the PRA. The essential role of public participation in the PRA was explained by a Public Member of the Administrative Conference of the United States who noted that during "*the first comment period, the agency is, or should be, considering possible alternate approaches and methods to collecting, processing and using the data. It is during this formative process when public input is of critical importance in assisting the agency in developing and*

[22] For information about the PRA and its significance, please see, J. Tozzi, "OIRA's Formative Years: The Historical Record of Centralized Regulatory Review Preceding OIRA's Founding," *Administrative Law Review (Special Edition) 37* (2011) *available at* http://www.thecre.com/pdf/20111211_ALR_Tozzi_Final.pdf.

[23] See Presidential statement, "Supreme Court Strikes Down the Defense of Marriage Act," ("I've directed the Attorney General to work with other members of my Cabinet to review all relevant federal statutes to ensure this decision, including its implications for Federal benefits and obligations, is implemented swiftly and smoothly.") June 26, 2013, http://www.whitehouse.gov/blog/2013/06/26/supreme-court-strikes-down-defense-marriage-act.

structuring the proposed ICR in order to achieve the PRA's goals of minimizing the burden of the collection and maximizing its benefits."[24]

By not explaining to state officials the tentative nature of the agency's information collection plans, the CMS letter misrepresents applicable law.

Effect: The effect of the statement's lack of utility is to mistakenly indicate that the public is not able to substantively participate in and help shape the agency's plans for collecting and using data on state marriage recognition policies pertaining to Medicaid.

Cause: CMS's letter violates the agency's completeness standard, because it does not discuss the agency's PRA responsibilities relevant to its stated information collection plans.

Review of Results

The question at issue is whether CMS's letter meets information quality standards. In all three instances analyzed, CMS's letter does not include information that the letter's intended users need to have in order to be able to understand and lawfully comply with CMS's Medicaid policy.

Finding

The CMS letter is deficient and does not comply with CMS information quality standards, because it omits necessary information regarding the applicability of HUD fair housing regulations to many Medicaid beneficiaries.

Recommendation

CMS should revise its letter to add a statement discussing the applicability of HUD's 2012 fair housing regulation to Medicaid beneficiaries.

Bruce Levinson and the Center for Regulatory Effectiveness are Affected Persons

Bruce Levinson is an affected person because he resides in a State with marriage equality laws and would not want to live in a federally-supported residential care facility that violates federal fair housing laws.

The Center for Regulatory Effectiveness is an affected person because it is a *regulatory watchdog* with the mission of ensuring that agencies comply with the *good government* laws that regulate the regulators.[25]

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[24] Jim Tozzi, "Comments on the Draft Report to The Administrative Conference of the United States on the Paperwork Reduction Act," February 2012, available at http://acus.granicus.com/MetaViewer.php?view_id=2&clip_id=29&meta_id=512.

[25] For more information about CRE, please see http://www.thecre.com/oira/?page_id=8.