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August 24, 2004

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable William M. Thomas
Chairman
The Honorable Charles B. Rangel
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 Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates*

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 Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates” (RIN: 0938-AM80). We received the rule on August 2, 2004. It was published in the Federal Register as a final rule on August 11, 2004. 69 Fed. Reg. 48916.

The final rule revises the Medicare hospital inpatient prospective payment systems for operating and capital-related costs to implement changes arising from CMS’s continuing experience with these systems and to implement changes made by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

We note the final rule has an announced effective date of October 1, 2004. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). The rule was published in the Federal Register on August 11, 2004. It was received by Congress on August 2, 2004. Therefore, the final rule does not have the required 60-day delay.

We note that the final rule was on public display at the Federal Register on August 2, 2004, and that the effective date is statutorily mandated. However, the Congressional Review Act (Act) requires publication in the Federal Register and that the Act is to apply notwithstanding any other provision of law. 5 U.S.C. 806(a).

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, with the exception of the 60-day delay in the effective date, the CMS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Regulations Coordinator
Department of Health and
Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; CHANGES TO THE HOSPITAL INPATIENT
PROSPECTIVE PAYMENT SYSTEMS AND
FISCAL YEAR 2005 RATES"
(RIN: 0938-AM80)

(i) Cost-benefit analysis

CMS states that, based on the overall percentage change in payments per case estimated using the payment simulation model (a 5.8 percent increase), it is estimated the total impact of these changes for Fiscal Year 2005 compared to Fiscal Year 2004 payments to be approximately a \$5.05 billion increase.

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

CMS prepared a Final Regulatory Impact Analysis in conjunction with its Regulatory Impact Analysis. The analysis discusses the impact of the final rule on hospitals by geographic location, size, and payment classification.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million 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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On May 18, 2004, CMS published a Notice of Proposed Rulemaking in the Federal Register. 69 Fed. Reg. 28196. In the preamble to the final rule, CMS responds to the comments it received.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. In

the preamble to the final rule, CMS discusses the various collections and whether they have already been approved or whether they are exempt from the requirements of the Act. For the three collections that still must be reviewed by OMB, CMS has included the annual burden estimate.

Statutory authorization for the rule

The final rule is promulgated under the authority found in sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

CMS has determined that the final rule will not have any negative impact on the rights, roles, or responsibilities of state, local, or tribal governments.