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December 12, 2006

The Honorable Charles E. Grassley
Chairman

The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Joe Barton
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

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; Revisions to Payment Policies, Five-Year Review of Work Relative Value Units, Changes to the Practice Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Revisions to the Payment Policies of Ambulance Services Under the Fee Schedule for Ambulance Services; and Ambulance Inflation Factor Update for CY 2007*

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, entitled “Medicare Program; Revisions to Payment Policies, Five-Year Review of Work Relative Value Units, Changes to the Practice Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Revisions to the Payment Policies of Ambulance Services Under the Fee Schedule for Ambulance Services; and Ambulance Inflation Factor Update for CY 2007” (RINs: 0938-AO24; 0938-AO11). We received the rule on

November 1, 2006. It was published in the Federal Register as a “final rule with comment period” on December 1, 2006. 71 Fed. Reg. 69624.

The final rule makes changes to the Medicare Part B payment policy to implement certain provisions of the Deficit Reduction Act of 2005. The changes are intended to ensure that the payment systems are updated to reflect changes in medical practices and the relative value of services. The rule also finalizes the calendar year (CY) 2006 interim relative value units (RVUs) and contains the interim RVUs for new and revised procedure codes for CY 2007. Also, the rule revises the payment policies under the fee ambulance services and the ambulance inflation fact update for CY 2007. Finally, the rule announces that the physician fee schedule update for CY 2007 is -5.0 percent, the initial estimate for the sustainable growth rate for CY 2007, which is 2.0 percent, and the conversion factor for CY 2007, which is \$35.9848.

The final rule with comment period has an announced effective date of January 1, 2007. 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 received by Congress on November 1, 2006, but was not published in the Federal Register until December 1, 2006. Therefore, the final rule does not have the required 60-day delay in its effective date.

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 delay in the rule’s effective date, 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; REVISIONS TO PAYMENT POLICIES,
FIVE-YEAR REVIEW OF WORK RELATIVE VALUE UNITS, CHANGES TO
THE PRACTICE EXPENSE METHODOLOGY UNDER THE PHYSICIAN FEE
SCHEDULE, AND OTHER CHANGES TO PAYMENT UNDER PART B;
REVISIONS TO THE PAYMENT POLICIES OF AMBULANCE SERVICES
UNDER THE FEE SCHEDULE FOR AMBULANCE SERVICES; AND
AMBULANCE INFLATION FACTOR UPDATE FOR CY 2007"
(RINS: 0938-AO24; 0938-AO11)

(i) Cost-benefit analysis

CMS prepared a regulatory impact analysis of the final rule that concludes that the final rule will have a \$4 billion dollar impact consisting of a \$3.7 billion reduction in program expenditure and a \$206 million increase in payments for ambulance services.

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

CMS prepared a Final Regulatory Flexibility Analysis in connection with the final rule that complies with the requirements of the Act, including alternatives considered to attempt to reduce the impact on small entities.

(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 title II, of more than \$120 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.*

A portion of the final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On June 29, 2006, CMS published a Notice of Proposed Rulemaking in the Federal Register dealing the relative value units and changes to the practice expense methodology. 71 Fed. Reg. 37170.

Since the American Medical Association issues its annual updates to the Current Procedural Terminology and the Healthcare Common Procedure Coding System in the fall of each year, CMS found “good cause” to waive the notice and comment procedures because of the short-time period before the 2007 final rule needed to be issued. Likewise, CMS waived notice and comment regarding the ambulance inflation factor because the computation is based on statutory and regulatory requirements, and CMS has no discretion regarding the calculation.

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

The final rule has two information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. However, one of the collections has already been approved (OMB Control No. 0938-0921, expiration date May 31, 2009), and CMS believes the other is exempted by 5 CFR 1320.3(b)(2) because the information would be collected in the normal course of doing business.

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)

The final rule does not have sufficient federalism implications to require the preparation of a federalism impact analysis.