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May 14, 2010

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

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

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

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment—Update for Rate Year Beginning July 1, 2010 (RY 2011)*

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 “Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment—Update for Rate Year Beginning July 1, 2010 (RY 2011)” (RIN: 0938-AP83). We received the rule on April 30, 2010. It was published in the *Federal Register* as a notice on April 30, 2010, with an effective date of July 1, 2010. 75 Fed. Reg. 23,106.

The notice updates the prospective payment rates for Medicare inpatient psychiatric facilities (IPFs). The changes are applicable to IPF discharges occurring during the rate year beginning July 1, 2010, through June 30, 2011.

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 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

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
"MEDICARE PROGRAM; INPATIENT PSYCHIATRIC
FACILITIES PROSPECTIVE PAYMENT SYSTEM
PAYMENT—UPDATE FOR RATE YEAR
BEGINNING JULY 1, 2010 (RY 2011)"
(RIN: 0938-AP83)

(i) Cost-benefit analysis

The net effect of the updates described in this notice results in an overall estimated \$95 million increase in payments from rate year 2010 to rate year 2011. CMS does not expect changes in the quality of care or access to services for Medicare beneficiaries due to this notice. CMS contends that access to inpatient psychiatric facility (IPF) services will be enhanced due to the patient- and facility-level adjustment factors, all of which are intended to adequately reimburse IPFs for expensive cases. Also, the outlier policy is intended to assist IPFs that experience high-cost cases.

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

CMS determined that this notice will not impose a significant burden on small entities because the estimated impact of the notice is a net increase in revenue across all categories of IPFs.

(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 notice will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of \$135 million (\$100 million adjusted for inflation).

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

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

CMS stated that although it ordinarily publishes a notice of proposed rulemaking and allows for a period for public comment before the provisions of a rule take effect, CMS did not do so in the case of this notice. CMS concluded notice and comment

procedures were unnecessary because this notice does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. In addition, CMS noted that new section 1886(s)(3)(A) of the Social Security Act requires the application of an “Other Adjustment” to the update to the IPF prospective payment system base rate in rate year 2011. CMS applied the statutorily required adjustment in this notice. CMS found that notice and comment procedures are unnecessary to implement that statutory provision because it is a self-implementing provision of law, not requiring the exercise of any discretion on the part of CMS. According to CMS, this is grounds for the good cause exception to the notice and comment procedures under section 553(b)(3)(B) of title 5, United States Code.

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

CMS determined that this notice does not impose any new information collection and recordkeeping requirements and consequently need not be reviewed by the Office of Management and Budget.

Statutory authorization for the rule

CMS promulgated this notice under section 124 of the Balanced Budget Refinement Act of 1999. 42 U.S.C. § 1395ww.

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

CMS determined that this notice does not meet the \$100 million threshold established by the Order. However, CMS considers this notice to be economically significant because it estimates that the redistributive effects of this notice will be close to constituting a shift of \$100 million.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice will not have any substantial direct impact on state or local governments, preempt states, or otherwise have a federalism implication under the Order.