



**United States
General Accounting Office
Washington, D.C. 20548**

Office of the General Counsel

B-278990

January 27, 1998

The Honorable William V. Roth, Jr.
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable Bill Archer
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Health Care Financing
Administration: Medicare Program; Schedule of Limits on Home Health
Agency Costs Per Visit for Cost Reporting Periods Beginning on or After
October 1, 1997

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, Health Care Financing Administration (HCFA), entitled "Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After October 1, 1997" (RIN: 0938-AI24). We received the rule on January 12, 1998. It was published in the Federal Register as a final rule on January 2, 1998. 63 Fed. Reg. 89.

The notice sets forth a revised schedule of limits on home health agency (HHA) costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1997. In addition, the notice provides, in accordance with the Balanced Budget Act of 1997, that: (1) there be no changes in the home health per visit limits for cost reporting periods beginning on or after July 1, 1997, and before October 1, 1997; (2) the establishment of the cost per visit limitations for cost reporting periods beginning on or after October 1, 1997, be based on 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding HHA's; (3) there be no updates in the home health costs limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996; and (4) the wage index value that is applied to the labor portion of the per visit limitations be based on the geographic area in which the home health service is located.

Enclosed is our assessment of HCFA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the notice. Our review indicates that HCFA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Health and Human Services, Health Care Financing Administration, is William Scanlon, Director, Health Financing and Systems Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Donna E. Shalala
The Secretary 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,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICARE PROGRAM; SCHEDULE OF LIMITS ON
HOME HEALTH AGENCY COSTS PER VISIT FOR COST
REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1997"
(RIN: 0938-AI24)

(i) Cost-benefit analysis

HCFA, in the preamble to the notice, discusses the impact of the notice in a combined regulatory impact analysis and regulatory flexibility analysis.

HCFA estimates that the notice will result in a decrease in payments to home health agencies by approximately \$570 million in fiscal year 1998 compared to the payments that would have been made in fiscal year 1998 if the Balanced Budget Act of 1997 had not been enacted.

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

In the combined analyses, HCFA notes that for purposes of the Regulatory Flexibility Act, states and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities either by their nonprofit status or having revenues of \$5 million or less annually. HCFA concludes that the notice will have a significant impact on a substantial number of small entities.

HCFA states that it is unable to identify the effects of the notice changes to the cost limits on individual HHA's. However, it estimates that 65 percent of the HHA's exceed the cost limits based on 105 percent of the median of per visit costs and, therefore, will be impacted.

HCFA does not discuss any regulatory alternatives considered in issuing the notice because the changes to the HHA cost were statutorily mandated by the Balanced Budget Act of 1997.

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

The notice does not impose a federal intergovernmental or private sector mandate, as defined in the Unfunded Mandates Act of 1995.

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

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

HCFA notes in the preamble to the notice that normally it would publish a proposed notice with a 60-day comment period as required by section 1871(b)(1) of the Social Security Act and would allow a 30-day comment period required by section 553(d) of the Administrative Procedure Act. However, because of the statutorily mandated effective date of the changes, the Secretary has found good cause to waive these two requirements.

Nevertheless, HCFA states in the preamble that it is providing a 60-day public comment period on the notice, which HCFA will respond to in a subsequent notice.

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

Neither the notice nor its preamble list any new information collections which require review by the Office of Management and Budget under the provisions of the Paperwork Reduction Act.

Statutory authorization for the rule

The notice was issued under authority of section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. § 1395x(v)(1)(L)) and section 4207(d) of Pub. L. 101-508 (42 U.S.C. § 1395x (note)).

Executive Order No. 12866

The notice was found to be an "economically significant" regulatory action under Executive Order No. 12866 and was reviewed by the Office of Management and Budget, which approved the notice on December 29, 1997.