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United States General Accounting Office
Washington, DC 20548

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July 3, 2002

The Honorable Carl Levin
Chairman
The Honorable John W. Warner
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Bob Stump
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on Armed Services
House of Representatives

Subject: Department of Defense, Office of the Secretary: TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers

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 Defense (DOD), Office of the Secretary, entitled “TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers” (RIN: 0720-AA73). We received the rule on June 19, 2002. It was published in the Federal Register as an interim final rule on June 13, 2002. 67 Fed. Reg. 40597.

The interim final rule establishes a sub-acute care benefits program with skilled nursing facility and home health care benefits modeled after those of the Medicare program. It adopts Medicare payment methods for skilled nursing facility, home health care, and certain other institutional health care providers. Also adopted are Medicare’s rules on balanced billing of beneficiaries, prohibiting it by institutional providers, and limiting it by non-institutional providers. Finally, the rule makes changes in the statutory exclusion of coverage for custodial and domiciliary care.

Enclosed is our assessment of the DOD’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 the DOD 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 William Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: D. O. Cooke
Director, Administration and
Management
Department of Defense

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
DEPARTMENT OF DEFENSE,
OFFICE OF THE SECRETARY
ENTITLED
"TRICARE; SUB-ACUTE CARE PROGRAM; UNIFORM SKILLED
NURSING FACILITY BENEFIT; HOME HEALTH CARE BENEFIT;
ADOPTING MEDICARE PAYMENT METHODS FOR SKILLED NURSING
FACILITIES AND HOME HEALTH CARE PROVIDERS"
(RIN: 0720-AA73)

(i) Cost-benefit analysis

DOD expects the interim final rule to result in reduced TRICARE payments to skilled nursing facilities in excess of \$100 million per year.

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

DOD states that it did not prepare a Regulatory Flexibility Analysis for the interim final rule because the rule merely implements significant policy action taken by Congress and that there were no potential options to evaluate where Congress has dictated the policy. We also note that since the rule was not previously issued as a notice of proposed rulemaking, it is exempt from the requirements of the act.

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

As defined in title II, the interim final rule does not contain either an intergovernmental or private sector mandate of more than \$100 million, adjusted for inflation, 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.

Since the rule implements specific statutory requirements with specific effective dates, DOD issued the rule as an interim final rule without soliciting prior public comments. The Assistant Secretary determined that such action would be unnecessary, impractical, and contrary to the public interest.

DOD is soliciting comments on the interim final rule until June 30, 2002.

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

The interim final rule does not contain any new or modified information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The interim final rule is promulgated under the authority contained in section 701 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107, December 28, 2001) (10 U.S.C. 1074j).

Executive Order No. 12866

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