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United States Government Accountability Office
Washington, DC 20548

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November 18, 2005

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; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment 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 Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates" (RIN: 0938-AN46). We received the rule on November 2, 2005. It was published in the Federal Register as a "final rule with comment period" on November 10, 2005. 70 Fed. Reg. 68516.

The final rule revises the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from CMS's continuing experience with the system and to implement certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In addition, the final rule describes final changes to the amounts and factors used to

determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system.

The final rule has an announced effective date of January 1, 2006. 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 4, 2005, but was not published in the Federal Register until November 10, 2005. 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 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

ENCLOSURE

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
OUTPATIENT PROSPECTIVE PAYMENT SYSTEM
AND CALENDAR YEAR 2006 PAYMENT RATES"
(RIN: 0938-AN46)

(i) Cost-benefit analysis

CMS estimates that the total change in expenditures under the outpatient prospective payment system for calendar year 2006 as a result of this rule will be approximately $1.4 billion.

(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. The analysis concludes that the final rule will have a significant economic impact on a substantial number of small entities including small rural hospitals.

(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 impose either an intergovernmental or private sector mandate, as defined in 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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On July 25, 2005, CMS published an interim rule with comment period in the Federal Register. 70 Fed. Reg. 42674. The preamble to the final rule contains CMS's responses to the over 1,000 comments received regarding the proposed rule.

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

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

collection has been approved and assigned OMB Control No. 0938-0328 with an expiration date of January 31, 2008.

Statutory authorization for the rule

The final rule is promulgated under the authority found in sections 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395(hh)).

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 federalism implications according to CMS.