



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

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August 15, 2000

The Honorable William V. Roth
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 D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable Bill Archer
Chairman
The Honorable Charles 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; Provisions of the Balanced Budget Refinement Act of 1999; Hospital Inpatient Payments and Rates and Costs of Graduate Medical Education

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; Provisions of the Balanced Budget Refinement Act of 1999; Hospital Inpatient Payments and Rates and Costs of Graduate Medical Education" (RIN: 0938-AK20). We received the rule on August 2, 2000. It was published in the Federal Register as an interim final rule with comment period on August 1, 2000. 65 Fed. Reg. 47026.

The interim final rule implements provisions of the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (Pub. L. 106-113) relating to Medicare payments to hospitals for inpatient services.

These provisions relate to reclassification of hospitals from urban to rural status, reclassification of certain hospitals for purposes of payment during federal fiscal year 2000, critical access hospitals, payments to hospitals excluded from the hospital inpatient prospective payment system, and payments for indirect and direct graduate medical education costs.

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 rule. Our review indicates that HCFA 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, Director, Health Financing and Public Health Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Jacquelyn Y. White
Deputy Executive Secretary to
the Department
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,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICARE PROGRAM; PROVISIONS OF THE BALANCED BUDGET
REFINEMENT ACT OF 1999; HOSPITAL INPATIENT PAYMENTS AND
RATES AND COSTS OF GRADUATE MEDICAL EDUCATION"
(RIN: 0938-AK20)

(i) Cost-benefit analysis and agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

Section 1102(b) of the Social Security Act, 42 U.S.C. 1302(b), requires the Secretary of Health and Human Services to prepare regulatory impact analyses for any rule that may have a significant impact on the operations of a substantial number of small, rural hospitals. The final analysis, to be prepared for a final or interim rule, must include, with respect to small, rural hospitals, the matters required under 5 U.S.C. 604. HCFA determined that the interim rule would affect a substantial number of small, rural hospitals as well as other classes of hospitals and that the effects could be significant. HCFA considers most hospitals to be small entities for purposes of the Regulatory Flexibility Act. Therefore, HCFA has prepared a combined regulatory impact/regulatory flexibility analysis.

HCFA estimates that the total anticipated impact of the provisions of the final rule for which data can be gathered is \$400 million for fiscal year 2000. The impact of certain provisions cannot be accurately gauged because HCFA is unaware of the number of hospitals that will apply for reclassification into different payment categories.

The analysis concludes with a section-by-section discussion of the impact of the interim rule 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 interim final rule does not contain a federal mandate, as defined in title II, on either state, local, or tribal governments or the private sector of more than \$100 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 interim rule was issued pursuant to the authority contained in section 1871(b) of the Social Security Act (42 U.S.C. 1395hh(b)), which permits HCFA to forgo a notice of proposed rulemaking “where a statute establishes a specific deadline for the implementation of the provision and the deadline is less than 150 days after the date of enactment of the statute in which the deadline is contained.” Public Law 106-113 required that certain provisions implemented by this interim rule take effect within 150 days of its November 29, 1999, enactment. Therefore, HCFA issued this interim rule but is permitting a 30-day comment period.

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

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

The preamble to the interim rule contains the information required by the Act. HCFA estimates that completion of the reclassification form will take 30 minutes and there will be 2 hours of additional recordkeeping--for a total burden of 2.5 hours per hospital.

Statutory authorization for the rule

The interim rule was promulgated pursuant to the authority of sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and the Medicare, Medicaid, and State Children’s Health Insurance Program Balanced Budget Refinement Act of 1999 (Pub. L. 106-113).

Executive Order No. 12866

The interim rule was determined to be an “economically significant” regulatory action and was reviewed by the Office of Management and Budget.

Executive Order No. 13132 (Federalism)

HCFA has determined that the interim rule will not have any negative impact on the rights, rules, and responsibilities of state, local, or tribal governments.