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November 22, 2013

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Dave Camp
Chairman
The Honorable Sander M. Levin
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 Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2014*

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 Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2014" (RIN: 0938-AR59). We received the rule on October 29, 2013. It was published in the *Federal Register* as a notice on October 30, 2013. 78 Fed. Reg. 64,953.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2014 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2014, the inpatient hospital deductible will be \$1,216. The daily coinsurance amounts for CY 2014 will be: \$304 for the 61st through 90th day of hospitalization in a benefit period; \$608 for lifetime reserve days; and \$152 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

Enclosed is our assessment of 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: Ann Stallion
Program Manager
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 HOSPITAL DEDUCTIBLE
AND HOSPITAL AND EXTENDED CARE SERVICES
COINSURANCE AMOUNTS FOR CY 2014"
(RIN: 0938-AR59)

(i) Cost-benefit analysis

CMS states that the estimated total increase in costs to beneficiaries is about \$870 million (rounded to the nearest \$10 million) due to the increase in the deductible and coinsurance amounts and the increase in the number of deductibles and daily coinsurance amounts paid.

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

For purposes of the RFA, CMS states that small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Additionally, CMS notes that most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$35.5 million in any 1 year. CMS explains that individuals and states are not included in the definition of a small entity. According to CMS, the annual notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in CY 2014 under Medicare's Hospital Insurance Program (Medicare Part A). As a result, CMS is not preparing an analysis for the RFA because the Secretary of Health and Human Services has determined that the notice will not have a significant economic impact on a substantial number of small entities. In addition, section 1102(b) of the Social Security Act requires CMS to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. CMS is not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of 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

CMS states that the notice does not impose mandates that will have a consequential effect of \$141 million or more on state, local, or tribal governments or on the private sector. However, CMS notes that states may be required to pay the deductibles and coinsurance for dually-eligible beneficiaries.

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

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

CMS notes that the Medicare statute requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each calendar year. CMS explains that the amounts are determined according to the statute. As has been its custom, CMS uses general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, CMS acknowledges that, under APA, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. CMS considered publishing a proposed notice to provide a period for public comment. However, CMS may waive that procedure if it finds good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. Accordingly, CMS found that the procedure for notice and comment was unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and CMS can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, CMS found good cause to waive publication of a proposed notice and solicitation of public comments.

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

CMS states that the notice does not impose information collection and recordkeeping requirements. Consequently, CMS states that it need not be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

Statutory authorization for the rule

CMS promulgated this rule under the authority of section 3004(b) of the Patient Protection and Affordable Care Act, Pub. L. 111-152, and section 1886(j)(7) of the Social Security Act.

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

CMS states that the notice is economically significant, and, in accordance with the provisions of the Order, the notice was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS states that since this notice does not impose any costs on state or local governments, preempt state law, or have federalism implications, the requirements of the Order are not applicable.