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August 21, 2001

The Honorable Max Baucus
Chairman
The Honorable Chuck Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Bill 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; Prospective Payment System for Inpatient Rehabilitation Facilities

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; Prospective Payment System for Inpatient Rehabilitation Facilities" (RIN: 0938-AJ55). We received the rule on August 1, 2001. It was published in the Federal Register as a final rule on August 7, 2001. 66 Fed. Reg. 41316.

The final rule establishes a prospective payment system for Medicare payment of inpatient hospital services provided by a rehabilitation hospital or by a rehabilitation unit of a hospital. The prospective payment system in this final rule replaces the reasonable cost-based payment system under which rehabilitation hospitals and rehabilitation units of hospitals are paid under Medicare.

Enclosed is our assessment of the CMS' 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 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 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: Ms. Ann Stallion
Regulations Coordinator
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,
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; PROSPECTIVE PAYMENT SYSTEM
FOR INPATIENT REHABILITATION FACILITIES"
(RIN: 0938-AJ55)

(i) Cost-benefit analysis

CMS projects that implementing the inpatient rehabilitation facilities (IRF) prospective payment system for cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, will cost the Medicare program \$70 million over 2 years with \$60 million in costs for fiscal year 2002 and \$10 million for fiscal year 2003.

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

CMS has determined following a Final Regulatory Flexibility Analysis that the final rule will have a significant economic impact on a substantial number of small entities. In the preamble to the final rule, there is a discussion of the various impacts on hospitals of different sizes and locations and the steps taken to reduce the impact, including adjusting the payments for IRF's in rural areas.

(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 contain either an intergovernmental or private sector mandate, as defined in title II, 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 final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On November 3, 2000, CMS (then the Health Care Financing Administration) published a Notice of Proposed Rulemaking in the Federal Register. 65 Fed. Reg. 66304. CMS received 399 comments on the proposed rule and discusses these comments in the preamble to the final rule.

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

The final rule contains numerous information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act. The preamble to the final rule contains the required information regarding the collections including the burden hours imposed. There is also a discussion of the changes made to the collections based on the comments CMS received.

Statutory authorization for the rule

The final rule is issued pursuant to the authority contained in section 1886(j) of the Social Security Act, as added by section 4421 of the Balanced Budget Act of 1997 and as amended by section 125 of the Medicare, Medicaid and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be a "significant" regulatory action under the order.

Executive Order No. 13132 (Federalism)

CMS has determined that the final rule will not have any negative impact on the rights, roles, or responsibilities of state, local, or tribal governments.