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January 2, 2003

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

The Honorable W.J. "Billy" Tauzin
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; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 and Inclusion of Registered Nurses in the Personnel Provision of the Critical Access Hospital Emergency Services Requirement for Frontier Areas and Remote Locations*

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, entitled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 and Inclusion of Registered Nurses in the Personnel Provision of the Critical Access Hospital Emergency Services Requirement for Frontier Areas and Remote Locations" (RIN: 0938-AL21). We received the rule on December 20, 2002. It was published in the Federal Register as a "final rule with comment period" on December 31, 2002. 67 Fed. Reg. 79966.

The final rule announces the physician fee schedule update for calendar year 2003 and refines the resource-based practice expense relative value units, among other changes to the Medicare Part B payment policy.

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 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: 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; REVISIONS TO PAYMENT POLICIES UNDER THE
PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2003 AND INCLUSION OF
REGISTERED NURSES IN THE PERSONNEL PROVISION OF THE CRITICAL
ACCESS HOSPITAL EMERGENCY SERVICES REQUIREMENT FOR FRONTIER
AREAS AND REMOTE LOCATIONS"
(RIN: 0938-AL21)

(i) Cost-benefit analysis

CMS conducted a regulatory impact analysis and found that the changes to the Medicare Economic Index would result in increases in Medicare expenditures for physicians' services of \$150 million in fiscal year (FY) 2003, \$340 million in FY 2004, and \$550 million in FY 2005.

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

After conducting a Regulatory Flexibility Analysis, CMS has certified that the final rule will not have a significant economic impact on a substantial number of 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 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 contained at 5 U.S.C. 553. On June 28, 2002, CMS published a Notice of Proposed Rulemaking (67 Fed. Reg. 43846) and an interim final rule (67 Fed. Reg. 43555) in the Federal Register. In response, CMS received 236 comments, which were considered in issuing the final rule.

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

The final rule does not include any information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in sections 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395rr(b)(1), and 1396hh).

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 sufficient federalism implications to warrant the preparation of a federalism assessment.