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B-296979

August 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2006*

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 and Consolidated Billing for Skilled Nursing Facilities for FY 2006" (RIN: 0938-AN65). We received the rule on July 29, 2005. It was published in the Federal Register as a final rule on August 4, 2005. 70 Fed. Reg. 45026.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2006.

The final rule has an announced effective date of October 1, 2005. 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 July 29, 2005, and was published in the Federal Register on August 4, 2005. Therefore, the rule does not have the required 60-day delay in its effective date.

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 indicates that, with the exception of the 60-day 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 Ms. Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

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; PROSPECTIVE PAYMENT SYSTEM  
AND CONSOLIDATED BILLING FOR  
SKILLED NURSING FACILITIES FOR FY 2006"  
(RIN: 0938-AN65)

(i) Cost-benefit analysis

CMS estimates that the impact of the standard update will increase payments to SNFs by approximately \$20 million. This reflects a \$1.02 billion reduction from the expiration of temporary payment increases, offset by a \$510 million increase from the refined case-mix classification system and a \$530 million increase from the update to the payment rates.

(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, including a discussion of the alternatives considered to lessen the economic impact 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 final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$110 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 May 19, 2005, CMS published a Notice of Proposed Rulemaking in the Federal Register. 70 Fed. Reg. 29070. In response, CMS received 149 comments, which are discussed in the preamble to the final rule.

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

The final rule does not contain an information collection that requires review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

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

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 will not impact on the rights or responsibilities of state, local, or tribal governments.