August 17, 2007

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Charles B. Rangel
Chairman
The Honorable Jim McCrery
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; Revised Payment System Policies for Services Furnished in Ambulatory Surgical Centers (ASCs) Beginning in CY 2008

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; Revised Payment System Policies for Services Furnished in Ambulatory Surgical Centers (ASCs) Beginning in CY 2008” (RIN: 0938-AO73). We received the rule on July 20, 2007. It was published in the Federal Register as a final rule on August 2, 2007. 72 Fed. Reg. 42,470.

The final rule revises the Medicare ambulatory surgical center (ASC) payment system to implement certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The final rule establishes the
ASC list of covered surgical procedures, identifies covered ancillary services under the revised ASC payment system, and sets forth the amounts and factors that will be used to determine the ASC payment rates for calendar year 2008. The final rule is effective on January 1, 2008.

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 CMS complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7114.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

c: Ann Stallion
   Regulations Coordinator
   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 AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; REVISED PAYMENT SYSTEM POLICIES
FOR SERVICES FURNISHED IN AMBULATORY SURGICAL
CENTERS (ASCS) BEGINNING IN CY 2008"
(RIN: 0938-AO73)

(i) Cost-benefit analysis

CMS estimates that the revised ASC payment system and the expanded ASC list of
covered surgical procedures that will be implemented in 2008 will have no net effect
on Medicare expenditures compared to the level of Medicare expenditures that
would have occurred in 2008 in the absence of a revised payment system. Stated
somewhat differently, CMS estimates that the revised ASC payment system
established in the final rule will result in neither savings nor costs to the Medicare
program in 2008. Implementation by January 1, 2008, of a revised ASC payment
system to result in budget neutrality is mandated by section 626(b) of Public Law No.
108-173.

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

CMS determined that the final rule will have a significant impact on a substantial
number of small entities. (CMS also determined, however, that the final rule will not
have a significant impact on the operations of a substantial number of small rural
hospitals pursuant to section 1102(b) of the Social Security Act.) CMS prepared a
Final Regulatory Analysis for the final rule that complies with the requirements of
the Act. For example, CMS considered alternatives that would reduce the impact on
small businesses—CMS had proposed to phase in the new ASC payment rates over a
2-year period, but are finalizing a policy to phase in the ASC payment rates over a
4-year period.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform

The final rule does not contain either an intergovernmental or private sector
mandate, as defined in Title II, or more than $120 million in any one year.
Other relevant information or requirements under acts and executive orders

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


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

CMS states that the final rule does not contain any information collections that are subject to review under the Paperwork Reduction Act.

Statutory authorization for the rule


Executive Order No. 12,866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13,132 (Federalism)

CMS concluded that the final rule does not have federalism implications, i.e., CMS determined that the final rule will not have a substantial impact on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.