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Washington, DC 20548

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October 3, 2008

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

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; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2009*

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; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2009” (RIN: 0938-AP03). We received the rule on September 19, 2008. It was published in the *Federal Register* as a notice on September 24, 2008. 73 Fed. Reg. 55,086.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2009 under Medicare’s Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2009, the inpatient hospital deductible will be \$1,068. The daily coinsurance amounts for CY 2009 will be: (a) \$267 for the 61st through 90th day of hospitalization in a benefit period; (b) \$534 for lifetime reserve days; and (c) \$133.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

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 or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
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 AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; INPATIENT HOSPITAL DEDUCTIBLE AND
HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS
FOR CALENDAR YEAR 2009"
(RIN: 0938-AP03)

(i) Cost-benefit analysis

CMS estimated that the total increase in costs to beneficiaries will be about \$680 million, due to the increase in the deductible and coinsurance amounts and the changes in the number of deductibles and daily coinsurance amounts paid.

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

CMS determined that the notice will not have a significant economic impact on a substantial number of small entities; therefore CMS did not prepare an analysis under the Regulatory Flexibility Act.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

CMS determined that the notice will have no consequential effect on state, local, or tribal governments or on the private sector.

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

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

In accordance with CMS's past practice regarding publication of deductible and coinsurance amounts under Medicare where such amounts are determined according to statute, a general notice is used rather than notice and comment rulemaking procedures contained in section 553 of the Administrative Procedure Act. In addition, CMS found good cause to waive the publication of a proposed notice and solicitation of public comments because delaying publication of the rates would be contrary to the public interest.

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

The notice does not impose information collection and recordkeeping requirements; therefore it need not be reviewed under the Paperwork Reduction Act.

Statutory authorization for the rule

The notice was issued under the authority contained in section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e-2(b)(2)).

Executive Order No. 12,866

CMS determined that the notice is an economically significant rule under the Order because the total increase in costs to beneficiaries associated with the notice will be about \$680 million. The notice was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS has determined that the notice does not have federalism implications.