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August 31, 2011

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Dave Camp
Chairman
The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2012 Rates; Hospitals' FTE Resident Caps for Graduate Medical Education Payment*

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 & Medicaid Services (CMS), entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2012 Rates; Hospitals' FTE Resident Caps for Graduate Medical Education Payment” (RINs: 0938-AQ24; 0938-AQ92). We received the rule on August 1, 2011. It was published in the *Federal Register* as final rules on August 18, 2011. 76 Fed. Reg. 51,476.

The final rule revises the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital-related costs of acute care hospitals to implement changes arising from continuing experience with these systems and to implement certain statutory provisions contained in the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively known as the Affordable Care Act) and other legislation. The rule also sets forth the update to the rate-of-increase limits for certain hospitals excluded from the IPPS. In addition, the rule updates the payment policy and the annual payment rates for the Medicare prospective payment system for inpatient hospital services provided by long-term care hospitals and implements certain statutory changes. Also, CMS is finalizing an interim final rule relating to the treatment of teaching hospitals that are members of the same Medicare graduate medical education affiliated groups for the purpose of determining possible full-time equivalent resident cap reductions.

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 of the procedural steps taken indicates that CMS complied with the applicable requirements.

The Congressional Review Act (CRA) 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). This rule was received on August 16, 2011, and published in the *Federal Register* on August 18, 2011. However, the rule has a stated effective date of October 1, 2011, except for certain provisions which have a stated effective date of September 1, 2011. Therefore, the rule does not have the required 60-day delay in effective date under the CRA.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager
Department of Health and Human Services

ENCLOSURE

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 & MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; HOSPITAL INPATIENT
PROSPECTIVE PAYMENT SYSTEMS FOR
ACUTE CARE HOSPITALS AND THE LONG-TERM CARE HOSPITAL
PROSPECTIVE PAYMENT SYSTEM AND FY 2012 RATES;
HOSPITALS' FTE RESIDENT CAPS FOR
GRADUATE MEDICAL EDUCATION PAYMENT"
(RINs: 0938-AQ24; 0938-AQ92)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) examined the impacts of this final rule. CMS estimates that the changes for FY 2012 acute care hospital operating and capital payments will redistribute amounts in excess of $100 million among different types of inpatient cases. CMS determined that the applicable percentage increase to the IPPS rates required by the statute, in conjunction with other payment changes in this final rule, will result in an estimated $1.13 billion increase in FY 2012 operating payments (or 1.1 percent change) and an estimated $151 million increase in FY 2012 capital payments (or 1.8 percent change). In addition, CMS expects long-term care hospitals will experience a change in payments by $126 million (or 2.5 percent).

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

CMS estimates that most hospitals and most other providers are small entities under the Act. Because CMS acknowledges that many of the affected entities are small entities, its analysis of this rule discussed throughout the preamble constitutes its Regulatory Flexibility Analysis.

(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 this final rule will not mandate any requirements for state, local, or tribal governments, nor will it affect private sector costs.

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

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

On May 5, 2011, CMS published a proposed rule. 76 Fed. Reg. 25,788. CMS received approximately 385 timely pieces of correspondence containing multiple comments on the proposed rule, but notes that some of the comments were outside the scope of the proposed rule. On March 14, 2011, CMS published an interim final rule with comment period, to which it received 9 timely pieces of correspondence. 76 Fed. Reg. 13,515. CMS addressed comments in this final rule.

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

CMS determined that this final rule contains information collection requirements (IRCs) under the Act, which were submitted to the Office of Management and Budget (OMB) for review. CMS determined that the changes to ICRs for the Hospital Inpatient Quality Reporting Program (OMB control number 0938-1022) would increase the collection burden on hospitals by approximately 3,260,175 hours. For the ICRs for the Occupational Mix Adjustment to the FY 2012 Index and the Hospital Applications for Geographic Reclassifications, CMS stated that the burden is currently approved under OMB control numbers 0938-0907 and 0938-0573 respectively. For the ICRs for the Quality Reporting Program for Long-Term Care Hospitals, CMS estimates that the annual cost for each provider will be $1,739 and will be covered by OMB control number 0920-0666.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of sections 1102 and 1871 of the Social Security Act and section 124 of Public Law 106-113. 42 U.S.C. §§ 1302, 1395hh; 113 Stat. 1501A-332.

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS determined that this rule is an economically significant rule under the Order, and it was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that because this rule does not impose any costs on state or local governments, the requirements of the Order are not applicable.