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United States General Accounting Office  
Washington, DC 20548

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B-288482

August 15, 2001

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

The Honorable Bill Thomas  
Chairman  
The Honorable Charles 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; Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education: Fiscal Year 2002 Rates; Provisions of the Balanced Budget Refinement Act of 1999; and Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

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; Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education: Fiscal Year 2002 Rates; Provisions of the Balanced Budget Refinement Act of 1999; and Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000” (RIN: 0938-AK20; 0938-AK73; and 0938-AK74). We received the rule on August 1, 2001. It was published in the Federal Register as a final rule on August 1, 2001. 66 Fed. Reg. 39828.

The final rule implements certain statutory provisions relating to Medicare payments to hospitals for inpatient services that are contained in the Medicare, Medicaid, and SCHIP (State Children’s Health Insurance Program) Benefits Improvement and Protection Act of 2000.

Enclosed is our assessment of the CMS' 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: Ms. 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; CHANGES TO THE HOSPITAL INPATIENT  
PROSPECTIVE PAYMENT SYSTEMS AND RATES AND COSTS OF GRADUATE  
MEDICAL EDUCATION: FISCAL YEAR 2002 RATES; PROVISIONS OF THE  
BALANCED BUDGET REFINEMENT ACT OF 1999; AND PROVISIONS OF THE  
MEDICARE, MEDICAID, AND SCHIP BENEFITS IMPROVEMENT AND  
PROTECTION ACT OF 2000"  
(RIN: 0938-AK47; 0938-AK73; 0938-AK74)

(i) Cost-benefit analysis

CMS estimates that the impact of the changes made by the final rule on the inpatient prospective payment system to be an increase of \$1.9 billion.

(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 its Regulatory Impact Analysis. The analysis discusses the impacts of the final rule on hospitals affected by geographic location, size, and payment classification.

(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 provisions of 5 U.S.C. 553. On May 4, 2001, CMS published a Notice of Proposed Rulemaking in the Federal Register. 66 Fed. Reg. 22646. CMS responds to the 232 comments that it received in response to the notice in the preamble to the final rule.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act (PRA).

One of the collections has already been approved and assigned OMB No. 0938-0573, with an expiration date of September 30, 2002. Another collection affects less than 10 hospitals and, according to CMS, is therefore exempt from the requirements of the PRA.

Regarding the third collection, the required data, including the estimated burden hours, has been submitted to OMB for its approval and is discussed in the preamble to the final rule.

#### Statutory authorization for the rule

The final rule was promulgated under the authority contained in sections 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106-554).

#### 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)

CMS has examined the final rule under the order and concludes that it will not have any negative impact on the rights, rules, and responsibilities of state, local, or tribal governments.