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January 25, 2001

The Honorable Chuck Grassley
Chairman

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

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

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, Health Care Financing Administration: Medicaid Program; Revision to Medicaid Upper Payment Limit Requirements for Hospital Services, Nursing Facility Services, Intermediate Care Facility Services for the Mentally Retarded, and Clinic Services

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, Health Care Financing Administration (HCFA), entitled "Medicaid Program; Revision to Medicaid Upper Payment Limit Requirements for Hospital Services, Nursing Facility Services, Intermediate Care Facility Services for the Mentally Retarded, and Clinic Services" (RIN: 0938-AK12). We received the rule on January 12, 2001. It was published in the Federal Register as a final rule on January 12, 2001. 66 Fed. Reg. 3148.

The final rule modifies the Medicaid upper payment limits for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services.

For each type of Medicaid inpatient service, existing regulations place an upper limit on overall aggregate payments to all facilities and a separate aggregate upper limit on payments made to state-operated facilities. This final rule establishes an aggregate upper limit that applies to payments made to government facilities that are not state government-owned or operated, and a separate aggregate upper limit on payments made to privately-owned and operated facilities. The rule also eliminates that overall aggregate upper limit that had applied to these services.

Enclosed is our assessment of HCFA'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 HCFA 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 Bill Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Ms. Cathy Beck
Deputy Executive Secretary to
the Department
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,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICAID PROGRAM; REVISION TO MEDICAID UPPER PAYMENT LIMIT
REQUIREMENTS FOR HOSPITAL SERVICES, NURSING FACILITY SERVICES,
INTERMEDIATE CARE FACILITY SERVICES FOR THE MENTALLY RETARDED,
AND CLINIC SERVICES"
(RIN: 0938-AK12)

(i) Cost-benefit analysis

HCFA performed a cost-benefit analysis of the final rule. For the six fiscal years (FY) of 2001 to 2006, HCFA estimates the total federal share of enhanced payments in Medicaid to be \$19.5 billion with estimated payments in excess of the upper payment limits to be \$13 billion. These costs were based on the FY 2001 budget baseline.

Projections completed since the FY 2001 budget now indicate that the federal share of enhanced payments to government facilities that are not state-owned or operated could reach \$10 billion per year by FY 2006 and may account for cumulative spending of more than \$90 billion over the next 10 years. Based on this budget analysis, potentially two-thirds of these enhanced payments could be in excess of the upper payment limits imposed by this final rule and could result in federal financial participation reductions of nearly \$55 billion over the next 10 years.

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

HCFA performed a Final Regulatory Flexibility Analysis and has found that the final rule will not have a significant impact on a substantial number of small entities or rural hospitals.

(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 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 procedures found at 5 U.S.C. 553. On October 10, 2000, HCFA published a Notice of Proposed Rulemaking in the Federal Register. 65 Fed. Reg. 60151. HCFA received 562 comments, which it discusses 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 (OMB). HCFA has submitted the required information to OMB for approval of the collections. The total burden of the two annual reports required by the final rule is 704 hours.

Statutory authorization for the rule

The final rule was issued under the authority contained in section 1102 of the Social Security Act (42 U.S.C. 1302).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

HCFA does not believe that the final rule imposes substantial compliance costs on state and local governments or preempts or supersedes state or local law.