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United States General Accounting Office  
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B-292673

August 8, 2003

The Honorable Charles Grassley  
Chairman

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

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

The Honorable William Thomas  
Chairman  
The Honorable Charles B. 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities--Update*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities--Update" (RIN: 0938-AL90). We received the rule on July 31, 2003. It was published in the Federal Register as a final rule on August 4, 2003. 68 Fed. Reg. 46036.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2004.

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 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: 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; PROSPECTIVE PAYMENT SYSTEM  
AND CONSOLIDATED BILLING FOR  
SKILLED NURSING FACILITIES--UPDATE"  
(RIN: 0938-AL90)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services estimates that the impact of the standard update will increase payments to SNFs by approximately \$400 million. In addition, CMS has adjusted the FY 2003 rates to reflect the 3.26 percent cumulative forecast error since the start of the SNF prospective payment system on July 1, 1998. This adjustment increases payments by an additional \$450 million, for a total increase of \$850 million.

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

Since the overall impact of the final rule is positive for the industry as a whole, it will not have a significant economic impact on a substantial number of small entities.

(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 procedures found at 5 U.S.C. 553. On May 16, 2003, CMS published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 26758. On June 10, 2003, a Supplemental Notice of Proposed Rulemaking was also published. 68 Fed. Reg. 34768. Over 400 comments were received in response to the two proposed rules and the comments are discussed in the preamble to the final rule.

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

The final rule does not contain any information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in section 1888(e) of the Social Security Act.

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)

The final rule will not impact on the rights or responsibilities of state, local, or tribal governments.