



G A O

Accountability \* Integrity \* Reliability

United States General Accounting Office  
Washington, DC 20548

---

B-293224

November 19, 2003

The Honorable Charles E. 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 M. 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; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004*

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; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004" (RIN: 0938-AL96). We received the rule on October 31, 2003. It was published in the Federal Register as a "final rule with comment period" on November 7, 2003. 68 Fed. Reg. 63196.

The final rule announces the physician fee schedule update for calendar year 2004 and refines the resource-based practice expense relative value units, among other changes to the Medicare Part B payment policy.

The final rule has an announced effective date of January 1, 2004. The Congressional Review Act 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. 553(a)(3)(A). While the rule was received by Congress on October 31, 2003, it was not published in the Federal Register until November 7, 2003. Therefore, the rule does not have the required 60-day delay in its effective date.

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, with the exception of the delay in the effective date, 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; REVISIONS TO PAYMENT POLICIES UNDER THE  
PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2004"  
(RIN: 0938-AL96)

(i) Cost-benefit analysis

CMS conducted a regulatory impact analysis that discusses the manner in which the changes in the fee schedule were calculated and the impact on various medical specialties. For calendar year (CY) 2004, the physician fee schedule update is -4.5 percent, the initial estimate of the sustainable growth rate for CY 2004 is 7.4 percent and the conversion factor is \$35.1339.

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

CMS prepared a Regulatory Flexibility Analysis that complies with the requirements of the Act, including the kinds and number of small entities affected (95 percent of the 900,000 physicians and other recipients of Medicare payments are considered small entities) and options that were considered to lessen the economic impact. Since the calculation of the payments is based on a statutory formula, CMS has very little discretion in considering other options.

(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 \$110 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 contained at 5 U.S.C. 553. On August 15, 2003, CMS published a Notice of Proposed Rulemaking (68 Fed. Reg. 49030) in the Federal Register. In response, CMS received 2,433 comments, which were considered in issuing the final rule.

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

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

Statutory authorization for the rule

The final rule is promulgated under the authority contained in sections 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395rr(b)(1), and 1395hh).

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 does not have sufficient federalism implications to warrant the preparation of a federalism assessment.