



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-309466

May 17, 2007

The Honorable Edward M. Kennedy
Chairman
The Honorable Michael B. Enzi
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

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

The Honorable Charles B. Rangel
Chairman
The Honorable Jim McCrery
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; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2007 (RY 2008)*

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; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2007 (RY 2008)” (RIN: 0938-AO40). We received the rule on May 3, 2007. It was published in the Federal Register as a notice on May 4, 2007. 72 Fed. Reg. 25,602.

This notice updates the prospective payment rates for Medicare inpatient psychiatric facilities (IPFs). The changes are applicable to IPF discharges occurring during the year beginning July 1, 2007, through June 30, 2008.

The notice has an announced effective date of July 1, 2007. The Congressional Review Act requires 60 days between the effective date of a major rule and the later of the date of publication of the rule in the *Federal Register* or receipt of the rule by Congress. 5 U.S.C. § 801(a)(3)(A). This notice was received by Congress on May 3 and published on May 4. Therefore, this notice does not have the required 60-day period prior to its effective date.

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 indicates that, with the exception of the 60-day period prior to the effective date, CMS complied with the applicable requirements. Although CMS ordinarily publishes a notice of proposed rulemaking and allows for a period of public comment before a rule takes effect, CMS did not do so in the case of this notice. CMS concluded that notice and comment procedures were unnecessary because this notice does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. According to CMS, this is grounds for the good cause exception to the notice and comment procedures under 5 U.S.C. § 553(b)(3)(B).

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ann Stallion
Regulations Coordinator
Department of Health and
Human Services

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 AND MEDICAID SERVICES
ENTITLED
“MEDICARE PROGRAM; INPATIENT PSYCHIATRIC FACILITIES
PROSPECTIVE PAYMENT SYSTEM PAYMENT UPDATE FOR
RATE YEAR BEGINNING JULY 1, 2007 (RY 2008)”
(RIN: 0938-AO40)

(i) Cost-benefit analysis

According to CMS’s estimate, the rate changes under this notice will increase payments by approximately \$130 million.

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

According to CMS, the rate changes in this notice may have a significant impact on a substantial number of small entities. However, the notice will result in a net increase in the revenues across all categories of inpatient psychiatric facilities (IPFs), so CMS concludes that the impact will not be a burden to the small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

According to CMS, the rate changes in this notice will not create any intergovernmental or private sector mandates.

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

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

Although CMS ordinarily publishes a notice of proposed rulemaking and allows for a period of public comment before a rule takes effect, CMS did not do so in the case of this notice. CMS concluded that notice and comment procedures were unnecessary because this notice does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. According to CMS, this is grounds for the good cause exception to the notice and comment procedures under 5 U.S.C. § 553(b)(3)(B).

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

This notice does not impose any information collection or recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

CMS promulgated this notice under section 124 of the Balanced Budget Refinement Act of 1999. 42 U.S.C. § 1395ww.

Social Security Act, 42 U.S.C. § 1302(b)

CMS prepared a regulatory impact analysis under this statute and determined that this notice will have a significant impact on a substantial number of rural hospitals. CMS plans to continue to provide a payment adjustment of 17 percent for IPFs located in rural areas.

Executive Order No. 12866

According to CMS's estimate, the rate changes under this notice will increase payments by approximately \$130 million.

Executive Order No. 13132 (Federalism)

CMS determined that the notice will not have any substantial impact on the rights, roles, and responsibilities of state, local, or tribal governments.