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November 23, 2010

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Sander M. Levin
Acting Chairman
The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2011*

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 & Medicaid Services (CMS), entitled “Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2011” (RIN: 0938-AP86). We received the rule on November 5, 2010. It was published in the *Federal Register* as a notice on November 9, 2010. 75 Fed. Reg. 68,799.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2011 under Medicare’s Hospital Insurance Program (Medicare Part A). The

Medicare statute specifies the formulae used to determine these amounts. For CY 2011, the inpatient hospital deductible will be \$1132. The daily coinsurance amounts for CY 2011 will be—(a) \$283 for the 61st through 90th day of hospitalization in a benefit period; (b) \$566 for lifetime reserve days; and (c) \$141.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

This notice has an effective date of January 1, 2011. The Congressional Review Act (CRA) generally 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. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). Accordingly, CMS believes it has good cause to forego the notice and comment procedures because the statute establishes the time period for which the deductible and coinsurance amounts will apply and the formulas used to calculate the deductible and coinsurance amounts are statutorily directed.

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 of the procedural steps taken indicates that CMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager, Department of
Health and Human Services

ENCLOSURE

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 & MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; INPATIENT HOSPITAL DEDUCTIBLE
AND HOSPITAL AND EXTENDED CARE SERVICES
COINSURANCE AMOUNTS FOR CY 2011"
(RIN: 0938-AP86)

(i) Cost-benefit analysis

CMS estimates that the total increase in costs to beneficiaries is about \$900 million due to the increase in the deductible and coinsurance amounts and the change in the number of deductibles and daily coinsurance amounts paid.

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

CMS has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

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

CMS states that this notice has no consequential effect on state, local, or tribal governments or on the private sector. However, states may be required to pay the deductibles and coinsurance for dually-eligible beneficiaries.

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

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

In accordance with CMS's past practice regarding publication of deductible and coinsurance amounts under Medicare where such amounts are determined according to statute, a general notice is used rather than notice and comment rulemaking procedures contained in section 553 of the Administrative Procedure Act. In addition, CMS notes that it has good cause to waive the publication of a proposed notice and solicitation of public comments because delaying publication of rates would be contrary to the public interest.

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

CMS states this notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget (OMB) under the authority of the Act.

Statutory authorization for the rule

CMS states that this notice was issued under the authority contained in section 1813(b)(2) of the Social Security Act (42 U.S.C. § 1395e-2(B)(2)).

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS notes that this notice is an economically significant rule under Executive Order 12,866. In accordance with the provisions this notice was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS states that this notice will not have a substantial effect on state or local governments and, therefore, does not have federalism implications.