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May 20, 2011

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

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

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Hospital Inpatient Value-Based Purchasing Program*

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; Hospital Inpatient Value-Based Purchasing Program” (RIN: 0938-AQ55). We received the rule on May 4, 2011. It was published in the *Federal Register* as a final rule on May 6, 2011. 76 Fed. Reg. 26,490.

The final rule implements a Hospital Inpatient Value-Based Purchasing program under which value-based incentive payments will be made in a fiscal year to hospitals that meet performance standards with respect to a performance period for the fiscal year involved. The program will apply to payments for discharges occurring on or after October 1, 2012.

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: Annie Lamb
Regulations Coordinator
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; HOSPITAL INPATIENT
VALUE-BASED PURCHASING PROGRAM"
(RIN: 0938-AQ25)

(i) Cost-benefit analysis

CMS prepared a cost-benefit analysis in conjunction with the final rule. The net impact of the final rule is budget-neutral, because section 1886(o)(7)(A) of the Social Security Act requires that total reductions for hospitals under section 1886(o)(7)(B) must be equal to the amount available for value-based incentive payments under section 1886(o)(6). CMS determined that overall, the distributive impacts of the final rule, resulting from the incentive payments and the 1-percent reduction (withhold) in the base operating Diagnosis-Related Group (DRG) payment for fiscal year 2013, are estimated at \$850 million for fiscal year 2013.

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

CMS determined that the final rule would not have a significant economic impact on a substantial number of small entities. CMS also determined that the final rule would 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 determined that the final rule would not mandate any requirements for state, local, or tribal governments, nor would it affect private sector costs.

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

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

On January 7, 2011, CMS published a notice of proposed rulemaking in the *Federal Register*. 76 Fed. Reg. 2,454. CMS received approximately 319 timely comments on the proposed rule from hospitals, health care facilities, advocacy organizations, researchers, patients, and other individuals and organizations. In the final rule, CMS summarized and responded to the comments. 76 Fed. Reg. 26,490.

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

The final rule contains information collection requirements for which CMS is revising existing information collection requirements approved on behalf of the Hospital Inpatient Quality Reporting program data collection (OMB 0938-1022) and supporting the Hospital Value Based Purchasing Program, and the Quality Improvement Organization (QIO) quality of care complaint form (OMB 0938-1102). CMS estimates that the 53 QIOs will each require approximately 120 hours per QIO per year to modify information, or a total of 6,360 burden hours per year.

Statutory authorization for the rule

The final rule is authorized by section 1886(o) of the Social Security Act, as added by section 3001(a) of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010.

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

CMS determined that the final rule is economically significant under Executive Order 12,866, and the final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that the final rule would not have a substantial effect on state or local governments.