



United States Government Accountability Office
Washington, DC 20548

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August 18, 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012" (RIN: 0938-AQ29). We received the rule on August 1, 2011. It was published in the *Federal Register* as a final rule on August 8, 2011. 76 Fed. Reg. 48,486.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2012. In addition, it recalibrates the case-mix indexes so that they more accurately reflect parity in expenditures between Research Utilization Groups, Version 4, and the previous

case-mix classification system. In addition, this final rule reduces the SNF market basket percentage by the multi-factor productivity adjustment. This rule also implements certain changes relating to the payment of group therapy services and implements new resident assessment policies.

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

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; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR
SKILLED NURSING FACILITIES FOR FY 2012"
(RIN: 0938-AQ29)

(i) Cost-benefit analysis

CMS performed an economic analysis, and it determined that the overall impact of the final rule would be a net decrease of \$3.87 billion in payments to skilled nursing facilities (SNFs). This reflects an increase of \$600 million from the update to the payment rates and a reduction of \$4.47 billion due to the recalibration of the case-mix adjustment.

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

CMS determined that the final rule may have a significant economic impact on a substantial number of small entities and a substantial number of small rural hospitals. CMS determined that the estimated effect of the recalibration on facilities for FY 2012 would be an aggregate negative impact of 11.1 percent, but that some individual providers may experience larger decreases in payments than others due to the distributional impact of the FY 2012 wage indexes and the degree of Medicare utilization. For most providers, when CMS included all payers in the revenue stream, CMS determined that the overall impact effect to total revenues should be less than the aggregate negative impact.

(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 will not impose costs on state, local, or tribal governments, in the aggregate, or by the private sector, of \$136 million.

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

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

On May 6, 2011, CMS published a proposed rule in the *Federal Register*. 76 Fed. Reg. 26,364. CMS received over 170 timely comments from individual providers, corporations, government agencies, private citizens, trade associations, and major organizations. CMS responded to the comments in the final rule. 76 Fed. Reg. 48,486.

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

The final rule references information collection requirements with regard to resident assessment information used to determine facility payments, and these requirements are currently approved under Office of Management and Budget (OMB) control number 0938-0739 (related to the Medicare PPS Assessment Form) and OMB control number 0938-0872 (related to the Minimum Data Set for Swing-Bed Hospitals). The final rule does not affect the burden associated with either of these collections.

Statutory authorization for the rule

The final rule is authorized by section 1888(e) of the Social Security Act, as amended.

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

The final rule has been designated as economically significant under the Executive Order, and the final rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

The final rule will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.