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B-322692

November 14, 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; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 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; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2012" (RIN: 0938-AQ14). We received the rule on November 2, 2011. It was published in the *Federal Register* as a notice on November 1, 2011. 76 Fed. Reg. 67,568.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2012 under Medicare's Hospital Insurance Program (Medicare Part A). The

Medicare statute specifies the formulae used to determine these amounts. For CY 2012, the inpatient hospital deductible will be \$1,156. The daily coinsurance amounts for CY 2012 will be \$289 for the 61st through 90th day of hospitalization in a benefit period; \$578 for lifetime reserve days; and \$144.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

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; INPATIENT HOSPITAL DEDUCTIBLE  
AND HOSPITAL AND EXTENDED CARE SERVICES  
COINSURANCE AMOUNTS FOR CY 2012"  
(RIN: 0938-AQ14)

(i) Cost-benefit analysis

CMS estimated the total increase in costs to beneficiaries to be about \$970 million (rounded to the nearest \$10 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 determined that the notice will not have a significant economic impact on a substantial number of small entities, or on the operations of a substantial number of small rural hospitals. Therefore, CMS did not prepare a regulatory flexibility analysis.

(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 notice will have no consequential effect on state, local, or tribal governments or on the private sector. However, CMS does note that 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.

CMS found good cause to waive publication of a proposed notice and solicitation of public comments. CMS found that the procedure of notice and comment was unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and CMS has no discretion in following the formulae.

Additionally, CMS found delaying publication would be contrary to the public interest because the statute establishes the time period for which the deductible and coinsurance amounts will apply.

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

The notice does not contain any information collection or recordkeeping requirements, and therefore, the Paperwork Reduction Act is not applicable.

Statutory authorization for the rule

The notice is authorized by section 1813 of the Social Security Act.

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

CMS determined that the notice is economically significant under Executive Order No. 12,866, and it was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that the notice will not have a substantial effect on state or local governments.