



Office of the General Counsel

B-278512

November 12, 1997

The Honorable William V. Roth, Jr.
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable Bill Archer
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Health Care Financing Administration: Medicare: Physician Fee Schedule for Calendar Year 1998; Payment Policies and Relative Value Unit Adjustments and Clinical Psychologist Fee Schedule

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, Health Care Financing Administration (HCFA), entitled "Medicare: Physician Fee Schedule for Calendar Year 1998; Payment Policies and Relative Value Unit Adjustments and Clinical Psychologist Fee Schedule" (RIN: 0938-AH94). We received the rule on October 30, 1997. It was published in the Federal Register as a final rule on October 31, 1997. 62 Fed. Reg. 59048.

The final rule contains changes affecting Medicare Part B payment. The changes relate to physician services, including geographic practice cost index changes, clinical psychologist services, physician supervision of diagnostic tests, establishment of independent diagnostic testing facilities, the methodology used to develop reasonable compensation equivalent limits, payment to participating and nonparticipating suppliers, global surgical services, caloric vestibular testing, and clinical consultations. The rule also implements provisions in the Balanced Budget Act of 1997 relating to practice expense relative value units, screening mammography, colorectal cancer screening, screening pelvic examinations, and EKG transportation. It also finalizes the 1997 interim work relative value units and issues interim work relative value units for new and revised codes for 1998.

Enclosed is our assessment of HCFA'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 HCFA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Health and Human Services, Health Care Financing Administration, is William Scanlon, Director, Health Financing and Systems Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Donna Shalala
The Secretary of Health and
Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, HEALTH CARE
FINANCING ADMINISTRATION
ENTITLED
"MEDICARE: PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 1998;
PAYMENT POLICIES AND RELATIVE VALUE UNIT ADJUSTMENTS AND
CLINICAL PSYCHOLOGIST FEE SCHEDULE"
(RIN: 0938-AH94)

(i) Cost-benefit analysis

In the preamble to the final rule, HCFA discusses the costs associated with the changes made by the rule. The projected budgetary impact of the new benefits described in the rule are \$160 million in FY 1998, \$385 million in FY 1999, \$510 million in FY 2000, \$685 million in FY 2001, and \$780 million in FY 2002.

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

The Secretary of Health and Human Services has determined that the final rule will have a significant economic impact on a substantial number of small entities and has prepared initial and final regulatory flexibility analyses, which are set forth in the proposed rule and final rule preambles, as required by sections 603 and 604. HCFA considers all physicians to be small entities. The analyses comply with the informational requirements by including the classes of small entities subject to the final rule and alternatives that were considered to reduce the burden.

The analyses use both quantifiable and general descriptions of the effects of the rule on small entities as required by section 607. Numerous small entities participated in the rulemaking, as required by section 609, by submitting comments on the proposed rule.

The Secretary has certified that the final rule will not have a significant impact on the operations of a substantial number of rural hospitals as required by section 1102(b) of the Social Security Act (42 U.S.C. § 1302(b)).

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

Since the final rule does not impose a federal intergovernmental or private sector mandate, as defined in the Unfunded Mandates Reform Act of 1995, sections 202,

204, and 205 of the act are inapplicable. Similarly, section 203 of the act is inapplicable because the rule will not significantly affect small governments.

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

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

The final rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553 and section 1871(b) of the Social Security Act (42 U.S.C. § 1395hh(b)). Section 1871(b) provides that, with exceptions not pertinent here, before issuing any final rule the Secretary shall provide notice of the proposed regulation in the Federal Register and a comment period of at least 60 days.

HCFA published the proposed rule on June 18, 1997 (62 Fed. Reg. 33159) and invited comments. HCFA received over 8,600 comments and in the preamble to the final rule discusses the comments and the actions HCFA took as a result of its consideration of the comments.

However, certain provisions of the final rule were not included in the proposed rule and were not available for public comments. As the preamble explains, the Secretary has determined that "good cause" exists to waive the notice of proposed rulemaking for these provisions. 5 U.S.C. § 553 (b)(B). These provisions were affected or required by the Balanced Budget Act of 1997, which was enacted shortly after the proposed rule was published in June 1997.

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

The final rule contains an information collection requirement subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The preamble to the final rule describes the requirement--which is the documentation to evidence proficiency in the performance and interpretation of each type of diagnostic procedure performed by an Independent Diagnostic Testing Facility (IDTF). Since there are 500 independent physiological laboratories that HCFA assumes will wish to become IDTF's and HCFA estimates that the recordkeeping to document proficiency should be minimal at five minutes, the total projected burden is 42 hours. This requirement will not become effective until the collection is approved by OMB.

HCFA states that the other information collection requirement associated with the final rule falls within exceptions to the Paperwork Reduction Act regarding normal course of business or information collected by a state, local, or tribal government in the absence of a federal requirement.

Statutory authorization for the rule

The final rule was promulgated under the authority of sections 1102, 1871, and 1881(b)(1) of the Social Security Act, as amended. 42 U.S.C. §§ 1302, 1395hh, and 1395rr(b)(1).

Executive Order No. 12866

The final rule was reviewed by OMB under Executive Order No. 12866 and found to be an economically significant regulatory action. OMB approved the rule as complying with the requirements of the order.

In its submission, HCFA did not identify any other statute or executive order imposing procedural requirements relevant to the rule.