



Office of the General Counsel

B-279117

February 10, 1998

The Honorable William V. Roth
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 Program; Limit on the Valuation of a Depreciable Asset Recognized as an Allowance for Depreciation and Interest on Capital Indebtedness After a Change of Ownership

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 Program; Limit on the Valuation of a Depreciable Asset Recognized as an Allowance for Depreciation and Interest on Capital Indebtedness After a Change of Ownership" (RIN: 0938-AI34). We received the rule on January 28, 1998. It was published in the Federal Register as a final rule on January 9, 1998. 63 Fed. Reg. 1379.

The final rule revises Medicare provider reimbursement regulations relative to allowable costs and sets a limit on the valuation of a depreciable asset that may be recognized in establishing an appropriate allowance for depreciation and for interest on capital indebtedness after a change of ownership that occurs on or after December 1, 1997. The change implements the mandate of section 4404 of the Balanced Budget Act of 1997 (Pub. L. 105-33).

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 E. 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 PROGRAM; LIMIT ON THE VALUATION OF A DEPRECIABLE ASSET
RECOGNIZED AS AN ALLOWANCE FOR DEPRECIATION AND INTEREST ON
CAPITAL INDEBTEDNESS AFTER A CHANGE OF OWNERSHIP"
(RIN: 0938-AI34)

(i) Cost-benefit analysis

The effect of the final rule will be to reduce Medicare payments for some capital expenses; it also provides that Medicare will no longer share in the loss or gain that results from a change of ownership.

HCFA estimates that the change made by the final rule will result in a 5-year savings of \$409 million, including \$91 million in fiscal year 1999, \$98 million in fiscal year 2000, \$106 million in fiscal year 2001, and \$114 million in fiscal year 2002. There are no savings shown for fiscal year 1998 because of the lag time between the sale of a facility and the Medicare payment.

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

In its analysis for the purpose of the Regulatory Flexibility Act, HCFA considers most hospitals, and most other providers, physicians, and health care suppliers to be small entities, either by their nonprofit status or by having revenues of \$5 million or less annually.

HCFA concludes that the final rule will have a significant impact on a substantial number of small entities. However, HCFA does not discuss any regulatory alternatives considered in issuing the final rule because the rule implements changes mandated by the Balanced Budget Act of 1997.

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

The final rule does not impose a federal intergovernmental or private sector mandate, as defined in the Unfunded Mandates Act of 1995.

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

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

HCFA notes in the preamble to the final rule that normally it would publish a notice of proposed rulemaking with a 60-day public comment period as required by section 1871(b)(1) of the Social Security Act and would allow a 30-day comment period required by section 553(d) of the Administrative Procedure Act. However, because of the statutorily mandated effective date of the change, the Secretary of Health and Human Services has found good cause to waive these two requirements.

However, HCFA is providing a 60-day public comment period on the final rule ending on March 10, 1998.

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

The final rule does not contain any information collections which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was issued pursuant to the authority contained in sections 1102, 1861(v)(1)(A), and 1871 of the Social Security Act, 42 U.S.C. §§ 1302, 1395x(v)(1)(A), and 1395hh, and section 4404 of the Pub. L. 105-33.

Executive Order No. 12866

This rule was determined to be an "economically significant" regulatory action under Executive Order No. 12866 and was reviewed and approved by the Office of Management and Budget.