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United States Government Accountability Office
Washington, DC 20548

B-317279

October 20, 2008

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

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

Subject: *Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates: Final Fiscal Year 2009 Wage Indices and Payment Rates Including Implementation of Section 124 of the Medicare Improvement for Patients and Providers Act of 2008*

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 and Medicaid Services (CMS), entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates: Final Fiscal Year 2009 Wage Indices and Payment Rates Including Implementation of Section 124 of the Medicare Improvement for Patients and Providers Act of 2008” (RIN: 0938-AP15). We received the rule on September 30, 2008. It was published in the *Federal Register* as a notice on October 3, 2008, and has a stated effective date of October 1, 2008. 73 Fed. Reg. 57,888.

The notice lists the final wage indices, hospital reclassifications, payment rates, impacts, and other related items for fiscal year 2009. The listed items reflect the extension of the expiration date for certain reclassifications and special exception wage indices as required by section 124 of the Medicare Improvement for Patients and Providers Act of 2008. Pub. L. No. 110-275, 122 Stat. 2494, 2518 (July 15, 2008).

The notice has a stated effective date of October 1, 2008. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The House of Representatives received the notice on September 29, 2008, and the Senate received it on September 30, 2008. It was published in the *Federal Register* on October 3, 2008. Therefore, the notice does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the 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 indicates that, with the exception of the delay in the rule's effective date, 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
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 AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; HOSPITAL INPATIENT
PROSPECTIVE PAYMENT SYSTEMS AND FISCAL YEAR 2009 RATES:
FINAL FISCAL YEAR 2009 WAGE INDICES AND PAYMENT RATES
INCLUDING IMPLEMENTATION OF SECTION 124 OF THE MEDICARE
IMPROVEMENT FOR PATIENTS AND PROVIDERS ACT OF 2008"
(RIN: 0938-AP15)

(i) Cost-benefit analysis

Centers for Medicare and Medicaid Services (CMS) examined the costs and benefits of this notice. CMS projects that the increase in operating payments in fiscal year 2009, as compared to 2008, will be approximately \$4.97 billion and the increase in capital payments over the same period to be \$60 million. CMS, therefore, expects a net increase of \$5.03 billion in the operating and capital payments to inpatient prospective payment system providers.

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

CMS determined that this notice will have a significant impact on a substantial number of small entities. Therefore, CMS prepared a Final Regulatory Flexibility Analysis in connection with this notice. CMS also determined that this notice will impact payments to a substantial number of small rural hospitals and the effects on some of those hospitals may be significant.

(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 this notice will not mandate any requirement for state, local, or tribal governments. Further, CMS determined that this notice will not have an impact on private sector costs.

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

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

CMS did not solicit or discuss public comments in this notice. CMS set forth the final rule for the fiscal year 2009 Medicare inpatient prospective payment system in a

separate final rule which was promulgated using notice-and-comment procedures found in the Administrative Procedure Act. 73 Fed. Reg. 48,434. That final rule stated that CMS would publish this notice containing the fiscal year 2009 wage index tables, rates, and impacts reflecting the implementation of statutory requirements.

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

This notice does not impose any information collections requirements under the Act.

Statutory authorization for the rule

This notice was promulgated under the authority found in sections 1102 and 1871 of the Social Security Act. 42 U.S.C. §§ 1302, 1395hh.

Executive Order No. 12,866

CMS determined that this notice is an economically significant rulemaking, and it was reviewed by the Office of Management and Budget under the Order.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice will not have a substantial impact on state and local governments.