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B-299167

December 6, 2006

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

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

The Honorable William M. Thomas  
Chairman  
The Honorable Charles B. Rangel  
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 Outpatient Prospective Payment System and CY 2007 Payment Rates; CY 2007 Update to the Ambulatory Surgical Center Covered Procedures List; Medicare Administrative Contractors; and Reporting Hospital Quality Data for FY 2008 Inpatient Prospective Payment System Annual Payment Update Program—HCAHPS Survey, SCIP, and Mortality*

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, entitled “Medicare Program; Hospital Outpatient Prospective Payment System and CY 2007 Payment Rates; CY 2007 Update to the Ambulatory Surgical Center Covered Procedures List; Medicare Administrative Contractors; and Reporting Hospital Quality Data for FY 2008 Inpatient Prospective Payment System Annual Payment Update Program—HCAHPS

Survey, SCIP, and Mortality” (RIN: 0938-AO15). We received the rule on November 1, 2006. It was published in the Federal Register as a “final rule with comment period and final rule” on November 24, 2006. 71 Fed. Reg. 67960.

The final rule revises the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from CMS’s continuing experience with the system, including changes to the amounts and factors used to determine Medicare’s payments. The final rule also revises the current list of procedures that are covered when furnished in a Medicare-approved ambulatory surgical center and the emergency medical screening requirements for critical access hospitals.

The final rule has an announced effective date of January 1, 2007. 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 rule was received by Congress on November 1, 2006, but was not published in the Federal Register until November 24, 2006. Therefore, the final rule 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, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Ann Stallion  
Regulations Coordinator  
Department 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,  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
ENTITLED

"MEDICARE PROGRAM; HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT  
SYSTEM AND CY 2007 PAYMENT RATES; CY 2007 UPDATE TO THE  
AMBULATORY SURGICAL CENTER COVERED PROCEDURES LIST; MEDICARE  
ADMINISTRATIVE CONTRACTORS; AND REPORTING HOSPITAL QUALITY DATA  
FOR FY 2008 INPATIENT PROSPECTIVE PAYMENT SYSTEM ANNUAL PAYMENT  
UPDATE PROGRAM—HCAHPS SURVEY, SCIP, AND MORTALITY"  
(RIN: 0938-AO15)

(i) Cost-benefit analysis

CMS estimates that the changes made by the final rule will increase Medicare expenditures for calendar year 2007 over the expenditures for calendar year 2006 by \$2.24 billion.

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

CMS has prepared a Final Regulatory Flexibility Analysis of the impact on the final rule on hospitals considered to be small entities and also on small rural hospitals. It has found that, while all hospitals will be affected to different degrees, almost all hospitals will experience positive updates in payments in 2007.

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

The rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$120 million (\$100 million in 1995 dollars adjusted for inflation) in any one year.

(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 issued using the notice and comment procedures found at 5 U.S.C. 553. On August 23, 2006, CMS published a Notice of Proposed Rulemaking in the Federal Register. 71 Fed. Reg. 49506. In response, CMS received approximately 1,100 comments, which are discussed in the preamble to the final rule.

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

The final rule contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The required information has been submitted to OMB, including the estimated annual burden hours of 1,037,500.

Statutory authorization for the rule

The final rule is promulgated under the authority found in sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Executive Order No. 12866

The rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

The rule does not have federalism implications under the order.