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United States Government Accountability Office
Washington, DC 20548

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May 22, 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; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2008 (RY 2009)*

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; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2008 (RY 2009)” (RIN: 0938-AO92). We received the rule on May 2, 2008. It was published in the *Federal Register* as a notice on May 7, 2008. 73 Fed. Reg. 25,709.

The notice updates the prospective payment rates for Medicare inpatient psychiatric facilities (IPFs). The changes are applicable to IPF discharges occurring during the rate year beginning July 1, 2008, through June 30, 2009.

The notice has an announced effective date of July 1, 2008. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The final rule was not published in the *Federal Register* until May 7, 2008, which means that the final rule will 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, except for the delay in the 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; INPATIENT PSYCHIATRIC FACILITIES
PROSPECTIVE PAYMENT SYSTEM PAYMENT UPDATE FOR
RATE YEAR BEGINNING JULY 1, 2008 (RY 2009)"
(RIN: 0938-AO92)

(i) Cost-benefit analysis

CMS performed a cost-benefit analysis of this final rule. CMS concludes that the effect of the updates described in this notice results in an overall \$120 million increase in payments from rate year 2008 to rate year 2009. CMS does not expect changes in the quality of care or access to services for Medicare beneficiaries due to the rate changes. CMS contends that access to inpatient psychiatric facility (IPF) services will be enhanced due to patient and facility level adjustment factors, all of which are intended to adequately reimburse IPFs for expensive cases. Also, the outlier policy in the final rule is intended to assist IPFs that experience high-cost cases.

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

CMS determined that this notice will not have a significant impact on a substantial number of small entities.

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

CMS concluded that this notice will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of \$130 million 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.

CMS states that although it ordinarily publishes a notice of proposed rulemaking and allows for a period of public comment before a rule takes effect, CMS did not do so in the case of this notice. CMS concluded that notice and comment procedures were

unnecessary because this notice does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. According to CMS, this is grounds for the good cause exception to the notice and comment procedures under 5 U.S.C. § 553(b)(3)(B).

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

This notice does not impose any new information collection or recordkeeping requirements that are subject to review by the Office of Management and Budget under the Act.

Statutory authorization for the rule

CMS promulgated this notice under section 124 of the Balanced Budget Refinement Act of 1999. 42 U.S.C. § 1395ww.

Social Security Act, 42 U.S.C. §1302(b)

CMS prepared a regulatory impact analysis under this statute and determined that this notice will have a significant impact on a substantial number of rural hospitals. However, since CMS determined that this notice will have a positive impact on a substantial number of hospitals classified as located in rural areas, CMS did not consider alternatives to reduce burden on these IPFs.

Executive Order No. 12,866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13,132 (Federalism)

CMS concluded that this notice will not have any substantial impact on the rights, roles, and responsibilities of state, local, or tribal governments.