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B-309963

August 17, 2007

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008” (RIN: 0938-AO64). We received the rule on August 1, 2007. It was published in the *Federal Register* as a final rule on August 3, 2007. 72 Fed. Reg. 43,412.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2008. In addition, the final rule revises and rebases the SNF market basket and modifies the threshold for the adjustment to account for market basket forecast error.

The final rule is effective on October 1, 2007. 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 August 3, 2007, 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, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. 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) 512-7114.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Ann Stallion  
Regulations Coordinator  
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; PROSPECTIVE PAYMENT SYSTEM  
AND CONSOLIDATED BILLING FOR  
SKILLED NURSING FACILITIES FOR FY 2008"  
(RIN: 0938-AO64)

(i) Cost-benefit analysis

CMS estimates that the impact of the final rule will be to increase payments to skilled nursing facilities (SNFs) by approximately \$690 million.

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

CMS determined that the final rule will have a significant impact on a substantial number of small entities. (CMS also determined that the final rule will have a significant impact on the operations of a substantial number of small rural hospitals pursuant to section 1102(b) of the Social Security Act.) CMS prepared a Final Regulatory Analysis for the final rule that complies with the requirements of the Act. CMS concluded that the final rule will have an aggregate positive impact on small entities of 3.3 percent.

(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 contain either an intergovernmental or private sector mandate, as defined in Title II, of more than \$120 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.

On May 4, 2007, CMS published a Notice of Proposed Rulemaking and Request for Comment in the *Federal Register* regarding the proposed rule to update the payment rates used under the prospective payment system for skilled nursing facilities for fiscal year 2008. 72 Fed. Reg. 25,526. CMS received 17 comments in response to the proposed rule. On August 3, 2007, CMS published the final rule in the *Federal Register* and responded to the comments. 72 Fed. Reg. 43,412, 43,415.

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

The final rule does not contain an information collection that requires review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in sections 1102 and 1888 of the Social Security Act, 42 U.S.C. §§ 1302 and 1395yy.

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)

According to CMS, the final rule does not have sufficient federalism implications under the order to require the preparation of a federalism assessment.