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May 25, 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 James McCreery
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 for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; and Hospital Direct and Indirect Graduate Medical Education Policy Changes*

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 for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; and Hospital Direct and Indirect Graduate Medical Education Policy Changes” (RIN: 0938-AO30). We received the rule on May 3, 2007. It was published in the *Federal Register* as a final rule on May 11, 2007. 72 Fed. Reg. 26,870.

This final rule updates the annual payment rates for inpatient hospital services provided by long-term care hospitals (LTCHs). These rates are for the rate year beginning July 1, 2007, and ending June 30, 2008. The rule also changes policies governing graduate medical education and indirect medical education.

The final rule has an announced effective date of July 1, 2007. The Congressional Review Act requires 60 days between the effective date of a major rule and the later of the date of publication of the rule in the *Federal Register* or receipt of the rule by Congress. 5 U.S.C. § 801(a)(3)(A). This final rule was received by Congress on May 3 and published on May 11. Therefore, this final rule does not have the required 60-day period prior to 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 60-day period prior to 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) 512-7101.

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 FOR
LONG-TERM CARE HOSPITALS RY 2008: ANNUAL PAYMENT RATE
UPDATES, AND POLICY CHANGES; AND HOSPITAL DIRECT AND
INDIRECT GRADUATE MEDICAL EDUCATION POLICY CHANGES"
(RIN: 0938-AO30)

(i) Cost-benefit analysis

According to CMS's estimate, this final rule will decrease estimated payments by approximately \$156 million, or 3.8 percent.

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

According to CMS, this final rule could have a significant impact on a substantial number of small entities. CMS conducted a regulatory flexibility analysis under this statute and concluded that the changes result in appropriate and adequate Medicare payments, and the final rule is consistent with the regulatory philosophy and principles identified in the Regulatory Flexibility Act.

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

According to CMS, this final rule will not create any intergovernmental or private sector mandates.

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

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

CMS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. CMS published a proposed rule on February 1, 2007. 72 Fed. Reg. 4776. CMS received 270 comments to which they responded in the final rule. 72 Fed. Reg. 26,874 – 26,976.

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

According to CMS, section 413.78 of this final rule contains several information collection requirements requiring Office of Management and Budget (OMB) approval. These requirements are for the determination of the total number of full-time equivalent residents to calculate direct graduate medical education payments. CMS will submit them to OMB.

Statutory authorization for the rule

CMS promulgated this final rule under section 123 of the Balanced Budget Refinement Act of 1999, as amended by section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000. 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 final rule will have a significant impact on a substantial number of rural hospitals. CMS will be providing special treatment for rural hospitals, including increasing the threshold for payment adjustment from 25 to 50 percent.

Executive Order No. 12,866

According to CMS's estimate, this final rule will decrease estimated payments by approximately \$156 million, or 3.8 percent.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not have a substantial impact on the rights, roles, and responsibilities of state, local, or tribal governments.