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August 8, 2003

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

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; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates*

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; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates" (RIN: 0938-AL89). We received the rule on July 31, 2003. It was published in the Federal Register as a final rule on August 1, 2003. 68 Fed. Reg. 45346.

The final rule revises the Medicare hospital inpatient prospective payment systems for operating and capital costs to implement changes arising from CMS's continuing experience with the systems. Also, the rule describes the changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs.

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 the 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 William Scanlon,
Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

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; CHANGES TO THE HOSPITAL INPATIENT
PROSPECTIVE PAYMENT SYSTEMS AND FISCAL YEAR 2004 RATES"
(RIN: 0938-AL89)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services estimates that, based on the overall percentage change in payments per case using CMS's payment simulation model (a 1.8 percent increase), the total impact is approximately a \$1.8 billion increase from Fiscal Year 2003 to Fiscal Year 2004.

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

CMS prepared a Final Regulatory Flexibility Analysis in conjunction with its Regulatory Impact Analysis. The analysis discusses the impacts of the final rule on hospitals by geographic location, size, and payment classification.

(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 \$100 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.

The final rule was published using the notice and comment procedures found at 5 U.S.C. 553. On May 19, 2003, CMS published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 27154. In response, CMS received approximately 4,200 comments, which are discussed in the final rule's preamble.

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

The final rule does not contain any information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was promulgated under the authority contained in sections 1102; 1812(d); 1814(b); 1815; 1833(a), (i), and (n); 1871; 1881; 1883; and 1886 of the Social Security Act (42 U.S.C. 1302; 1395d; 1395f(b); 1395g; 1395l(a), (i), and (n); 1395hh; 1395rr; 1395tt; and 1395ww) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106-554).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

CMS has examined the final rule under the order and concludes that it will not have any negative impact on the rights, rules, and responsibilities of state, local, or tribal governments.