



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

B-293238

November 19, 2003

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

The Honorable W.J. "Billy" Tauzin
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; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment 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 Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates" (RIN: 0938-AL19). We received the rule on October 31, 2003. It was published in the Federal Register as a "final rule with comment period" on November 7, 2003. 68 Fed. Reg. 63398.

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. It describes changes to the amounts and factors used to determine the payment rates for the system for services furnished on or after January 1, 2004.

The final rule has an announced effective date of January 1, 2004. 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. 553 (a)(3)(A). While the Senate received the rule on October 31, 2003, and the House of Representatives received it on November 3, 2003, the rule was not published in the Federal Register until November 7, 2003. 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 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 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 OUTPATIENT PROSPECTIVE PAYMENT SYSTEM
AND CALENDAR YEAR 2004 PAYMENT RATES"
(RIN: 0938-AL19)

(i) Cost-benefit analysis

CMS estimates the total increase (from changes in the final rule as well as enrollment, utilization, and case mix changes) in expenditures under the Outpatient Prospective Payment System for calendar year 2004 compared to calendar year 2003 to be approximately \$0.607 billion.

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

After preparation of a Regulatory Flexibility Analysis, as part of its overall Regulatory Impact Analysis, CMS has determined that approximately 37 percent of hospitals are considered small entities under the Regulatory Flexibility Act and that the final rule will have a significant impact on a substantial number of these small entities.

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

As defined in title II, the final rule does not contain either an intergovernmental or private sector mandate of more than \$110 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 issued using the notice and comment procedures contained at 5 U.S.C. 553. On August 12, 2003, CMS published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 47966. In response, CMS received approximately 876 items of correspondence containing multiple comments, which are discussed in the preamble to the final rule.

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 is promulgated under the authority contained in sections 1102, 1815, 1833, 1833(t), 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395(t), 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

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 states that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.