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United States General Accounting Office
Washington, DC 20548

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July 14, 2004

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; Medicare Ambulance MMA Temporary Rate Increases Beginning July 1, 2004*

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; Medicare Ambulance MMA Temporary Rate Increases Beginning July 1, 2004" (RIN: 0938-AN24). We received the rule on July 1, 2004. It was published in the Federal Register as an "interim final rule with comment period" on July 1, 2004. 69 Fed. Reg. 40288.

The interim final rule codifies the four payment provisions for Medicare covered ambulance services contained in section 414 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

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.

In September 2003, GAO issued a report entitled "Ambulance Services: Medicare Payments Can Be Better Targeted to Trips in Less Densely Populated Rural Areas" (GAO-03-986). The data from this report was used by CMS to implement the statutory provisions.

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 Marjorie Kanof, Managing Director, Health Care Issues. Ms. Kanof can be reached at (202) 512-7101.

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; MEDICARE AMBULANCE MMA
TEMPORARY RATE INCREASES BEGINNING JULY 1, 2004"
(RIN: 0938-AN24)

(i) Cost-benefit analysis

CMS states that the cost to the Medicare program will be approximately \$840 million over the total 5-year period, during which the provisions of the interim final rule will be in effect.

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

CMS performed a Final Regulatory Flexibility Analysis for the interim final rule. It found that the rule will have a significant impact on all ambulance providers and suppliers to the extent that the rule authorizes higher payments to anyone furnishing Medicare-covered ambulance services to Medicare beneficiaries.

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

The interim 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.

CMS has found good cause to forgo notice and comment procedures because section 414(e) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 specifies that the rule may be issued as an interim final rule in order to meet the statutorily required implementation date.

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

The interim 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 interim final rule is issued pursuant to section 414 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Pub. L. 108-173.

Executive Order No. 12866

The interim 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 determined that the interim final rule does not have federalism implications.