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May 20, 2005

The Honorable Charles E. 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; Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates, Policy Changes, and Clarification*

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: Annual Payment Rate Updates, Policy Changes, and Clarification” (RIN: 0938-AN28). We received the rule on May 4, 2005. It was published in the Federal Register as a final rule on May 6, 2005. 70 Fed. Reg. 24168.

The final rule updates the annual payment rates for the Medicare prospective payment system for inpatient hospital services provided by long-term care hospitals (LTCHs). The payment amounts and factors used to determine the updated federal rates that are described in the final rule have been determined based on the LTCH prospective payment system rate year July 1, 2005, through June 30, 2006.

The final rule has an announced effective date of July 1, 2005. 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. 801(a)(3)(A). The rule was received by Congress on May 4, 2005, and

was published in the Federal Register on May 6, 2005. Therefore, the 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 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 Marjorie Kanof, Managing Director, Health Care. 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

ENCLOSURE

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; PROSPECTIVE PAYMENT SYSTEM
FOR LONG-TERM CARE HOSPITALS: ANNUAL PAYMENT RATE
UPDATES, POLICY CHANGES, AND CLARIFICATION"
(RIN: 0938-AN28)

(i) Cost-benefit analysis

CMS estimates that the final rule will result in an increase in payments from the 2005 long-term care hospital prospective payment system rate of \$169 million.

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

CMS has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(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 \$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 promulgated using the notice and comment procedures found at 5 U.S.C. 553. On February 3, 2005, CMS published a Notice of Proposed Rulemaking in the Federal Register. 70 Fed. Reg. 5724. In response, CMS received 13 comments, which are discussed in the preamble to the final rule.

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

CMS's information regarding the Paperwork Reduction Act in the preamble to the final rule is incorrect. We have been advised by CMS that a correction will be published in the Federal Register in the near future.

Statutory authorization for the rule

The final rule is promulgated under the authority found in sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action.

Executive Order No. 13132 (Federalism)

CMS has determined that the final rule will not have any significant impact on the rights, roles, and responsibilities of state, local, or tribal governments or preempt state law.