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Washington, DC 20548

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August 26, 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; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006*

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; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006" (RIN: 0938-AN43). We received the rule on August 1, 2005. It was published in the Federal Register as a final rule on August 15, 2005. 70 Fed. Reg. 47880.

The final rule establishes the prospective payment rates for inpatient rehabilitation facilities (IRF) for federal fiscal year 2006.

We note the final rule has an announced effective date of October 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 published in the Federal Register on August 15, 2005. It was received by Congress on August 1, 2005. Therefore, the final rule does not have the required 60-day delay.

Enclosed is our assessment of 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 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 Ms. Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

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; INPATIENT REHABILITATION
FACILITY PROSPECTIVE PAYMENT SYSTEM
FOR FY 2006"
(RIN: 0938-AN43)

(i) Cost-benefit analysis

CMS projects that updating the IRF prospective payment system for fiscal year 2006 will result in an increase of \$210 million over fiscal year 2005 levels.

(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 connection with the final rule that complies with the requirements of the Act, including specific impacts of various provisions of the final rule on different IRFs based on teaching status or geographic location.

(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 issued using the notice and comment procedures found at 5 U.S.C. 553. CMS published a Notice of Proposed Rulemaking in the Federal Register on May 25, 2005. 70 Fed. Reg. 30188. In response, CMS received 55 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 an information collection that is 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 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 OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

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