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August 14, 2006

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

The Honorable Joe Barton
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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice*

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 and Consolidated Billing for Skilled Nursing Facilities—Update—Notice” (RIN: 0938-AM46). We received the rule on July 31, 2006. It was published in the Federal Register as a notice on July 31, 2006. 71 Fed. Reg. 43158.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2007.

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 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; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR
SKILLED NURSING FACILITIES—UPDATE—NOTICE"
(RIN: 0938-AM46)

(i) Cost-benefit analysis

CMS estimates that the impact of the standard update will increase payments to SNFs by approximately \$560 million.

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

CMS has determined 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.

CMS has found good cause under 5 U.S.C. 553 to waive the notice and comment procedures because the statute requires annual updates to the rates, the methodology used has been previously subject to public comment, and the notice contains no policy changes.

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

The final rule does not contain an information collection that requires 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 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)

The final rule will not impact the rights or responsibilities of state, local, or tribal governments.