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Washington, DC 20548

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May 19, 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 for Long-Term Care Hospitals RY 2007: 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 RY 2007: Annual Payment Rate Updates, Policy Changes, and Clarification” (RIN: 0938-A006). We received the rule on May 2, 2006. It was published in the Federal Register as a final rule on May 12, 2006. 71 Fed. Reg. 27798.

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 for the LTCH prospective payment system rate year July 1, 2006, through June 30, 2007.

The final rule has an announced effective date of July 1, 2006. 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 2, 2006, and was published in the Federal Register on May 12, 2006. 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 in the delay in the effective date, the 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

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 RY 2007: ANNUAL PAYMENT RATE
UPDATES, POLICY CHANGES, AND CLARIFICATION"
(RIN: 0938-AO06)

(i) Cost-benefit analysis

CMS estimates that the final rule will result in a decrease in estimated payments from the 2006 LTCH prospective payment system of approximately \$156 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 \$120 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 January 27, 2006, CMS published a Notice of Proposed Rulemaking in the Federal Register. In response, CMS received 860 comments, which are summarized and discussed in the preamble to the final rule.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. CMS has submitted the required information to OMB for review and approval.

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 states that the final rule does not have federalism implication under the order.