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United States Government Accountability Office
Washington, DC 20548

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September 2, 2008

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

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Charles B. Rangel
Chairman
The Honorable Jim McCrery
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; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates; Payments for Graduate Medical Education in Certain Emergency Situations; Changes to Disclosure of Physician Ownership in Hospitals and Physician Self-Referral Rules; Updates to the Long-Term Care Prospective Payment System; Updates to Certain IPPS-Excluded Hospitals; and Collection of Information Regarding Financial Relationships Between Hospitals*

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; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates; Payments for Graduate Medical Education in Certain Emergency Situations; Changes to Disclosure of Physician Ownership in Hospitals and Physician Self-Referral Rules; Updates to the Long-Term Care Prospective Payment System; Updates to Certain IPPS-Excluded Hospitals; and Collection of Information Regarding Financial Relationships Between Hospitals” (RIN: 0938-AP15; 0938-AO35; 0938-AO65). We

received the rule on July 31, 2008. It was published in the *Federal Register* on August 19, 2008, with a stated effective date of October 1, 2008. 73 Fed. Reg. 48,434.

The final rule is composed of several rules. This final rule revises the Medicare hospital inpatient prospective payment system (IPPS) to implement applicable statutory requirements and changes arising from CMS's continuing experience with the system, including changes to the amounts and factors used to determine Medicare's payments. This rule also updates the rate-of-increase limits for certain hospitals and hospital units excluded from the IPPS that are paid on a reasonable cost basis subject to these limits. In addition to the IPPS changes, this rule revises the patient classifications and relative weights used under the long-term care hospital prospective payment system, and it contains policy changes relating to the requirements for furnishing hospital emergency services.

This rule also states policies relating to payments for Medicare graduate medical education to affiliated teaching hospitals in certain emergency situations. Further, this rule revises the regulatory requirements regarding information collection and disclosure to patients of financial relationships between hospitals and physicians.

The final rule has an announced effective date of October 1, 2008. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was received on July 31, 2008, and published on August 19, 2008, which means that the final rule will 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, except for the delay in the effective date, CMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager
Department of Health and
Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED

"MEDICARE PROGRAM; CHANGES TO THE HOSPITAL INPATIENT
PROSPECTIVE PAYMENT SYSTEMS AND FISCAL YEAR 2009 RATES;
PAYMENTS FOR GRADUATE MEDICAL EDUCATION IN CERTAIN EMERGENCY
SITUATIONS; CHANGES TO DISCLOSURE OF PHYSICIAN OWNERSHIP IN
HOSPITALS AND PHYSICIAN SELF-REFERRAL RULES; UPDATES TO THE
LONG-TERM CARE PROSPECTIVE PAYMENT SYSTEM; UPDATES TO CERTAIN
IPPS-EXCLUDED HOSPITALS; AND COLLECTION OF INFORMATION
REGARDING FINANCIAL RELATIONSHIPS BETWEEN HOSPITALS"
(RIN: 0938-AP15; 0938-AO35; 0938-AO65)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) estimates that this final rule will increase operating payments to inpatient prospective payment system (IPPS) providers in 2009 (as compared to 2008) by \$4.409 billion. CMS also estimates this rule will increase capital payments to IPPS providers in 2009 (as compared to 2008) by \$40 million.

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

CMS determined that this final rule will have a substantial impact on small entities. CMS performed a Regulatory Impact Analysis.

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

CMS determined that this final rule will not mandate any requirements for state, local, or tribal governments, or affect private sector costs under the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

CMS promulgated parts of this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On April 30, 2008, CMS published a proposed rule that set forth the proposed changes to the Medicare IPPS for operating and capital-related costs in fiscal year 2009, to which CMS received

over 1,100 comment letters. 73 Fed. Reg. 23,528. CMS also solicited public comment on the phase-out of the capital teaching adjustment to the capital payment update under IPPS, to which CMS received approximately 90 comments. 72 Fed. Reg. 47,130; 73 Fed. Reg. 23,528. Further, CMS published two interim final rules modifying the graduate medical education regulations on April 12, 2006, and November 27, 2007, to which CMS received comment. 71 Fed. Reg. 18,654; 72 Fed. Reg. 66,580. On July 12, 2007, CMS published a proposed rule revising policies governing physician self-referral issues and received comments. 72 Fed. Reg. 38,122. CMS responded to these comments in the final rule. 73 Fed. Reg. 48,443–745.

CMS waived notice and comment procedures for some parts of this rule finding for good cause that the procedures are impractical, unnecessary, or contrary to the public interest. The parts of the rule for which CMS waived notice and comment include the documentation and coding adjustments to the Puerto Rico specific operating standardized amounts, the Puerto Rico specific capital payment rate for fiscal year 2008, and the rebasing of payments to sole community hospitals.

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

This final rule contains information collection requirements under the Act. CMS has solicited comment on these information collection requirements and will submit them to the Office of Management and Budget (OMB) for review and approval.

Statutory authorization for the rule

CMS promulgated this rule under the authority of sections 1102, 1812(d), 1814(b), 1815, 1819, 1820(e), 1833, 1860D-1 to 1860D-42, 1861, 1864(m), 1866, 1869, 1871, 1877, 1881, 1883, 1886 of the Social Security Act and section 124 of Public Law 106-113. 42 U.S.C. §§ 1302, 1395d(d), 1395f(b), 1395g, 1395i-3, 1395i-4, 1395l, 1395w-101 to 1395w-152, 1395x, 1395aa, 1395cc, 1395ff, 1395hh, 1395nn, 1395rr, 1395tt, 1395ww; 113 Stat. 1501, 1501A-332 (Nov. 29, 1999).

Executive Order No. 12,866

CMS determined that this final rule is significant under the Order because it will have an effect on the economy of \$100 million or more in any one year. The rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not have a substantial effect on state or local governments.