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United States Government Accountability Office
Washington, DC 20548

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November 30, 2004

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

The Honorable W.J. "Billy" Tauzin
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 Inpatient Psychiatric Facilities*

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 Inpatient Psychiatric Facilities" (RIN: 0938-AL50). We received the rule on November 3, 2004. It was published in the Federal Register as a final rule on November 15, 2004. 69 Fed. Reg. 66922.

The final rule implements section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 by establishing a prospective payment system for Medicare payment of inpatient hospital services furnished in psychiatric hospitals and psychiatric units of acute care hospitals and critical access hospitals.

The final rule has an announced effective date of January 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. 553(a)(3)(A). The rule was published in the Federal Register on November 15, 2004, and was received by Congress on November 3, 2004. Therefore, the final rule does not have the required 60-day delay in its effective date. While we recognize that the rule was on display at the Federal Register from November 3, 2004, section 801(a)(3)(A) requires publication in the Register to start the 60-day period.

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 of the 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 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 INPATIENT PSYCHIATRIC FACILITIES"
(RIN: 0938-AL50)

(i) Cost-benefit analysis

CMS estimates that the re-distributive impact of the inpatient psychiatric facilities prospective payment system among facility types is \$96 million in the first year the system is fully implemented. The analysis also showed that an estimated payment "reduction" of almost \$48 million would occur for psychiatric units and an estimated payment "increase" of \$18 million would occur for for-profit hospitals, \$27 million for government-operated hospitals, and slightly more than \$3 million for non-profit hospitals.

(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, which complies with the requirements of the Act. CMS concludes that the rule will have not have a significant impact because the prospective payment system's impact on small entities will be a 5-percent increase in payments relative to their payments under the Tax Equity and Fiscal Responsibility Act of 1982, which placed a limit on allowable costs per discharge.

(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. On November 28, 2003, CMS published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 66920. In response, CMS received 273 comments, and they are discussed in the preamble to the final rule.

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

The final rule does not contain a new or modified 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 section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Pub. L. 106-113).

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 does not have federalism implications.