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United States General Accounting Office  
Washington, DC 20548

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B-292037

March 14, 2003

The Honorable Chuck 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; Physician Fee Schedule Update for Calendar Year 2003*

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; Physician Fee Schedule Update for Calendar Year 2003" (RIN: 0938-AL21). We received the rule on February 26, 2003. It was published in the Federal Register as a final rule on February 28, 2003. 68 Fed. Reg. 9567.

The final rule revises the estimates used to establish the sustainable growth rates for fiscal years 1998 and 1999 for the purposes of determining future updates to the physician fee schedule. It also announces a 1.6-percent increase in the calendar year 2003 physician fee schedule conversion factor (CF) for March 1, 2003, to December 31, 2003. The physician fee schedule CF from March 1, 2003, to

December 31, 2003, will be \$36.7856. The anesthesia CF for this period will be \$17.05.

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 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 William Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

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; PHYSICIAN FEE SCHEDULE  
UPDATE FOR CALENDAR YEAR 2003"  
(RIN: 0938-AL21)

(i) Cost-benefit analysis

CMS estimates that the changes to the physician fee schedule update will increase Medicare expenditures for physicians' services by \$1.1 billion in fiscal year (FY) 2003, \$2.0 billion in FY 2004, and \$2.8 billion in FY 2005 or an estimated \$15.7 billion over 5 years and \$49.6 billion over 10 years.

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

After conducting a Final Regulatory Flexibility Analysis, 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 \$100 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.

Because the revisions in the final rule constitute technical corrections to the final rule (which was subject to notice and comment) published on December 31, 2002, CMS has found "good cause" under 5 U.S.C. 553 to forgo notice and comment procedures and delaying the effective date.

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

The final rule does not contain any information collections that are 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 contained in section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and section 402(a) of the Consolidated Appropriations Resolution of 2003 (Pub. L. 108-7).

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 found that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.