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September 1, 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
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2007; Certain Provisions Concerning Competitive Acquisition for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Accreditation of DMEPOS Suppliers*

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2007; Certain Provisions Concerning Competitive Acquisition for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Accreditation of DMEPOS Suppliers" (RIN: 0938-AO16). We received the rule on August 1, 2006. It was published in the Federal Register as a final rule on August 18, 2006. 71 Fed. Reg. 48354

The final rule updates the prospective payment rates for inpatient rehabilitation facilities for fiscal year 2007. It also establishes certain requirements related to competitive acquisition for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) and establishes accreditation of suppliers as required under section 302 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

The final rule has announced effective dates ranging from August 31, 2006, to October 2, 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 August 1, 2006, and was published in the Federal Register on August 18, 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 of the delay in the rule's 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

ENCLOSURE

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; INPATIENT REHABILITATION FACILITY PROSPECTIVE PAYMENT SYSTEM FOR FEDERAL FISCAL YEAR 2007; CERTAIN PROVISIONS CONCERNING COMPETITIVE ACQUISITION FOR DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES (DMEPOS); ACCREDITATION OF DMEPOS SUPPLIERS"
(RIN: 0938-AO16)

(i) Cost-benefit analysis

CMS performed a cost-benefit analysis and estimates that the total impact of these changes for estimated fiscal year 2007 payments compared to estimated fiscal year 2006 payments will be an increase of approximately $50 million. This reflects a $220 million increase from the update to the payment rates and a $10 million increase due to updating the outlier threshold amount to increase estimated outlier from 2.9 percent in fiscal year 2006 to 3.0 percent in fiscal year 2007. This is offset by a $180 million estimated decrease from the reduction to the standard payment to account for changes in coding that do not reflect real changes in the case mix.

CMS estimates that the DMEPOS suppliers will incur total accreditation costs of $465.7 million over 5 years. The supplier accreditation requirement has no anticipated fiscal impact of the benefit payments from the Medicare trust fund.

(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 $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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On May 15, 2006, CMS published a Notice of Proposed Rulemaking in the Federal Register. 71 Fed. Reg. 28106. In response, CMS received 58 comments, which are discussed in the preamble of the final rule.

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

The final rule does not contain any 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 at sections 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

Executive Order No. 12866

The final rule was reviewed by the OMB and found to be an "economically significant" regulatory action under the order.

Executive Order No. 13132 (Federalism)

The final rule does not have sufficient federalism implications to require the preparation of a federalism impact statement.