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Washington, DC 20548

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May 17, 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

Subject: *Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2006 (RY 2007)*

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 Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2006 (RY 2007)” (RIN: 0938-AN82). We received the rule on May 1, 2006. It was published in the Federal Register as a final rule on May 9, 2006. 71 Fed. Reg. 27040.

The final rule updates the prospective payment rates for Medicare inpatient psychiatric facilities (IPFs). The changes are applicable to IPF discharges occurring during the rate year beginning July 1, 2006, through June 30, 2007. In addition, CMS is adopting the new Office of Management and Budget (OMB) labor market area definitions for the purpose of geographic classification and the wage index.

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 1, 2006, but was not published in the Federal Register until May 9, 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 60-day delay in the rule's 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 Majorie 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; INPATIENT PSYCHIATRIC FACILITIES
PROSPECTIVE PAYMENT SYSTEM PAYMENT UPDATE FOR
RATE YEAR BEGINNING JULY 1, 2006 (RY 2007)"
(RIN: 0938-AN82)

(i) Cost-benefit analysis

CMS states that the impact attributable to the final rule is approximately \$170 million in the inpatient psychiatric facilities prospective payment system for rate year 2007.

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

CMS performed a Final Regulatory Flexibility Analysis for the final rule and has found that payments will increase by 4.2 percent for small entities. Therefore, while the rule will affect a significant number of small entities, it will not have a substantial economic impact.

(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 January 23, 2006, CMS published a Notice of Proposed Rulemaking in the Federal Register. 71 Fed. Reg. 3616. In response, CMS received 32 comments, which are discussed in the preamble to the final rule.

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

The final rule does not contain any new information collections that are subject to review by OMB under the Paperwork Reduction Act.

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), section 124 of Public Law 106-113, 113 Stat. 1515, and section 405 of Public Law 108-173, 117 Stat. 2266.

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)

According to CMS, the final rule does not have any federalism implications under the order.