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United States General Accounting Office
Washington, DC 20548

B-289041

October 15, 2001

The Honorable Max Baucus
Chairman
The Honorable Chuck Grassley
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

Subject: Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicaid Program; Modification of the Medicaid Upper Payment Limit Transition Period for Inpatient Hospital Services, Outpatient Hospital Services, Nursing Facility Services, Intermediate Care Facility Services for the Mentally Retarded, and Clinic Services

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 "Medicaid Program; Modification of the Medicaid Upper Payment Limit Transition Period for Inpatient Hospital Services, Outpatient Hospital Services, Nursing Facility Services, Intermediate Care Facility Services for the Mentally Retarded, and Clinic Services" (RIN: 0938-AK89). We received the rule on October 1, 2001. It was published in the Federal Register as a final rule on September 5, 2001. 66 Fed. Reg. 46397.

The final rule modifies the Medicaid upper payment limit (UPL) provisions by establishing a new transition period for states that submitted plan amendments before March 13, 2001, that do not comply with the new UPL's effective on that date (but do comply with prior UPL's) and were approved on or after January 22, 2001. This new transition period applies to payments for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services.

We note that the final rule has an announced effective date of November 5, 2001. 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). While the final rule was published in the Federal Register on September 5, 2001, Congress did not receive it until October 1, 2001. Therefore, the final rule does not have the required 60-day delay in the effective date to allow for congressional review.

Enclosed is our assessment of the CMS' 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 above effective date discussion, 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: Ms. 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
"MEDICAID PROGRAM; MODIFICATION OF THE MEDICAID UPPER
PAYMENT LIMIT TRANSITION PERIOD FOR INPATIENT HOSPITAL SERVICES,
OUTPATIENT HOSPITAL SERVICES, NURSING FACILITY SERVICES,
INTERMEDIATE CARE FACILITY SERVICES
FOR THE MENTALLY RETARDED, AND CLINIC SERVICES"
(RIN: 0938-AK89)

(i) Cost-benefit analysis

CMS conducted a Regulatory Impact Analysis. It found that were these state plan amendments to be approved under the 2-year transition period, the increase in spending attributed to these amendments would total \$1.0 billion over fiscal years 2001 and 2002. Subjecting these same state payment provisions to the new shorter transition periods provided in the final rule will result in a \$0.5 billion saving over the same period relative to the spending that could have occurred under the 2-year transition period ending September 30, 2002.

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

CMS does not find that the final rule will have a significant impact on a substantial number of small entities, including rural hospitals.

(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 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 contained at 5 U.S.C. 553. On April 3, 2001, a Notice of Proposed Rulemaking was published in the Federal Register. 66 Fed. Reg. 17657. Seven comments were received in response to the notice and are considered in the preamble to the final rule.

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

The final rule does not contain any information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was issued under the authority contained in section 1102 of the Social Security Act (42 U.S.C. 1302).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action.

Executive Order No. 13132 (Federalism)

The final rule does not impose substantial compliance costs on state and local governments or preempts or supersedes state or local law.