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United States Government Accountability Office
Washington, DC 20548

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May 19, 2009

The Honorable Max Baucus
Chairman
The Honorable Chuck Grassley
Ranking Minority Member
Committee on Health, Education, Labor and Pensions
United States Senate

The Honorable Henry Waxman
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Charles B. Rangel
Chairman
The Honorable Dave Camp
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers of Medicare & Medicaid Services: "Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2009 (RY 2010)"*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Health and Human Services, Centers of Medicare & Medicaid Services (CMS), entitled "Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2009 (RY 2010)" (RIN: 0938-AP50). We received the rule on May 4, 2009. It was published in the *Federal Register* as a notice on May 1, 2009 with a stated effective date of July 1, 2009. 74 Fed. Reg. 20,362.

The notice 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, 2009, through June 30, 2010.

This notice was published on May 1, 2009 and received on May 4, 2009. This notice has a stated effective date of July 1, 2009. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Therefore, this notice does not have the 60-day delay in effective date required by the Congressional Review Act.

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 or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager
Department of Health and
Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY
DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS OF
MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; INPATIENT PSYCHIATRIC FACILITIES
PROSPECTIVE PAYMENT SYSTEM PAYMENT UPDATE FOR RATE YEAR
BEGINNING JULY 1, 2009 (RY 2010)"
(RIN: 0938-AP50)

(i) Cost-benefit analysis

CMS estimates that the net effect of the updates described in this notice will result in an overall \$87 million increase in payments from rate 2009 to rate year 2010. CMS does not expect changes in the quality of care or access to services for Medicare beneficiaries due to this notice. CMS contends that access to inpatient psychiatric facility (IPF) services will be enhanced due to the patient- and facility-level adjustment factors, all of which are intended to adequately reimburse IPFs for expensive cases. Also, the outlier policy is intended to assist IPFs that experience high-cost cases.

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

CMS determined that this notice will not impose a significant burden on small entities because the estimated impact of the notice is a net increase in revenue across all categories of IPFs.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

CMS determined that this notice will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of \$133 million (\$100 million adjusted for inflation).

(iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

CMS states that although it ordinarily publishes a notice of proposed rulemaking and allows for a period of public comment before a rule takes effect, CMS did not do so in the case of this notice. CMS concluded that notice and comment procedures were unnecessary because this notice does not make any substantive changes in policy,

but merely reflects the application of previously established methodologies. According to CMS, this is grounds for the good cause exception to the notice and comment procedures under section 553(b)(3)(B) of title 5, United States Code.

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

CMS determined that this notice does not impose any new information collection and recordkeeping requirements and consequently need not be reviewed by the Office of Management and Budget.

Statutory authorization for the rule

CMS promulgated this notice under the section 124 of the Balanced Budget Refinement Act of 1999. 42 U.S.C. § 1395ww.

Executive Order No. 12,866

CMS determined that this notice does not meet the \$100 million threshold established by the Order. However, CMS considers this notice to be economically significant because it estimates that the redistributive effects of this notice will be close to constituting a shift of \$100 million.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice will not have any substantial direct impact on state or local governments, preempt states, or otherwise have a federalism implication under the Order.