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November 17, 2005

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
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; Home Health Prospective Payment System Rate Update for Calendar Year 2006*

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; Home Health Prospective Payment System Rate Update for Calendar Year 2006" (RIN: 0938-AN44). We received the rule on November 2, 2005. It was published in the Federal Register as a final rule on November 9, 2005. 70 Fed. Reg. 68132.

The final rule sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. The rule also rebases and revises the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. Finally, the rule revises the fixed dollar loss ratio, which is used in the calculation of outlier payments.

The final rule has an announced effective date of January 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 published in the Federal Register on November 9, 2005, and received by Congress November 4, 2005. Therefore, the rule does not have the required 60-day delay.

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 its 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 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; HOME HEALTH PROSPECTIVE PAYMENT SYSTEM
RATE UPDATE FOR CALENDAR YEAR 2006"
(RIN: 0938-AN44)

(i) Cost-benefit analysis

CMS estimates that there will be an additional \$370 million in calendar year (CY) 2006 expenditures attributable to the CY 2006 market basket (3.6 percent), minus 0.8 percentage points, an estimated increase of 2.8 percent.

(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 in connection with the final rule. The analysis concludes that the economic impact of the rule on small entities is positive and significant because it increases the rate of Medicare payments to providers of home health services.

(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 \$120 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 July 14, 2005, CMS published a Notice of Proposed Rulemaking in the Federal Register. 70 Fed. Reg. 40788. CMS received 35 comments in response to the proposal and discusses the issues raised 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 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 found in sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

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 will not have substantial direct effects on the rights, roles, and responsibilities of states.