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United States Government Accountability Office  
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B-324147

December 6, 2012

The Honorable Max Baucus  
Chairman  
The Honorable Orrin G. Hatch  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Dave Camp  
Chairman  
The Honorable Sander M. Levin  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2013*

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 & Medicaid Services (CMS), entitled “Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2013” (RIN: 0938-AR14). We received the rule on November 19, 2012. It was published in the *Federal Register* as a notice on November 21, 2012. 77 Fed. Reg. 69,848.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2013 under Medicare’s Hospital Insurance Program, also known as Medicare Part A.

The notice has an effective date of January 1, 2013. The Congressional Review Act (CRA) 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). However, an agency can waive the delay in effective date if it finds, for good cause, that the delay is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 808(2). CMS incorporated a statement of finding such good cause and provided the reasons in the notice.

Enclosed is our assessment of 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 of the procedural steps taken indicates that 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.

signed

Robert J. Cramer  
Managing 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 THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
CENTERS FOR MEDICARE & MEDICIAD SERVICES  
ENTITLED  
"MEDICARE PROGRAM; INPATIENT HOSPITAL DEDUCTIBLE  
AND HOSPITAL AND EXTENDED CARE SERVICES  
COINSURANCE AMOUNTS FOR CY 2013"  
(RIN: 0938-AR14)

(i) Cost-benefit analysis

CMS stated in the notice that the inpatient hospital deductible for calendar year 2013 will be \$1,184, which was determined by multiplying the inpatient hospital deductible for calendar year 2012 by the payment-weighted average increase in the payment rates multiplied by the increase in real-case mix. The coinsurance amounts are defined in the statute as fixed percentages of the inpatient hospital deductible for the calendar year. CMS estimated that the total increase in costs to Medicare beneficiaries will be \$1,030 million, rounded to the nearest \$10 million, due to the increase in the deductible and coinsurance amounts, as well as the increase in the number of deductibles and daily coinsurance amounts paid.

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

CMS determined that the notice will not have a significant economic impact on a substantial number of small entities. Further, CMS determined that the notice will not have a significant impact on the operations of a substantial number of small rural hospitals. As a result of these determinations, CMS did not prepare an analysis under the Regulatory Flexibility Act.

(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 the notice will have no consequential effect on state, local, or tribal governments, or on the private sector. CMS did note that states may be required to pay the deductibles and coinsurance for dually-eligible beneficiaries.

(iv) Other relevant information or requirements under acts and executive orders

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

CMS stated that CMS considers the notice to be an interpretive rule because the amounts are determined according to statute, and, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. CMS further stated that CMS considered publishing a proposed notice to provide a period for public comment. However, CMS waived that procedure because CMS found good cause that prior notice and comment was impracticable, unnecessary, or contrary to the public interest. CMS found that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and CMS can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest.

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

The notice does not contain information collection requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The notice is authorized by section 1813 of the Social Security Act.

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS determined that the notice was economically significant for purposes of the Executive Order, and the notice was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that the notice will not have a substantial effect on state or local governments.