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B-294417

September 10, 2004

The Honorable Charles E. Grassley  
Chairman  
The Honorable Max Baucus  
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

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice” (RIN: 0938-AM46). We received the rule on August 27, 2004. It was published in the Federal Register as a notice on July 30, 2004. 69 Fed. Reg. 45775.

The notice updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2005.

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 indicates that 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 Ms. Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

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; PROSPECTIVE PAYMENT SYSTEM  
AND CONSOLIDATED BILLING FOR  
SKILLED NURSING FACILITIES—UPDATE--NOTICE "  
(RIN: 0938-AM46)

(i) Cost-benefit analysis

CMS estimates that the impact of the standard update will increase payments to SNFs by approximately \$440 million.

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

The Administrator of CMS has certified that the notice will not have a significant economic impact on a substantial number of small entities.

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

The notice does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$110 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.

CMS has found “good cause” to waive the notice and comment procedures found at 5 U.S.C. 553. CMS notes that the statute requires annual updates to the SNF prospective payment system rates; the methodologies used to update the rates have been previously subject to public comment and the notice makes no policy changes.

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

The notice does not contain an information collection that requires review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The notice is promulgated under the authority contained in section 1888(e) of the Social Security Act.

Executive Order No. 12866

The notice was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

The final rule will not impact on the rights or responsibilities of state, local, or tribal governments.