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November 19, 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

The Honorable Bill 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; Announcement of the Calendar Year 2002 Conversion Factor for the Hospital Outpatient Prospective Payment System and a Pro Rata Reduction on Transitional Pass-Through Payments

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; Announcement of the Calendar Year 2002 Conversion Factor for the Hospital Outpatient Prospective Payment System and a Pro Rata Reduction on Transitional Pass-Through Payments" (RIN: 0938-AK54). We received the rule on November 5, 2001. It was published in the Federal Register as a final rule on November 2, 2001. 66 Fed. Reg. 55857.

The final rule announces the Medicare hospital outpatient prospective payment system conversion factor for calendar year (CY) 2002. In addition, it describes the Secretary's estimate of the total amount of transitional pass-through payments for

CY 2002 and the implementation of a uniform reduction in each of the pass-through payments for that year.

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 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, Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

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; ANNOUNCEMENT OF THE CALENDAR YEAR 2002
CONVERSION FACTOR FOR THE HOSPITAL OUTPATIENT PROSPECTIVE
PAYMENT SYSTEM AND A PRO RATA REDUCTION ON
TRANSITIONAL PASS-THROUGH PAYMENTS"
(RIN: 0938-AK54)

(i) Cost-benefit analysis

CMS concludes that the total impact of this final rule for calendar year 2002 payments compared to calendar year 2001 payments will be an increase of approximately \$400 million. CMS estimates that the total amount of pass-through payments for 2002 would be \$2.26 billion if CMS did not fold in costs of pass-through devices in the base ambulatory payment classification rates. Of that amount, approximately \$0.37 million represents payments for drugs and biologicals and \$1.89 billion represents payments for medical devices.

In calendar year 2002, the outpatient prospective payment system's total payments are estimated to be \$17.5 billion. Because the estimate of pass-through payments exceeds 2.5 percent of the estimated total payments, which is approximately \$437 million (2.5 percent of \$17.5 billion), CMS must implement a uniform reduction of all pass-through payments.

(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 conjunction with its analysis of the costs of the final rule and concludes that the final rule affects both a substantial number of rural hospitals as well as other classes of hospitals and the effects on some may be significant. In the analysis, CMS discusses how it has attempted to mitigate the effects of the significant pro rata reduction.

(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 \$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 August 24, 2001, CMS published a Notice of Proposed Rulemaking in the Federal Register. 66 Fed. Reg. 44672. CMS received 400 items of correspondence containing multiple comments on the proposed rule and discusses these comments 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 under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in section 1102, 1833(t) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395(t) and 1395hh).

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action.

Executive Order No. 13132 (Federalism)

The final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.