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June 28, 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 Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Health Care Financing Administration: Medicare Program; Provisions of the Benefits Improvement and Protection Act of 2000; Inpatient Payments and Rates and Costs of Graduate Medical Education

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, Health Care Financing Administration (HCFA), entitled "Medicare Program; Provisions of the Benefits Improvement and Protection Act of 2000; Inpatient Payments and Rates and Costs of Graduate Medical Education" (RIN: 0938-AK74). We received the rule on June 14, 2001. It was published in the Federal Register as an "interim final rule with comment period" on June 13, 2001. 66 Fed. Reg. 32172.

The interim rule implements certain statutory provisions relating to Medicare payments to hospitals for inpatient services that are contained in the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Benefits Improvement and Protection Act of 2000.

Enclosed is our assessment of HCFA'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 HCFA 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, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Ms. 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,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICARE PROGRAM; PROVISIONS OF THE BENEFITS IMPROVEMENT
AND PROTECTION ACT OF 2000; INPATIENT PAYMENTS AND RATES
AND COSTS OF GRADUATE MEDICAL EDUCATION"
(RIN: 0938-AK74)

(i) Cost-benefit analysis

HCFA estimates that the impact of the changes made by the interim rule on the inpatient prospective payment system to be \$1.04 billion.

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

Although not required to under the Regulatory Flexibility Act (RFA) since the interim rule did not follow the issuance of a notice of proposed rulemaking, HCFA considered the impact of the interim rule on small entities. Since the overall impact of the interim rule is to increase payments to the hospitals, which for the purpose of the RFA are considered small entities, HCFA did not find a substantial economic impact on small entities under the RFA.

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

The interim 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 notice and comment provisions of 5 U.S.C. 553 were not used by HCFA in this rulemaking.

Under section 1871(b) of the Social Security Act, a notice of proposed rulemaking is not required before a rule takes effect where "a statute establishes a specific deadline for the implementation of the provision and the deadline is less than 150 days after the date of enactment." Public Law 106-554 contains a number of provisions that have effective dates of October 1, 2000, April 1, 2001, or other dates

prior to the end of fiscal year 2001. Accordingly, HCFA has issued the rule as an interim rule with request for comments.

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

The interim 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 interim rule was promulgated under the authority contained in sections 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106-554).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

HCFA has examined the interim rule under the order and concludes that it will not have any negative impact on the rights, rules, and responsibilities of state, local, or tribal governments.