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United States General Accounting Office
Washington, DC 20548

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November 20, 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; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 2002

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; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 2002" (RIN: 0938-AK57). We received the rule on November 6, 2001. The rule was received by Congress on October 31, 2001. It was published in the Federal Register as a final rule on November 1, 2001. 66 Fed. Reg. 55246.

The final rule makes several changes affecting Medicare Part B payments. Some of the changes include a refinement of resource-based practice expense relative value units; services and supplies incident to a physician's professional service; anesthesia

base unit variations; recognition of CPT tracking codes; and nurse practitioners, physician assistants, and clinical nurse specialists performing screening sigmoidoscopies.

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, Managing 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; REVISIONS TO PAYMENT POLICIES AND
FIVE-YEAR REVIEW OF AND ADJUSTMENTS TO THE
RELATIVE VALUE UNITS UNDER THE PHYSICIAN FEE SCHEDULE
FOR CALENDAR YEAR 2002"
(RIN: 0938-AK57)

(i) Cost-benefit analysis

CMS states that the physician fee update for 2002 is a minus 4.8 percent of an estimated \$41.2 billion in physician expenditures for 2001. However, CMS projects that total Medicare expenditures for physicians' services will increase from \$41.2 billion to \$41.7 billion in 2002.

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

Because CMS determined that this rule will have a significant economic impact on a substantial number of small entities, it prepared an Initial Regulatory Flexibility Analysis in conjunction with its proposed rule.

All physicians are considered to be small entities for purposes of the act. There are more than 700,000 physicians and other practitioners who receive Medicare payments under the physician fee schedule.

The preamble to the final rule contains the Final Regulatory Flexibility Analysis as part of the CMS' Regulatory Impact Analysis.

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

As defined in title II, the final rule will not impose either an intergovernmental or private sector mandate 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 2, 2001, CMS published a Notice of Proposed Rulemaking in

the Federal Register. 66 Fed. Reg. 40373. CMS received over 2,000 comments in response to the notice. The issues raised by the comments are discussed in the preamble to the final rule.

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

The final rule contains an information collection that is subject to review by the Office of Management and Budget and CMS has requested comments on the collection. However, CMS believes the burden associated with the collection is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary would be incurred by referring physicians and practitioners in the normal course of business activities.

Statutory authorization for the rule

The final rule was promulgated pursuant to the authority contained in sections 1302, 1395hh, and 1395rr(b)(1) of Title 42 of the United States Code.

Executive Order No. 12866

The final rule was determined to be an “economically significant” regulatory action and was reviewed and approved by the Office of Management and Budget as complying with the requirements of the order.

Executive Order No. 13132 (Federalism)

CMS has determined that the final rule does not significantly affect the rights, roles, and responsibilities of the states.