



B-283353

August 13, 1999

The Honorable William V. Roth
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable Bill Archer
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; Changes to the Hospital Inpatient
Prospective Payment Systems and Fiscal Year 2000 Rates**

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Health and Human Services, Health Care Financing Administration (HCFA), entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates" (RIN: 0938-AJ50). We received the rule on August 2, 1999. It was published in the Federal Register as a final rule on July 30, 1999. 64 Fed. Reg. 41490.

The final rule revises the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement changes arising from HCFA's continuing experience with the systems.

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, Director, Health Financing and Public Health Issues. Mr. Scanlon can be reached at (202) 512-7114.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Jacquelyn Y. White
Deputy Executive Secretary
to the Department
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; CHANGES TO THE HOSPITAL INPATIENT
PROSPECTIVE PAYMENT SYSTEMS AND FISCAL YEAR 2000 RATES"
(RIN: 0938-AJ50)

(i) Cost-benefit analysis and agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

Section 1102(b) of the Social Security Act, 42 U.S.C. § 1302(b), requires the Secretary of Health and Human Services to prepare regulatory impact analyses for any rule that may have a significant impact on the operations of a substantial number of small, rural hospitals. An initial analysis, to be prepared for a proposed rule, is to describe the impact of the proposed rule on such hospitals and include the matters required under 5 U.S.C. § 603. The final analysis, to be prepared for a final rule, must include, with respect to small, rural hospitals, the matters required under 5 U.S.C. § 604. HCFA determined that the proposed rule would affect a substantial number of small, rural hospitals, and that the effects on some could be significant. HCFA also determined that the rule could have a significant impact on other classes of hospitals as well. HCFA considers most hospitals to be small entities for purposes of the Regulatory Flexibility Act. Therefore, HCFA has prepared a combined regulatory impact/regulatory flexibility analysis in connection with the rule, which was contained in Appendix A to the final rule.

HCFA estimates that the impact of the final rule will be to decrease payments to hospitals by approximately \$125 million in fiscal year 2000.

The final analysis explains the reasons and objectives, as well as the legal bases, for the final rule. It also describes and estimates the number of small entities to which the rule will apply. The prospective payment system will apply to 4,922 hospitals or about 82 percent of all Medicare-participating hospitals. The remaining 18 percent are specialty hospitals (psychiatric, rehabilitation, long-term care, children's, and cancer hospitals) that are excluded from the prospective payment system and continue to be paid on the basis of reasonable costs.

The final analysis provides both a quantifiable description of the effect of the rule and general descriptive statements if quantification is not practicable or reliable. These descriptions include the percent of the changes in payments per case due to changes in the prospective payment system for operating costs.

(ii) 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 impose either an intergovernmental or private sector mandate of over \$100 million per year, as defined in the Unfunded Mandates Reform Act of 1995.

(iii) 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 in 5 U.S.C. § 553 and section 1871(b) of the Social Security Act, 42 U.S.C. § 1395hh(b).¹

HCFA published a Notice of Proposed Rulemaking on May 7, 1999, in the Federal Register (64 Fed. Reg. 24716). It received 82 pieces of correspondence containing comments, which are summarized and responded to 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 was issued under the Secretary's broad authority to promulgate regulations necessary for the efficient administration of the Medicare program, contained primarily in sections 1102 and 1871 of the Social Security Act, 42 U.S.C. §§ 1302 and 1395hh. In addition, many of the rule provisions were mandated by Title 4 of the Balanced Budget Act of 1997 (Pub. L. 105-33, August 5, 1997).

Executive Order No. 12866

The final rule was determined to be an "economically significant" regulatory action under Executive Order No. 12866 and was reviewed and approved by the Office of Management and Budget.

¹With exceptions not pertinent here, section 1871(b) states that before issuing any final rule, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a comment period of at least 60 days.