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B-310139

September 10, 2007

The Honorable Max Baucus  
Chairman  
The Honorable Charles E. Grassley  
Ranking Minority Member  
Committee on Finance  
United States Senate

The Honorable John D. Dingell  
Chairman  
The Honorable Joe Barton  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Charles B. Rangel  
Chairman  
The Honorable Jim McCrery  
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; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008*

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; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008” (RIN: 0938-AO32). We received the rule on August 24, 2007. It was published in the *Federal Register* as a final rule with comment period on August 29, 2007. 72 Fed. Reg. 49,762.

The final rule sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services. In addition, the final rule rebases and revises the home health market basket to ensure it continues to adequately reflect the price changes of

efficiently providing home health services, sets forth refinements to the payment system, and establishes new quality of care data collection requirements.

Enclosed is our assessment of the 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7114.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Ann Stallion  
Regulations Coordinator  
Department of Health and  
Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
ENTITLED  
"MEDICARE PROGRAM; HOME HEALTH PROSPECTIVE PAYMENT SYSTEM  
REFINEMENT AND RATE UPDATE FOR CALENDAR YEAR 2008"  
(RIN: 0938-AO32)

(i) Cost-benefit analysis

CMS estimates that the impact to the Medicare program and the annual effect on the overall economy will be more than \$100 million. It is estimated that the final rule will result in an additional \$430 million in 2008 expenditures due to the 3.0 percent home health market basket increase and a decrease in expenditures of \$410 million as a result of a 2.75 percent reduction to the payment rate to account for the case-mix change adjustment under the home health prospective payment system, resulting in a net impact of \$20 million in 2008.

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

CMS performed a Regulatory Assessment under the Regulatory Flexibility Act and has determined that the final rule will have a positive effect on small entities that are home health agencies (HHAs).

(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 of more than \$110 million in one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On May 4, 2007, CMS published a notice of proposed rulemaking in the *Federal Register* proposing an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services. 72 Fed. Reg. 25,356. CMS received approximately 150 comments from the public in response to the proposed rule, in addition to comments from trade organizations, HHAs, hospitals, other providers, suppliers, practitioners, advocacy

groups, and consulting firms. On August 29, 2007, CMS published the final rule with comment period in the *Federal Register* and responded to the comments. 72 Fed. Reg. 49,762. The effective date of this final rule is January 1, 2008.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. A final copy of the rule has been submitted to OMB for review of the information collection requirements, and these requirements are not effective until OMB has approved them.

Statutory authorization for the rule

The final rule is promulgated under the authority found in section 1895 of the Social Security Act (42 U.S.C. 1395fff).

Executive Order No. 12,866

The final rule was considered to be an economically significant regulatory action under the executive order, and a regulatory impact analysis was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS states that the final rule does not have federalism implications under the order.