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United States Government Accountability Office
Washington, DC 20548

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June 17, 2010

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

The Honorable Henry A. Waxman
Chairman
The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Sander M. Levin
Chairman
The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates: Final Fiscal Year 2010 Wage Indices and Payment Rates Implementing the Affordable Care Act*

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 & Medicaid Services (CMS), entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates: Final Fiscal Year 2010 Wage Indices and Payment Rates Implementing the Affordable Care Act” (RIN: 0938-AQ03). We received the rule on May 26, 2010. It was published in the *Federal Register* as a notice on June 2, 2010. 75 Fed. Reg. 31,118.

The notice contains the final wage indices, hospital reclassifications, payment rates, impacts, and other related tables effective for the fiscal year (FY) 2010 hospital inpatient prospective payment system (IPPS) and the rate year 2010 long-term care hospital (LTCH) prospective payment system. CMS notes that the rates, tables, and impacts included in this notice reflect changes required by or resulting from the implementation of several provisions of the Patient Protection and Affordable Care Act, Pub. L. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152. (These public laws are collectively known as the Affordable Care Act.)

The revised standard federal rates described in this notice are effective for payment years beginning October 1, 2009. Hospitals are paid based on the rates published in this notice for discharges on or after April 1, 2010. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The Congressional Review Act's 60-day delay does not apply, however, when an agency for good cause finds that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest. 5 U.S.C. § 808(2). CMS determined that retroactive application of those provisions effective April 1, 2010, is required by statute and thus a 60-day delay is not required by the Congressional Review Act.

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 of the procedural steps taken indicates that CMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Vivian Stallion
Office Manager, 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 & MEDICAID SERVICES
ENTITLED

"MEDICARE PROGRAM; HOSPITAL INPATIENT PROSPECTIVE PAYMENT
SYSTEMS FOR ACUTE CARE HOSPITALS AND FISCAL YEAR 2010 RATES AND
TO THE LONG-TERM CARE HOSPITAL PROSPECTIVE PAYMENT SYSTEM AND
RATE YEAR 2010 RATES: FINAL FISCAL YEAR 2010 WAGE INDICES AND
PAYMENT RATES IMPLEMENTING THE AFFORDABLE CARE ACT"
(RIN: 0938-AQ03)

(i) Cost-benefit analysis

CMS conducted a cost-benefit analysis of this notice. CMS estimates that the operating payments to the IPPS will increase by approximately \$75.7 million in FY 2010; the capital payments will increase by approximately \$94.7 million in FY 2010. CMS estimates that payments to the LTCHs will decrease by approximately \$11 million in FY 2010. Both of these estimates reflect changes from the previously published estimates for FY 2010.

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

CMS determined that this notice will have a significant impact on a substantial number of small entities, including small rural hospitals, and conducted a regulatory flexibility analysis.

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

CMS determined that this notice will not mandate any requirements for state, local, or tribal governments, nor will it affect private sector costs.

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

Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*

The final rule setting forth the Medicare FY 2010 hospital IPPS rates for acute care hospitals and the rate year 2010 LTCH prospective payment system was published in the *Federal Register* on August 27, 2009. 74 Fed. Reg. 43,754. It was subsequently corrected in an October 7, 2009 notice. 74 Fed. Reg. 51,496. On March 23, 2010, the Patient Protection and Affordable Care Act, Pub. L. 111-148, was enacted. The

Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, was enacted on March 30, 2010, and amended certain provisions of Pub. L. 111-148. This notice contains the final wage indices, hospital reclassifications, payment rates, impacts, and other related tables for FY 2010 and addresses the provisions of those Acts that impact the FY 2010 hospital IPPS rates and the rate year 2010 LTCH prospective payment system. CMS concluded that this rule is exempt from APA rulemaking requirements under the “good cause” exception in 5 U.S.C. § 553(b)(3)(B). CMS stated that it was unnecessary to undertake notice and comment rulemaking in this instance because Congress required that the agency make these changes, and left no discretion to CMS.

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

The notice does not impose new information and collection recordkeeping requirements.

Statutory authorization for the rule

In this notice, CMS implemented provisions of the Patient Protection and Affordable Care Act, Pub. L. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152.

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS determined that this notice is “economically significant” and submitted it to the Office of Management and Budget for review.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice will not have a substantial effect on state and local governments.