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United States Government Accountability Office
Washington, DC 20548

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August 2, 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 L. Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Sander M. Levin
Acting 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for Fiscal Year 2011*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for Fiscal Year 2011” (RIN: 0938-AP87). We received the rule on July 22, 2010. It was published in the *Federal Register* as a notice with comment period on July 22, 2010. 75 Fed. Reg. 42,886. It has a stated effective date of October 1, 2010.

The notice updates the payment rates used under the prospective payment system for skilled nursing facilities for fiscal year 2011. In addition, this notice also

implements section 10325 of the Patient Protection and Affordable Care Act,¹ which postpones the implementation of the Resource Utilization Groups, Version 4 (RUG-IV) case-mix classification system, but, notwithstanding the postponement, requires the implementation of the parts of RUG-IV related to concurrent therapy and the look-back period.²

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: Ann Stallion
Program Manager
Department of Health and
Human Services

¹ Pub. L. No. 111-148, § 10325, 124 Stat. 119, 960–961 (Mar. 23, 2010).

² For more information on RUG-IV, see 74 Fed. Reg. 40,288 (Aug. 11, 2009).

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; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR
SKILLED NURSING FACILITIES FOR FISCAL YEAR 2011"
(RIN: 0938-AP87)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) analyzed the costs and benefits of this notice. CMS estimates that overall payments for skilled nursing facilities will increase by \$542 million, or 1.7 percent, in fiscal year 2011 as compared to fiscal year 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 not have a significant impact on a substantial number of small entities. In addition, CMS determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

(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 impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of \$100 million (\$135 million adjusted for inflation).

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

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

CMS may waive notice-and-comment procedures if it finds good cause that the notice-and-comment procedures would be impractical, unnecessary, or contrary to the public interest. 5 U.S.C. § 553(b). CMS determined that notice-and-comment procedures were unnecessary for this notice: (1) because the increase in prospective payment system rates for skilled nursing facilities for fiscal year 2011 are required by statute and (2) because the methodologies used to update the rates and the policies initiated in this notice have been previously subject to notice and comment.

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

CMS stated that the information collection requirements referenced in this notice are approved under the Office of Management and Budget (OMB) Control Numbers 0938-0739 and 0938-0872.

Statutory authorization for the rule

CMS stated that annual updates to the prospective payment system rates for skilled nursing facilities are required by section 1395yy(e) of title 42, United States Code.

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

CMS determined that this notice is an economically significant rule under the Order because CMS estimates the notice will increase payments to skilled nursing facilities by approximately \$542 million in fiscal year 2011. OMB reviewed this notice.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.