



Office of the General Counsel

B-281438

November 17, 1998

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 B. 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; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999

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, Health Care Financing Administration (HCFA), entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999" (RIN: 0938-AI52). We received the rule on November 2, 1998. It was published in the Federal Register as a final rule on November 2, 1998. 63 Fed. Reg. 58814. This rule is effective January 1, 1999.

This final rule makes several policy changes affecting Medicare Part B payments. The changes that relate to physicians' services include: resource-based practice expense relative value units, medical direction rules for anesthesia services, and payment for abnormal Pap smears. The rule rebases the Medicare Economic Index from a 1989 base year to a 1996 base year. It also revises HCFA's payment policy for nonphysician practitioners, for outpatient rehabilitation services, and for some drugs and biologicals. It further allows physicians, under certain circumstances, to opt out of Medicare and to provide covered services through private contractors and permits payment for professional consultations via interactive telecommunications systems.

Enclosed is our assessment of the Health Care Financing Administration'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 Kathleen Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the Department of Health and Human Services, Health Care Financing Administration, is William Scanlon, Director, Health Financing and Systems Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Donna E. Shalala
The Secretary 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; REVISIONS TO PAYMENT POLICIES AND
ADJUSTMENTS TO THE RELATIVE VALUE UNITS
UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 1999"
(RIN: 0938-AI52)

(i) Cost-benefit analysis

HCFA prepared individual cost-benefit analyses related to each of the provisions of the rule. The discussion of these analyses is included in the Final Regulatory Flexibility Analysis, which is published in the preamble to the final rule (63 Fed. Reg. 58814 at 58894). Some of the provisions have minimal costs associated with their implementation. For example, the conversion to a resource-based determination for the payment of physicians' practice expenses is required to be budget neutral; the total Medicare expenditures for calendar year 1999 must be the same as the amount that would have been paid under the prior method of paying practice expenses.

Other provisions do result in significant costs and savings. For example, the provisions of the rule relating to expanded nurse practitioners, clinical nurse specialists, and physician assistant services are estimated to cost \$350 million in calendar year 1999. The provisions related to changes in payment for outpatient rehabilitation services, however, will result in savings of an estimated \$130 million in the same year.

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

Because HCFA determined that this rule will have a significant economic impact on a substantial number of small entities,¹ it prepared an Initial Regulatory Flexibility Analysis, which it published in connection with the proposed rule (63 Fed. Reg. 30818).

¹For purposes of the Regulatory Flexibility Analysis, all physicians are considered to be small entities. There are about 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. It explains the rationale for and purposes of the rule, details the costs and benefits of the rule as described above, analyzes alternatives, and presents the measures HCFA proposed to minimize the burden on small entities.

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

HCFA considered this rule's anticipated costs and benefits under section 202 of the Unfunded Mandates Reform Act of 1995 and determined that the rule does not impose either an intergovernmental or a private sector mandate of over \$100 million per year.

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

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

HCFA promulgated this rule using the notice and comment procedures of 5 U.S.C. 553. On July 5, 1998, the agency published a proposed rule (63 Fed. Reg. 30818) requesting comments on the rule. In response to that publication, the agency received over 14,000 comments from individual physicians, health care workers, and professional associations and societies. In the preamble to the final rule, HCFA discusses the comments it received, as well as the actions it took as a result of the comments. Most of the comments appear to have addressed the proposal related to the resource-based practice expense policy.

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

This rule, in its final form, modifies the renewal and early termination of the opt-out requirement. In so doing, it creates an additional information collection requirement that was not addressed in the proposed rule published on July 5, 1998 (63 Fed. Reg. 30820). The Office of Management and Budget (OMB) had approved the proposed information collection requirement and issued Control No. 0938-0730, expiration date August 31, 2001. In the preamble to the final rule, HCFA states that it has requested emergency OMB approval of the new requirement, with a 180-day approval period, to ensure that all of the requirements in this rule can be implemented concurrently. HCFA states that within that 180-day period it will publish a separate Federal Register notice seeking public comment on the new requirement. After considering the comments received, it will then seek OMB extension of the emergency approval.

Statutory authorization for the rule

This rule was issued under the authority of sections 1302, 1395a, and 1395hh 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 executive order.