



Office of the General Counsel

B-281580

December 8, 1998

The Honorable William V. Roth, Jr.
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; Limited Additional Opportunity to
Request Certain Hospital Wage Data Revisions for FY 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; Limited Additional Opportunity to Request Certain Hospital Wage Data Revisions for FY 1999" (RIN: 0938-AJ26). We received the rule on November 23, 1998. It was published in the Federal Register as a final rule on November 19, 1998. 63 Fed. Reg. 64191.

The final rule provides hospitals with a limited additional opportunity to request certain revisions to their wage data used to calculate the fiscal year 1999 hospital

wage index. This hospital wage index was issued in conjunction with a final rule issued by HCFA and published in the Federal Register on July 31, 1998, which was the subject of our Office's major rule report, GAO/OGC-98-70 dated August 14, 1998.

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 Vickers, Assistant General Counsel, at (202) 512-8210. 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; LIMITED ADDITIONAL OPPORTUNITY TO REQUEST
CERTAIN HOSPITAL WAGE DATA REVISIONS FOR FY 1999"
(RIN: 0938-AJ26)

(i) Cost-benefit analysis

HCFA did not perform a cost-benefit analysis because the actual impact of the rule cannot be determined prior to reviewing the revision requests. However, the range could be from \$0 to \$500 million.

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

HCFA states that the implementation of the rule will have isolated positive payment impacts in areas whose wage indexes include hospitals receiving wage data revisions. HCFA will estimate and publish the entire impacts of payment changes associated with any revisions to hospitals' wage indexes.

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

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

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

HCFA has invoked the "good cause" exception contained in the Administrative Procedure Act at section 553(b)(3)(B) which allows the agency to forego issuing a notice of proposed rulemaking and receiving public comments.

Also, HCFA has properly cited the exception to the 60-day delay in the effective date of a major rule since HCFA, for good cause, found that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 808(2).

HCFA is, however, soliciting comments for 30 days in connection with the final rule.

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

HCFA has determined that the information which will be submitted by the hospitals, while an information collection, does not have to be approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act as it falls under an exception to the Act. Information does not include, "facts or opinions solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information." 5 C.F.R. 1320.3(h)(9). The previous collection of information has been approved by OMB and issued No. 0938-0050.

Statutory authorization for the rule

The final rule was issued under the Secretary of Health and Human Services' 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.

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget under Executive Order No. 12866.