



Office of the General Counsel

B-280024

May 27, 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities" (RIN: 0938-AI47). We received the rule on May 7, 1998. It was published in the Federal Register as a final rule on May 12, 1998. 63 Fed. Reg. 26252.

The final rule implements provisions in section 4432 of the Balanced Budget Act of 1997 related to Medicare payment for skilled nursing facility services. These provisions include the implementation of a Medicare prospective payment system

for skilled nursing facilities, consolidated billing, and a number of related changes. The prospective payment system described in the rule replaces the retrospective reasonable cost-based system currently utilized by Medicare for payment of skilled nursing facility services under Part A of the program.

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; PROSPECTIVE PAYMENT SYSTEM AND
CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES"
(RIN: 0938-AI47)

(i) Cost-benefit analysis

HCFA has estimated the budgetary impact of the final rule to result in annual savings to the Medicare program of \$30 million in fiscal year 1998, \$1.58 billion in fiscal year 1999, \$3.1 billion in fiscal year 2000, \$3.88 billion in fiscal year 2001, and \$4.28 billion in fiscal year 2002. These savings include both the savings to Medicare fee-for-service and managed care payments.

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

HCFA performed a final regulatory flexibility analysis and was not able to conclude, based on the data available, what the impact of the final rule would be on individual skilled nursing facilities.

Under the Regulatory Flexibility Act (RFA), most skilled nursing facilities and suppliers are considered small entities either by their nonprofit status or by having revenues of \$5 million or less annually.

HCFA notes that under the RFA, an economic impact is significant if the annual total costs or revenues of a substantial number of entities will increase or decrease by at least 3 percent. Since Medicare payments account for about 10 percent of skilled nursing facilities revenues and these payments will decrease by approximately 17 percent on average, the total revenues for the facilities would be reduced by about 1.7 percent. However, HCFA was unable to determine the effects on individual facilities and, therefore, could not determine if the new payment rates would result in a substantial number of facilities experiencing significant decreases in their total revenues.

Likewise, HCFA found the impact on suppliers of items and services to the facilities would be minimal. The analysis and other portions of the preamble discuss the various options which were considered such as alternative case-mix methodologies and assessment schedules.

In addition, for the purposes of section 1102(b) of the Social Security Act, the Secretary of Health and Human Services has certified that the final rule 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

HCFA states that the final rule does not impose a federal intergovernmental or private sector mandate of \$100 million or more, 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 found good cause under 5 U.S.C. § 553(b) to waive notice and comment procedures and forgo the issuance of a notice of proposed rulemaking because of the time constraints imposed by the Balanced Budget Act of 1997 to have the skilled nursing facility prospective payment system for cost reporting periods beginning on or after July 1, 1998. Accordingly, the final rule has been issued as an interim final rule and HCFA is providing a public comment period of 60 days.

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

The final rule contains information collections subject to review by the Office of Management and Budget under the Paperwork Reduction Act (PRA).

HCFA has requested emergency review and approval of the collections because of the statutory requirement to implement the changes in the program on July 1, 1998. The preamble to the final rule contains the information necessary to comply with the requirements of the PRA, including a description and need for the information and an estimate of the annual burden hours imposed by the collection.

One collection requires maintenance of patient assessment data for the 5th, 30th and 60th days following admission in order for HCFA to administer the payment rate methodology. This additional collection to the routine monthly transfer of provider data is estimated at 5 minutes per month or an annual burden of 1 hour for the 17,000 facilities. The other collection requires the inclusion of the skilled nursing facility's Medicare provider number and appropriate HCPCS coding on a claim. HCFA estimates this burden to be minimal but has assigned a token hourly burden of 1 hour per facility annually.

Statutory authorization for the rule

The final rule is issued pursuant to the authority in sections 1102, 1861(v)(1)(A), and 1395hh of the Social Security Act (42 U.S.C. §§ 1302, 1395x(v)(1)(A) and 1395hh).

Executive Order No. 12866

The final rule was reviewed and approved by the Office of Management and Budget as an "economically significant" regulatory action under Executive Order No. 12866.