



B-284489

February 4, 2000

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 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: Medicare Inpatient Disproportionate
Share Hospital (DSH) Adjustment Calculation: Change in the Treatment of
Certain Medicaid Patient Days in States With 1115 Expansion Waivers**

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, entitled "Medicare Program: Medicare Inpatient Disproportionate Share Hospital (DSH) Adjustment Calculation: Change in the Treatment of Certain Medicaid Patient Days in States With 1115 Expansion Waivers" (RIN: 0938-AJ92). We received the rule on January 21, 2000. It was published in the Federal Register as an interim final rule with comment period on January 20, 2000. 65 Fed. Reg. 3136.

The rule implements a change to the Medicare Disproportionate Share Hospital (DSH) adjustment calculation policy in reference to section 1115 expansion waiver days. The rule sets forth the criteria to use in calculating the Medicare DSH

adjustment for hospitals for purposes of payment under the prospective payment system.

Enclosed is our assessment of the 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 W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is William Scanlon, Director, Health Financing and Public Health Issues. Mr. Scanlon can be reached at (202) 512-7114.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Jacquelyn Y. White
Deputy Executive Secretary to
the Department
Department of Health and
Human Services

ENCLOSURE

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: MEDICARE INPATIENT DISPROPORTIONATE
SHARE HOSPITAL (DSH) ADJUSTMENT CALCULATION:
CHANGE IN THE TREATMENT OF CERTAIN MEDICAID PATIENT DAYS
IN STATES WITH 1115 EXPANSION WAIVERS"
(RIN: 0938-AJ92)

(i) Cost-benefit analysis and agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

HCFA prepared a combined regulatory impact analysis/regulatory flexibility analysis for the rule. For purposes of the Regulatory Flexibility Act, HCFA considers all hospitals to be small entities.

The effect of the rule will be to increase the DSH payments that the hospitals in the eight states with section 1115 expansion waivers will receive compared to what they would have received absent the change. Therefore, the impact on the small entities is favorable.

HCFA estimates the result of this change will be \$270 million in higher FY 2000 prospective payment system payments, (total FY 2000 DSH payments are projected to be \$4.6 billion), and \$370 million in FY 2001 payments. The total impact of this change for the period from FY 2001 through FY 2005 is estimated to be \$2.14 billion.

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

The rule will not impose either an intergovernmental or private sector mandate in any one year of \$100 million or more.

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

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

HCFA notes in the preamble to the rule that normally it would publish a Notice of Proposed Rulemaking with a comment period and would delay the effective date for 30 days. However, HCFA has found "good cause" to waive the notice and comment procedures because a delay in implementing the rule would have an impact on the financial positions of hospitals and the Medicaid beneficiaries and other low-income patients who are served by the hospitals.

Also, since no prior notice was used and comments were not solicited, HCFA can properly invoke the exception to the 60-day delay in the effective date of a major rule required by 5 U.S.C. 801.

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

The rule contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

In the preamble to the rule, HCFA solicits comments on the requirement under the rule that a hospital has the burden of furnishing data adequate to prove eligibility for each Medicaid patient day claimed under the changed requirements. Based on these comments and the burden estimates received from the public, HCFA will add these requirements and the associated burden to the already approved collections OMB #0938-0691 or 0938-0746 in a submittal to OMB.

Statutory authorization for the rule

The rule was issued under the authority of sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Executive Order No. 12866

The rule was determined to be an “economically significant” regulatory action under the Order and was reviewed and approved by OMB as complying with the Order’s requirements.

Executive Order No. 12612 (Federalism)

HCFA considered the federalism impacts of the rule and concludes that no new standards or requirements are established on states as a result of the rule and, therefore, does not increase the burden on states.