



United States General Accounting Office  
Washington, DC 20548

Office of the General Counsel

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May 9, 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: Office of Inspector General; Medicare Program; Prospective Payment System for Hospital Outpatient Services

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 "Office of Inspector General; Medicare Program; Prospective Payment System for Hospital Outpatient Services" (RIN: 0938-AI56). We received the rule on April 24, 2000. It was published in the Federal Register as a final rule with comment period on April 7, 2000. 65 Fed. Reg. 18434.

The final rule implements a prospective payment system for hospital outpatient services furnished to Medicare beneficiaries, as required by section 1833(t) of the Social Security Act. It establishes requirements for provider departments and provider-based entities. It also implements section 9343(c) of the Omnibus Budget Reconciliation Act of 1986 which prohibits Medicare payment for nonphysician

services furnished to a hospital outpatient by a provider or supplier other than a hospital, unless the services were furnished under an arrangement with the hospital.

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 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.

Robert P. Murphy  
General Counsel

Enclosure

cc: Ms. Jacquelyn Y. White  
Deputy Executive Secretary to  
the Department  
Department 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  
"OFFICE OF INSPECTOR GENERAL; MEDICARE PROGRAM;  
PROSPECTIVE PAYMENT SYSTEM FOR  
HOSPITAL OUTPATIENT SERVICES"  
(RIN: 0938-AI56)

(i) Cost-benefit analysis

HCFA conducted a cost-benefit analysis as part of its Regulatory Impact Analysis. In summary, HCFA estimates that the final rule will increase Medicare payments by \$600 million in calendar year 2000, and that figure includes beneficiary co-payments. Additional expenditures from the Part B Trust Fund are estimated to be \$490 million in fiscal year 2000.

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

The Administrator of HCFA has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(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 contain any mandates, as defined in title II of the Act, of the more than \$100 million in any one year on state, local or tribal governments or the private sector.

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

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

Portions of the final rule were issued using the notice and comment procedures contained at 5 U.S.C. 553.

On September 8, 1998, HCFA published a Notice of Proposed Rulemaking (63 Fed. Reg. 47552) regarding the prospective payment system and has received comments and considered these comments in issuing the final rule.

However, the Balanced Budget Refinement Act of 1999 (BBRA), which was enacted on November 29, 1999, mandated certain changes and refinements to the prospective

payment system as described in the proposed rule. Therefore, HCFA has found that it is impracticable under 5 U.S.C. 553 to publish a proposed rule and receive comments given the limited timeframe before the July 1, 2000, implementation date. Therefore, HCFA is waiving prior notice and comment with respect to these changes but is providing a 60-day comment period for the BBRA changes.

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

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

HCFA has submitted the information collections to OMB for review. Based on the summaries of the collections in the preamble to the final rule, the total burden hours for the collections are estimated at 41,063 hours annually.

#### Statutory authorization for the rule

The final rule was issued under the authority of sections 1102, 1128, 1128A, 1128E, 1140, 1812(d), 1814(b), 1815, 1833 (a), (i), (n) and (t), 1866(g), 1871, 1876(i), 1877(g), 1881, 1882(d), 1883, 1886, 1903(m)(5) of the Social Security Act, as amended, and section 421(c) and 427(b)(2) of Public Law 99-660.

#### Executive Order No. 12866

The final rule was found to an “economically significant” regulatory action and was reviewed and approved by OMB as complying with the Executive Order.

#### Executive Order No. 13132 (Federalism)

HCFA has determined that the final rule will not have a negative impact on the rights, roles, and responsibilities of state, local or tribal governments.