



**Office of the General Counsel**

B-279224

February 23, 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 and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy 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, entitled "Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services" (RIN: 0938-AG70). We received the rule on February 10, 1998. It was published in the Federal Register as a final rule on January 30, 1998. 63 Fed. Reg. 5106.

The final rule revises the salary equivalency guidelines for Medicare payments for the reasonable costs of physical therapy and respiratory therapy services furnished under arrangements by an outside contractor. Also, the rule contains new salary equivalency guidelines for Medicare payments for the reasonable costs of speech language pathology and occupational therapy services furnished under arrangements by an outside contractor. The guidelines do not apply to inpatient hospital services and hospice services and will be used by Medicare fiscal intermediaries to determine the maximum allowable costs of the therapy services.

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 AND MEDICAID PROGRAMS; SALARY EQUIVALENCY GUIDELINES  
FOR PHYSICAL THERAPY, RESPIRATORY THERAPY, SPEECH LANGUAGE  
PATHOLOGY, AND OCCUPATIONAL THERAPY SERVICES"  
(RIN: 0938-AG70)

(i) Cost-benefit analysis

HCFA has concluded that the final rule will result in an estimated savings of \$170 million for Medicare Part A and \$90 million for Medicare Part B to the Medicare Trust Funds from 1998 through 2000. The preamble to the final rule discusses the anticipated effects on providers, beneficiaries, and therapists, and therapist companies in qualitative terms rather than quantitative terms because of the difficulty of predicting what revenue enhancement practices may be used in the future.

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

The preambles of the proposed and final rules contain a combined regulatory impact analysis with an Initial and Final Regulatory Flexibility Analysis, respectively.

The analyses comply with the informational requirements by discussing the small entities subject to the final rule and alternatives that were considered. The analyses use both quantifiable (percentage increases or decreases in costs) and general descriptions of the effects of the rule on the small entities. HCFA considers all therapists to be small entities.

Also, 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 rural hospitals, as required by section 1102(b) of the Social Security Act (42 U.S.C. § 1302(b)).

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

According to HCFA, the final rule will 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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. HCFA published a Notice of Proposed Rulemaking on March 28, 1997 (62 Fed. Reg. 14851) and requested comments on the proposed changes in methodology to establish the salary equivalency guidelines.

HCFA received 409 comments in the response to the notice. In the preamble to the final rule HCFA summarizes the comments received and its responses to the comments.

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

The information collections contained in the final rule are currently included in HCFA's provider cost report information collections, which have already been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is issued pursuant to authority contained in sections 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. §§ 1302, 1395x(v)(1)(A), and 1395hh).

Executive Order No. 12866

The final rule was determined to be an "economically significant" regulatory action by the Office of Management and Budget and was reviewed under Executive Order No. 12866. It was approved by OMB on January 23, 1998.