



**Office of the General Counsel**

B-280734

August 14, 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; Changes to the Hospital Inpatient  
Prospective Payment Systems and Fiscal Year 1999 Rates**

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; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates" (RIN: 0938-AI22). We received the rule on July 31, 1998. It was published in the Federal Register as a final rule on July 31, 1998. 63 Fed. Reg. 40954.

The final rule revises the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement applicable statutory requirements, including section 4407 of the Balanced Budget Act of 1997 (BBA).

Also, the final rule implements section 4625 of the BBA concerning the payment for the direct costs of graduate medical education.

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; CHANGES TO THE HOSPITAL INPATIENT  
PROSPECTIVE PAYMENT SYSTEMS AND FISCAL YEAR 1999 RATES"  
(RIN: 0938-AI22)

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

Section 1102(b) of the Social Security Act, 42 U.S.C. § 1302(b), requires the Secretary of Health and Human Services to prepare regulatory impact analyses for any rule that may have a significant impact on the operations of a substantial number of small, rural hospitals. An initial analysis, to be prepared for a proposed rule, is to describe the impact of the proposed rule on such hospitals and include the matters required under 5 U.S.C. § 603. The final analysis, to be prepared for a final rule, must include, with respect to small, rural hospitals, the matters required under 5 U.S.C. § 604. HCFA determined that the proposed rule would affect a substantial number of small, rural hospitals, and that the effects on some could be significant. HCFA also determined that the rule could have a significant impact on other classes of hospitals as well. HCFA considers most hospitals to be small entities for purposes of the Regulatory Flexibility Act. Therefore, HCFA has prepared a combined regulatory impact/regulatory flexibility analysis in connection with the rule which was contained in Appendix A to the final rule.

HCFA estimates that the impact of the final rule will be to decrease payments to hospitals by approximately \$530 million in fiscal year 1999.

The final analysis explains the reasons and objectives, as well as the legal bases, for the final rule. It also describes and estimates the number of small entities to which the rule will apply. The prospective payment system will apply to 4,975 hospitals or about 82 percent of all Medicare-participating hospitals. The remaining 18 percent are specialty hospitals (psychiatric, rehabilitation, long-term care, children's, and cancer hospitals) that are excluded from the prospective payment system and continue to be paid on the basis of reasonable costs.

The final analysis provides both a quantifiable description of the effect of the rule and general descriptive statements if quantification is not practicable or reliable. These descriptions include the percent of the changes in payments per case due to changes in the prospective payment system for operating costs.

(ii) 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.

(iii) 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 contained in 5 U.S.C. § 553 and section 1871(b) of the Social Security Act, 42 U.S.C. § 1395hh(b).<sup>1</sup>

HCFA published a Notice of Proposed Rulemaking on May 8, 1998, in the Federal Register (63 Fed. Reg. 25576). It received 214 pieces of correspondence containing comments, which are summarized and responded to in the preamble to the final rule.

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

The final rule does not contain any information collections which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was issued under the Secretary's 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. In addition, many of the rule provisions were mandated by Title 4 of the Balanced Budget Act of 1997 (Pub. L. 105-33, August 5, 1997).

Executive Order No. 12866

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

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<sup>1</sup>With exceptions not pertinent here, section 1871(b) states that before issuing any final rule, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a comment period of at least 60 days.