

### *Section 424.14 Requirements for Inpatient Services of Psychiatric Hospitals*

We propose to amend § 424.14 by adding a new paragraph (c)(3) to state that for recertification a physician must indicate that the patient continues to need, on a daily basis, inpatient psychiatric care (furnished directly by or requiring the supervision of inpatient psychiatric facility personnel) or other professional services that, as a practical matter, can be provided only on an inpatient basis.

We propose to amend § 424.14(d)(2) by removing the word "18th day of hospitalization" and replacing it with "10th day of hospitalization."

### **VII. Collection of Information Requirements**

These regulations do not impose any new information collection requirements. The burden of the requirements in § 412.404(e), reporting and recordkeeping requirements, are captured in the burden for the cross-referenced § 412.27(c), § 413.20, and § 413.24 under OMB approval numbers 0938-0301, 0938-0500, 0938-0358, and 0938-0600.

### **VIII. Response to Comments**

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

### **IX. Regulatory Impact Statement**

#### *A. Overall Impact*

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), and Executive Order 13132).

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). Based on analysis of the aggregate dollar impacts for each of the different facility types, we have determined that the redistributive impact among facility types is \$78 million. In addition, our analysis showed that a payment reduction of \$40 million would occur for psychiatric units and a payment increase of \$10 million would occur for-profit hospitals, \$26 million for government hospitals, and \$2 million for non-profit hospitals. Therefore, we have determined that this proposed rule would not be a major rule within the meaning of Executive Order 12866 because the redistributive effects do not constitute a shift of \$100 million in any 1 year. In addition, because the proposed IPF prospective payment system must be budget neutral in accordance with section 124(a)(1) of Pub. L. 106-113, we estimate that there will be no budgetary impact for the Medicare program (section IX.B.6. of this proposed rule).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$29 million or less in any 1 year. Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

HHS considers that a substantial number of entities are affected if the rule impacts more than 5 percent of the total number of small entities as it does in this rule. We included all freestanding psychiatric hospitals (88 are nonprofit hospitals) in the analysis since their total revenues do not exceed the \$29 million threshold. We also included small psychiatric units as well as psychiatric units of small hospitals, that is, fewer than 100 beds. We did not include psychiatric units within larger hospitals in the analysis because we believe this proposed rule would not significantly impact total revenues of the entire hospital that supports the unit. We have provided the following RFA analysis in section B, to emphasize that although the proposed rule would impact a substantial number of IPFs that were identified as small entities, we do not believe it would have a significant economic impact. Based on the analysis of the 917 psychiatric facilities that were classified as small entities by the

definitions described above, we estimate the combined impact of the proposed rule would be a 1-percent increase in payments relative to their payments under TEFRA. This estimated impact does not meet the threshold established by HHS to be considered a significant impact. Nonetheless, we have prepared the following analysis to describe the impact of the proposed rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. We have determined that this proposed rule would have a substantial impact on hospitals classified as located in rural areas. As discussed earlier in this preamble, we are proposing to adjust payments by 16 percent for IPFs located in rural areas. In addition, we are proposing a 3-year transition to the new system to allow IPFs an opportunity to adjust to the new system. Therefore, the impacts shown in Table 8 below reflect the adjustments that are designed to minimize or eliminate the negative impact that the proposed IPF prospective payment may otherwise have on small rural IPFs.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any proposed rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million or more. This proposed rule does not mandate any requirements for State, local, or tribal governments nor would it result in expenditures by the private sector of \$110 million or more in any 1 year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law.