



441 G St. N.W.
Washington, DC 20548

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August 20, 2013

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Dave Camp
Chairman
The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2014*

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, Centers for Medicare & Medicaid Services (CMS) entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2014" (RIN: 0938-AR65). We received the rule on August 2, 2013. It was published in the *Federal Register* as a final rule on August 6, 2013. 78 Fed. Reg. 47,936.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2014. In addition, it revises and rebases the SNF market basket, revises and updates the labor related share, and makes certain technical and conforming revisions in the regulation text. This final rule also states the policy for reporting the SNF market basket forecast error in certain limited circumstances and adds a new item to the Minimum Data Set (MDS), Version 3.0 for reporting the number of distinct therapy days. Finally, this final rule adopts a change to the diagnosis code used to determine which residents will receive the AIDS add-on payment, effective for services provided on or after the October 1, 2014, the implementation date for conversion to the International Classification of Diseases, 10th revision, Clinical Modification.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was received by Congress on August 2, 2013, and published on August 6, 2013. 159 Cong. Rec. H5395 (Aug. 2, 2013); 78 Fed. Reg. 47,936. The stated effective date for this final rule is October 1, 2013. Therefore, this final rule does not have the required 60-day delay.

Enclosed is our assessment of CMS'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 of the procedural steps taken indicates that CMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Annie Lamb
Regulations Coordinator
Department of Health and Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE & MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR SKILLED
NURSING FACILITIES FOR FY 2014"
(RIN: 0938-AR65)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) summarized the costs, transfers, and benefits of this final rule by estimating that the aggregate impact of the rule will be an increase of \$470 million in aggregate payments to skilled nursing facilities (SNFs) during FY 2014 resulting from the SNF market basket update to the payment rates, as adjusted by the forecast error correction and multifactor productivity adjustment.

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

CMS determined that this final rule will not have a significant economic impact on a substantial number of small entities. CMS also determined that this final rule will not have a significant economic impact on a substantial number of small rural hospitals.

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

CMS determined that this final rule will not impose spending costs on state, local, or tribal governments, in the aggregate, or on the private sector, of \$141 million.

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

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

On May 6, 2013, CMS published a proposed rule. 78 Fed. Reg. 26,438. CMS received 20 timely public comments on the proposed rule from individual providers, corporations, government agencies, private citizens, trade associations, and major organizations, to which CMS responded in the final rule.

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

CMS determined that this final rule contains changes to an existing information collection requirement under the Act. This rule adds Item O0420 to the MDS 3.0 form, capturing the number of distinct calendar days a SNF resident has received therapy across all rehabilitation disciplines in a 7-day look-back period. CMS does not believe that this action will cause any measurable adjustment to its burden estimates.

Statutory authorization for the rule

CMS promulgated this rule under the authority of section 1888(e) of the Social Security Act, as amended. 42 U.S.C. § 1395yy(e).

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

CMS determined that this final rule is economically significant under the Orders. The rule has been reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.