



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

B-328588

November 30, 2016

The Honorable Orrin G. Hatch
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Kevin Brady
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: Medicaid Program; Final FY 2014 and Preliminary FY 2016 Disproportionate Share Hospital Allotments, and Final FY 2014 and Preliminary FY 2016 Institutions for Mental Diseases Disproportionate Share Hospital Limits*

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 “Medicaid Program; Final FY 2014 and Preliminary FY 2016 Disproportionate Share Hospital Allotments, and Final FY 2014 and Preliminary FY 2016 Institutions for Mental Diseases Disproportionate Share Hospital Limits” (RIN: 0938-ZB30). We received the rule on November 16, 2016. It was published in the *Federal Register* as a notice on October 26, 2016, with an effective date of November 25, 2016. 81 Fed. Reg. 74,432.

The notice announces the final federal share disproportionate share hospital (DSH) allotments for federal fiscal year (FY) 2014 and the preliminary federal share DSH allotments for FY 2016. The notice also announces the corresponding limitations on aggregate state DSH payments to institutions for mental disease and other mental health facilities. Additionally, this notice includes background information describing the methodology for determining the amounts of states’ fiscal year DSH allotments.

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 published in the *Federal Register* on October 26, 2016. 81 Fed. Reg. 74,432. It was received November 16, 2016, and has a stated effective date of November 25, 2016. Therefore, the final rule does not have the required 60-day delay in its effective date.

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. With the exception of the 60-day delay in effective date requirement, 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: Agnes Thomas
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
"MEDICAID PROGRAM; FINAL FY 2014 AND PRELIMINARY
FY 2016 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS,
AND FINAL FY 2014 AND PRELIMINARY FY 2016 INSTITUTIONS
FOR MENTAL DISEASES DISPROPORTIONATE
SHARE HOSPITAL LIMITS"
(RIN: 0938-ZB30)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) summarized the costs of this final rule. CMS stated that the final federal fiscal year (FY) 2014 disproportionate share hospital (DSH) allotments are approximately \$11 million more than the preliminary FY 0214 DHS allotments published in the February 28, 2014, *Federal Register*. 79 Fed. Reg. 11,436. The increase in the final FY 2014 DSH allotments is due to the difference between the actual percentage change in the Consumer Price Index for Urban Areas (CIP-U) for FY 2013 used in the calculation of the final FY 2014 allotments.

CMS also stated that the preliminary FY 2016 DSH allotments are about \$36 million more than the preliminary FY 2015 DSH allotments published in the February 2, 2016, *Federal Register*. 79 Fed Reg. 5448. The increase in the FY 2016 DSH allotments is due to the application of the statutory formula for calculating DSH allotments under which the prior fiscal year allotments are increased by the percentage increase in CPI-U for the prior fiscal year.

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

CMS determined that this notice will not have significant economic impact on a substantial number of small entities. Additionally, CMS determined that this notice will not have a significant impact on the operations of 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 found that this notice will have no consequential effect on state, local, or tribal governments, in the aggregate, or on the private sector.

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

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

The Affordable Care Act amended Medicaid DSH provisions, adding section 1923(f)(7) of the Social Security Act which would have required reductions to states' FY DSH allotments beginning with FY 2014, the calculation of which was described in the Disproportionate Share

Hospital Payment Reduction final rule published in the September 18, 2013, *Federal Register*. 78 Fed. Reg. 57,293.

CMS stated that because there are no reductions to DSH allotments for FY 2014 and FY 2016 under section 1923(f)(7) of the Social Security Act, this notice contains only the state-specific final FY 2014 DSH allotments and preliminary FY 2016 DSH allotments, as calculated under the statute without application of the reductions that would have been imposed under the Affordable Care Act.

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

CMS found that this notice does not impose any new or revised information collection or recordkeeping requirements or burden. Therefore, CMS stated that this notice is not subject to the Act.

Statutory authorization for the rule

CMS promulgated this rule under 42 U.S.C. § 1396r-4.

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS determined that this rule is economically significant and prepared a regulatory impact analysis in accordance with the provisions of the Executive Order.

Executive Order No. 13,132 (Federalism)

CMS found that this notice does not impose any costs on state or local governments, and therefore the requirements of the Executive Order are not applicable.