



441 G St. N.W.
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May 5, 2014

The Honorable Ron Wyden
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; Extension of the Payment Adjustment for Low-Volume Hospitals and the Medicare-Dependent Hospital (MDH) Program Under the Hospital Inpatient Prospective Payment Systems (IPPS) for Acute Care Hospitals for Fiscal Year 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; Extension of the Payment Adjustment for Low-Volume Hospitals and the Medicare-Dependent Hospital (MDH) Program Under the Hospital Inpatient Prospective Payment Systems (IPPS) for Acute Care Hospitals for Fiscal Year 2014” (RIN: 0938-AR12). We received the rule on April 22, 2014. It was published in the *Federal Register* as an interim final rule with comment period on March 18, 2014. 79 Fed. Reg. 15,022.

The interim final rule with comment period implements sections 1105 and 1106 of the Pathway for SGR Reform Act of 2013 by making changes to the payment adjustment for low-volume hospitals and to the MDH program under the hospital IPPS for the year ending March 31, 2014. Section 1105 of the Pathway for SGR Reform Act extends changes to the payment adjustment for low-volume hospitals for an additional 6 months, through March 31, 2014.¹ Section 1106 of

¹ Pub. L. No. 113-67, div. B, § 1105, 127 Stat. 1165, 1197 (2013).

the Pathway for SGR Reform Act extends the MDH program for an additional 6 months, through March 31, 2014.²

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). The interim final rule with comment period has a stated effective date of March 14, 2014. Under the rule's stated applicability dates, the provisions of the rule are applicable for discharges on or after October 1, 2013, and on or before March 31, 2014. The rule was received on April 22, 2014, and published in the *Federal Register* on March 18, 2014. Therefore, the final rule does not have the required 60-day delay in effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). CMS found good cause that notice and public procedures were unnecessary and contrary to the public interest in the case of this interim final rule and therefore the 60-day delay is not required.

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: Ann Stallion
Deputy Director
Department of Health and Human Services

² Pub. L. No. 113-67, div. B, § 1106, 127 Stat. 1165, 1197 (2013).

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; EXTENSION OF THE PAYMENT ADJUSTMENT FOR
LOW-VOLUME HOSPITALS AND THE MEDICARE-DEPENDENT HOSPITAL (MDH)
PROGRAM UNDER THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT
SYSTEMS (IPPS) FOR ACUTE CARE HOSPITALS FOR FISCAL YEAR 2014”
(RIN: 0938-AR12)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) estimated the impact of this interim final rule with comment period. The earlier FY 2014 IPPS/LTCH PPS final rule included an impact analysis for the changes to the IPPS included in that rule. 78 Fed. Reg. 51,037 (Aug. 19, 2013). This interim final rule with comment period updates those impacts to the IPPS to reflect the changes made by sections 1105 and 1106 of the Pathway for SGR Reform Act. Pub. L. No. 113-67, div. B, §§ 1105, 1106, 127 Stat. 1165, 1197 (2013). Since these sections were not budget neutral, the overall estimates for hospitals have changed from CMS's estimates that were published in the earlier final rule. CMS estimates that the cumulative changes from both rules will result in an approximate \$1.44 billion increase in total payments to IPPS hospitals relative to fiscal year 2013--rather than the \$1.2 billion increase CMS projected in the earlier final rule. In its accounting statement for this rule, CMS states that the rule will result in estimated annualized monetized transfers from the federal government to IPPS Medicare providers of \$227 million for fiscal year 2014.

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

CMS determined that this interim final rule with comment period will have a significant economic impact on a substantial number of small entities and therefore conducted a final regulatory flexibility analysis. This analysis included a statement of the need for the rule, a discussion of the overall impact of the rule, and the anticipated effects of the rule.

(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 interim final rule with comment period will not mandate any requirements for state, local, or tribal governments, nor will it affect private sector costs.

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

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

CMS found it unnecessary to undertake notice and comment rulemaking for this interim final rule with comment period because it sets forth the requirements for the extension of the temporary changes to the payment adjustment for low-volume hospitals and the MDH program

as prescribed in statute. As the changes outlined in this interim final rule with comment period have already taken effect, it would also be impracticable to undertake notice and comment rulemaking. For the reasons outlined, CMS found good cause to waive the notice of proposed rulemaking for the requirements for the extension of the temporary changes to the payment adjustment for low-volume hospitals and the MDH program as prescribed by statute and issue these provisions on an interim final basis. Even though CMS waived the notice of proposed rulemaking requirements and are issuing these provisions on an interim basis, CMS is providing a 60-day public comment period.

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

CMS determined that this interim final rule with comment period does not impose any information collection or recordkeeping requirements under the Act.

Statutory authorization for the rule

CMS promulgated this interim final rule under the authority of sections 1102, 1862, and 1871 of the Social Security Act. 42 U.S.C. §§ 1302, 1395y, 1395hh.

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

CMS determined that this interim final rule with comment period is economically significant under the Order, and it was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this interim final rule with comment period will not have a substantial effect on state and local governments.