



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

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August 22, 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: Medicare Program; FY 2017 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update*

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; FY 2017 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update” (RIN: 0938-AS76). We received the rule on August 5, 2016. It was published in the *Federal Register* as a notice on August 1, 2016. 81 Fed. Reg. 50,502.

The notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs) (which include freestanding IPFs and psychiatric units of an acute care hospital or critical access hospital). These changes are applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2016, through September 30, 2017 (FY 2017).

The Congressional Review Act 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 final rule has a stated effective date of October 1, 2016. The rule was received on August 5, 2016, and published in the *Federal Register* on August 1, 2016.

81 Fed. Reg. 50,502. 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 delay is 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. §§ 553(d)(3), 808(2). CMS stated that good cause exists for issuing this notice without prior notice and comment because the updates in the notice do not reflect any substantive changes in policy, but merely reflect the application of previously established methodologies. For these reasons, CMS waived notice and comment procedures for good cause under 5 U.S.C. 553(b)(3)(B).

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: 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  
"MEDICARE PROGRAM; FY 2017 INPATIENT PSYCHIATRIC  
FACILITIES PROSPECTIVE PAYMENT SYSTEM—  
RATE UPDATE"  
(RIN: 0938-AS76)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) summarized the impact of this final rule. CMS estimated that the total overall impact of these changes for FY 2017 payments compared to FY 2016 payments will be a net increase of approximately \$100 million. This reflects a \$105 million increase from the update to the payment rates, as well as a \$5 million decrease as a result of the update to the outlier threshold amount. Outlier payments are estimated to decrease from 2.1 percent in FY 2016 to 2.0 percent of total estimated inpatient psychiatric facilities (IPF) payments in FY 2017.

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

Because CMS lacks data on individual hospital receipts, it did not determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, CMS assumed that all IPFs are small entities. CMS estimates that the overall revenue impact of this rule on all IPFs is to increase Medicare payments by approximately 2.2 percent. As a result, since the estimated impact of this final rule is a net increase in revenue across all categories of IPFs, CMS determined that this final rule will have a positive revenue impact on a substantial number of small entities.

(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 by the private sector, of \$146 million (\$100 million adjusted for inflation).

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

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

CMS stated that it ordinarily publishes a notice of proposed rulemaking in the *Federal Register* to provide a period for public comment before the provisions of a rule take effect. Agencies can waive this procedure, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of finding and its reasons in the notice.

CMS found that it was unnecessary to undertake notice and comment rulemaking for this action because the updates in the notice do not reflect any substantive changes in policy, but merely reflect the application of previously established methodologies. Therefore, CMS waived notice and comment procedures for good cause under 5 U.S.C. 553(b)(3)(B).

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

CMS stated that the notice does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget (OMB) under the authority of PRA.

Statutory authorization for the rule

The notice is authorized by section 1886(s) of the Social Security Act, which was added by section 3401(f) of the Patient Protection and Affordable Care Act (Public Law 111-148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

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

CMS states that this notice is designated as economically significant under section 3(f)(1) of Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

CMS states that Executive Order 13,132 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. CMS concluded that this notice would not have a substantial effect on state and local governments.