



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

B-328341

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2017, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, and SNF Payment Models Research*

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 2017, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, and SNF Payment Models Research" (RIN: 0938-AS75). We received the rule on August 5, 2016. It was published in the *Federal Register* as a final rule on August 5, 2016. 81 Fed. Reg. 51,970.

The final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2017. In addition, it specifies a potentially preventable readmission measure for the Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP) and implements requirements for that program, including performance standards, a scoring methodology, and a review and correction process for performance information to be made public, aimed at implementing value-based purchasing for SNFs. Additionally, the final rule includes additional polices and measures in the Skilled Nursing

Facility Quality Reporting Program (SNF QRP). This final rule also responds to comments on the SNF Payment Models Research (PMR) project.

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 rule was received by GAO on August 5, 2016, and it was published in the *Federal Register* on August 5, 2016. 81 Fed. Reg. 51,970. The stated effective date for this final rule is October 1, 2016. Therefore, the final rule does not have the required 60-day delay in 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. Our review of the procedural steps taken indicates that with the exception of the 60-day delay in effective date, 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; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR SKILLED NURSING
FACILITIES FOR FY 2017, SNF VALUE-BASED PURCHASING
PROGRAM, SNF QUALITY REPORTING PROGRAM,
AND SNF PAYMENT MODELS RESEARCH"
(RIN: 0938-AS75)

(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 estimated increase of \$920 million in aggregate payments to skilled nursing facilities (SNFs) during fiscal year (FY) 2017 resulting from the SNF market basket update to the payment rates, as adjusted by the applicable forecast error adjustment and by the multifactor productivity adjustment. CMS noted that there was no attempt to predict behavioral changes to the changes made by the final rule.

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

CMS determined that the final rule will not have a significant impact on a substantial number of small entities or 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 the final rule would not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of \$146 million.

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

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

On April 25, 2016, CMS published a proposed rule. 81 Fed. Reg. 24,230. CMS received 95 public comments from individuals, 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 states the final rule sets out three claims-based measures that it is adopting for the SNF Quality Reporting Program (QRP) beginning with the FY 2018 payment year: (1) Medicare Spending per Beneficiary— post acute care (PAC) SNF QRP; (2) Discharge to Community— PAC SNF QRP; and (3) Potentially Preventable 30-Day Post-Discharge Readmission Measure

for SNF QRP. According to CMS, because they are claims-based, the measures can be calculated using data that are already reported to the Medicare program for payment purposes. Consequently, CMS believes there will be no additional burden on SNFs in connection with the reporting of data needed to calculate these measures.

CMS states that it did not receive any public comments on this topic in response to the FY 2017 SNF PPS proposed rule. According to CMS, although it set out burden estimates, the requirements and associated estimates will not be submitted to the Office of Management and Budget for approval under PRA since the burden estimates are either claims-based or associated with the exemption under section 1899B(m) of the IMPACT Act of 2014. CMS stated that it set out the burden as a courtesy to advise interested parties of the time and costs.

Statutory authorization for the rule

CMS promulgated this rule under the authority of sections 1888(e), (g), (h), and 1899B of the Social Security Act, as amended.

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

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

Executive Order No. 13,132 (Federalism)

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