



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

B-328343

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 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements*

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 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements" (RIN: 0938-AS79). 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. 52,144.

The final rule updates the hospice payment rates for fiscal year (FY) 2017. This rule also finalizes new quality measures and provides an update on the hospice quality reporting program (HQRP). Hospices that have failed to meet quality reporting requirements receive a 2 percent reduction to their payments. This final rule also shares information on the Medicare Care Choices Model to test innovative payment and service models that have the potential to reduce Medicare, Medicaid, or Children's Health Insurance Program (CHIP) expenditures while maintaining or improving the quality of care.

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 has a stated effective date of October 1, 2016. The rule was received and published in the *Federal Register* on August 5, 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. Our review of the procedural steps taken indicates that, other than the 60-day delay, 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 HOSPICE WAGE INDEX  
AND PAYMENT RATE UPDATE AND HOSPICE  
QUALITY REPORTING REQUIREMENTS"  
(RIN: 0938-AS79)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) performed an economic analysis for this final rule. CMS estimates that aggregate payments to hospices in fiscal year (FY) 2017 will increase by \$350 million, or 2.1 percent, compared to payments in FY 2016. This \$350 million is a transfer from the federal government to Medicare hospitals. CMS further estimates that in FY 2017 hospices in urban and rural areas will experience, on average, a 2.1 percent and a 2.0 percent increase, respectively, in estimated payments compared to FY 2016. CMS found that hospices providing services in the urban Pacific and rural Pacific regions would experience the largest estimated increases in payments of 2.7 percent and 2.8 percent, respectively. CMS also found that hospices serving patients in rural areas in the West North Central region would experience the lowest estimated increase of 1.1 percent in FY 2017 payments.

(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 create a significant economic impact on a substantial number of small entities. Further, CMS determined that this final rule 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 does not anticipate this final rule to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$146 million (\$100 million adjusted for inflation) or more.

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

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

On April 28, 2016, CMS published a proposed rule. 81 Fed. Reg. 25,497. CMS received approximately 56 public comments on the proposed rule, including comments from MedPAC, hospice agencies, national provider associations, patient organizations, nurses, and advocacy groups. In the final rule, CMS provided a summary of the public comments received and its responses to them.

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

CMS determined that this final rule contains information collections requirements under the Act. Hospice providers will submit a Hospice Item Set Admission Assessment and a Hospice Item Set Discharge Assessment for each patient admission under Office of Management and Budget (OMB) Control Number 0938-1153. CMS estimates that the total nursing time required for completion of both the admission and discharge assessments is 23 minutes at a rate of \$67.10 per hour. CMS estimates the cost across all hospices for the nursing/clinical time required to complete both the admission and discharge Hospice Item Sets to be \$32,111,417 annually, or \$96,334,252 over 3 years, and the cost to each individual hospice to be \$7,539.66 annually, or \$22,618.98 over 3 years. CMS further estimates that time burden to hospices for a medical data entry clerk to complete the admission and discharge Hospice Item Set assessments is 10 minutes at a rate of \$32.24 per hour. CMS estimates the cost for completion of both the admission and discharge Hospice Item Sets by a medical data entry clerk to be \$6,708,171 across all hospices annually, or \$20,124,514 across all hospices over 3 years, and \$1,575.06 to each hospice annually, or \$4,725.17 to each hospice over 3 years. The total combined time burden for completion of the Admission and Discharge Hospice Item Sets is estimated by CMS to be 33 minutes. The total cost across all hospices is estimated by CMS to be \$38,819,589 annually or \$116,458,766 over 3 years. For each individual hospice, this cost is estimated by CMS to be \$9,114.72 annually or \$27,344.16 over 3 years.

Statutory authorization for the rule

CMS cited sections 1812, 1814, and 1861 of the Social Security Act, as amended, as statutory authority in this final rule. 42 U.S.C. §§ 1395d, 1395f, 1395x.

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

CMS determined that this final rule is economically significant under the Order. This rule was also reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not impose substantial direct costs on state or local governments.