

B-333776

November 30, 2021

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model*

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: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model" (RIN: 0938-AU43). We received the rule on November 9, 2021. It was published in the *Federal Register* as a final rule with comment period (final rule) on November 16, 2021. 86 Fed. Reg. 63458. The stated effective date is January 1, 2022.

According to CMS, this final rule revises the Medicare Hospital Outpatient Prospective Payment System and the Medicare Ambulatory Surgical Center Payment System for calendar year (CY) 2022 based on CMS's continuing experience with these systems. CMS stated that in this final rule, it describes the changes to the amounts and factors used to determine the payment rates for Medicare services paid under the Outpatient Prospective Payment System and those paid under the Ambulatory Surgical Center Payment System. CMS also stated that this final rule updates and refines the requirements for the Hospital Outpatient Quality Reporting Program and

the Ambulatory Surgical Center Quality Reporting Program, updates hospital price transparency requirements, and updates and refines the design of the Radiation Oncology Model.

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 November 16, 2021. 86 Fed. Reg. 63458. The *Congressional Record* does not reflect the date of receipt by either chamber of Congress. The rule has a stated effective date of January 1, 2022. Therefore, based on the date of publication, 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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is fluid and cursive, with "Shirley" on the top line and "A. Jones" on the bottom line.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
Regulations Coordinator

ENCLOSURE

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: HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT
AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEMS
AND QUALITY REPORTING PROGRAMS;
PRICE TRANSPARENCY OF HOSPITAL STANDARD CHARGES;
RADIATION ONCOLOGY MODEL”
(RIN: 0938-AU43)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared accounting statements and tables for this final rule with comment period (final rule). From calendar year (CY) 2021 to CY 2022, CMS estimates that there would be approximately \$1.27 billion in transfers from the federal government to outpatient hospitals and other providers who receive payment under the Medicare Hospital Outpatient Prospective Payment System (OPPS). CMS also estimates that from CY 2021 to CY 2022, there would be approximately \$80 million in transfers from the federal government to Medicare providers and suppliers under the Medicare Ambulatory Surgical Center Payment System (ASCPs). Lastly, CMS estimates that for a period that covers 2022–2026, the Radiation Oncology Model implemented by the final rule would decrease transfers from the federal government to healthcare providers by \$27 million (in 2020 dollars) at a 7 percent discount rate and \$29 million (in 2020 dollars) at a 3 percent discount rate.

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

The Secretary of HHS has determined that this final rule will not have a significant impact on a substantial number of small entities. CMS also stated that the final rule would not have a significant impact on small rural hospitals. CMS stated that its analysis together with other sections of the preamble provides a regulatory flexibility analysis and a regulatory impact analysis.

(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 does not mandate any requirements for state, local, or tribal governments, or for the private sector.

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

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

On August 4, 2021, CMS published a proposed rule. 86 Fed. Reg. 42018. According to CMS, it received 18,864 timely comments. CMS stated that it did not address comments that were

outside the scope of the proposed rule. CMS also stated that it provided a summary and response to comments that were within the scope of the proposed rule throughout various sections of the final rule. In addition, CMS stated that it received 32 timely comments on its CY 2021 OPPS/ASCPS final rule with comment period. 85 Fed. Reg. 85866. CMS stated that most of these comments were out of scope.

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

CMS stated that there are information collection requirements (ICRs) associated with this final rule. CMS also stated that the ICRs associated with this rule are currently approved by the Office of Management and Budget (OMB) and they are included under OMB control numbers 0938-1109 and 0938-1270. CMS stated further that it will submit the revised information collection estimates promulgated by the final rule to OMB for approval. CMS estimates that the updated assumptions and policies under OMB control number 0938-1109 will result in a decrease of 73,344 hours annually for 3,300 OPPS hospitals across a 5-year period. CMS stated that the total cost decrease related to this information collection is approximately \$3,109,786. Lastly, CMS estimates that the policies under OMB control number 0938-1270 will result in an increase of 67,085 hours annually for 4,646 ambulatory surgical centers across a 4-year period. CMS also stated that the total cost increase related to this information collection is approximately \$2,844,404.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to sections 300gg-18, 1302, 1315a, 1395l, and 1395hh of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that this final rule is economically significant under the Order and that it was reviewed by OMB.

Executive Order No. 13132 (Federalism)

CMS determined that this final rule will not have a substantial direct effect on state, local or tribal governments, preempt state law, or otherwise have a Federalism implication.