The Honorable Tom Harkin  
Chairman  
The Honorable Lamar Alexander  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
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, Office of the Secretary: Administrative Simplification: Change to the Compliance Date for the International Classification of Diseases, 10th Revision (ICD-10-CM and ICD-10-PCS) Medical Data Code Sets  

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 (HHS), Office of the Secretary entitled “Administrative Simplification: Change to the Compliance Date for the International Classification of Diseases, 10th Revision (ICD-10-CM and ICD-10-PCS) Medical Data Code Sets” (RIN: 0938-AS31). We received the rule on July 31, 2014. It was published in the Federal Register as a final rule on August 4, 2014. 79 Fed. Reg. 45,128.  

The final rule changes the compliance date for the International Classification of Diseases, 10th Revision (ICD-10) for diagnosis and procedure coding, from October 1, 2014, to October 1, 2015. The final rule also requires the continued use of the International Classification of Diseases, 9th Revision (ICD-9) through September 30, 2015.  

The final rule has an effective date of September 3, 2014. 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). We received the rule on July 31, 2014, and the rule was published in the Federal Register on August 4, 2014. Therefore, the final rule does not have the required 60-day delay in
its 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). HHS found good cause to waive the normal notice and comment rulemaking procedures based on its determination that they are impracticable and contrary to the public interest. HHS stated in the final rule that HHS believes waiving normal notice and comment rulemaking requirements is justified because covered entities subject to the final rule need adequate time to prepare to accurately submit, process, and pay for health care claims.

Enclosed is our assessment of HHS’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 HHS 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

(i) Cost-benefit analysis

HHS did a cost-benefit analysis in conjunction with the final rule. HHS estimated there would be a significant cost to industry from a delay in the compliance date for ICD-10 coding, because commercial health plans, medium and large hospitals, and large physician practices were far along in their implementation and had devoted funds, resources, and staff to the effort. HHS estimated that a 1-year delay of the compliance date would add a range of 10 to 30 percent to the total cost that the private entities had already spent or budgeted for the transition. HHS estimates that the cost of the 1-year delay to the Health Insurance Portability and Accountability Act covered entities will be $1.1 to $6.8 billion. HHS determined that a 1-year delay, as opposed to a longer delay, would be the least costly way and most fiscally responsible way to implement the requirements of section 212 of the Protecting Access to Medicare Act of 2014, which authorized this final rule.

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

HHS certified that the final rule will not have a significant economic 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

HHS determined that the final rule contains a mandate that would likely impose spending costs on the healthcare industry of more than $141 million. Those costs are discussed as part of the cost-benefit analysis described above.

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

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

The Administrative Procedure Act requires agencies to publish a notice of proposed rulemaking as part of the rulemaking process. 5 U.S.C. § 553. An agency may waive the normal rulemaking requirements if the agency finds that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. HHS stated in the final rule that HHS believes waiving normal notice and comment rulemaking requirements is justified because covered entities subject to the final rule need adequate time to prepare to accurately submit,
process, and pay for health care claims. As a result, HHS found good cause to waive the normal notice and comment rulemaking procedures, as they are impracticable and contrary to the public interest.

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

HHS stated that the final rule does not contain information collection and recordkeeping requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by section 212 of the Protecting Access to Medicare Act of 2014, Pub. L. No. 113-93.

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

HHS determined that the final rule is economically significant under the Executive Order and prepared a cost-benefit analysis in conjunction with the final rule.

Executive Order No. 13,132 (Federalism)

HHS stated that it does not anticipate that the final rule will have a significant economic impact on state and local governments, preempt state laws, or otherwise have federalism implications.