November 21, 2014

The Honorable Ron Wyden
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry 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, Centers for Medicare & Medicaid Services: Medicare and Medicaid Programs; CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies

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 and Medicaid Programs; CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies” (RIN: 0938-AS14). We received the rule on October 30, 2014. It was published in the Federal Register as a final rule on November 6, 2014. 79 Fed. Reg. 66,032.

The final rule updates Home Health Prospective Payment System (HH PPS) rates, including the national, standardized 60-day episode payment rates, the national per-visit rates, and the non-routine medical supply (NRS) conversion factor under the Medicare prospective payment system for home health agencies (HHAs), effective for episodes ending on or after January 1, 2015. As required by the Affordable Care Act, the final rule also implements the second year of the 4-year phase-in of the rebasing adjustments to the HH PPS payment rates.
The final rule has an effective date of January 1, 2015. 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 October 30, 2014, but the rule was not published in the Federal Register until November 6, 2014. 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, 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: Annie Lamb
    Regulations Coordinator
    Department of Health and Human Services
(i) Cost-benefit analysis

CMS performed a cost-benefit analysis in conjunction with the final rule. CMS estimated that the net impact of this final rule is a decrease in Medicare payments to HHAs of $60 million for CY 2015. The $60 million decrease in estimated payments for CY 2015 reflects the distributional effects of the 2.1 percent CY 2015 home health payment update percentage ($390 million increase) and the second year of the 4-year phase-in of the rebasing adjustments required by section 3131(a) of the Affordable Care Act ($450 million decrease). Also, starting in CY 2015, certifying physicians are estimated to incur a net reduction in burden costs of $21,796,330, and HHAs are expected to incur a one-time increase in burden costs to revise the certification form of $245,397 as a result of the elimination of the face-to-face encounter narrative requirement.

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

CMS determined that all home health agencies are small entities for purposes of the Regulatory Flexibility Act and that the final rule will 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

CMS determined that the final rule is not anticipated to have an effect on state, local, or tribal governments in the aggregate, or by the private sector, of $141 million or more in calendar year 2015.

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

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

CMS published a notice of proposed rulemaking in the Federal Register on July 7, 2014. 79 Fed. Reg. 38,366. CMS received approximately 337 timely comments in response to the rule, including comments from various trade associations, HHAs, individual registered nurses, physicians, clinicians, therapists, therapy assistants, health care industry organizations, and health care consulting firms. CMS responded to the comments in the final rule. 79 Fed. Reg. 66,032.
Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements under the Paperwork Reduction Act. The requirements in the final rule consist of proposed changes to requirements approved under OMB control number 0938-1083. The final rule changes the face-to-face encounter requirements in current regulations and will result in an estimated net reduction in burden for certifying physicians of 192,765 hours or $21,796,330. The changes to the face-to-face encounter requirements will result in a one-time burden for HHAs to revise the certification form of 5,761 hours or $245,397.

Statutory authorization for the rule

The final rule is authorized by sections 1102, 1871, and 1895 of the Social Security Act, 42 U.S.C. 1302, 1395hh, and 1395fff.

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

The final rule was designated an economically significant rule under the Executive Order. Accordingly, the rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS has determined that the final rule will not have substantial direct effects on the rights, roles, and responsibilities of state, local, or tribal governments.