



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

B-327284

August 19, 2015

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 Paul Ryan
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 (SNFs) for FY 2016, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, and Staffing Data Collection*

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 (SNFs) for FY 2016, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, and Staffing Data Collection" (RIN: 0938-AS44). We received the rule on July 31, 2015. It was published in the *Federal Register* as a final rule on August 4, 2015. 80 Fed. Reg. 46,390.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2016. In addition, it specifies a SNF all-cause all-condition hospital readmission measure and adopts that measure for a new SNF Value-Based Purchasing (VBP) Program. The rule also includes a discussion of the SNF VBP Program's policies CMS is considering for future rulemaking to promote higher quality and more efficient health care for Medicare beneficiaries. Additionally, the final rule will implement a new quality reporting program for SNFs as specified in the Improving Medicare Post-Acute Care Transformation Act of 2014. It also amends the requirements that a long-term care facility must

meet to qualify to participate as a skilled nursing facility in the Medicare program, or a nursing facility in the Medicaid program, by establishing requirements that implement the provision in the Patient Protection and Affordable Care Act regarding the submission of staffing information based on payroll data.

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 received by Congress on July 31, 2015, and published on August 4, 2015. 161 Cong. Rec. H5787 (Aug. 4, 2015); 80 Fed. Reg. 46,390. The stated effective date for this final rule is October 1, 2015, with the exception of provisions in § 483.75(u), which are effective on July 1, 2016. To the extent this rule is effective on October 1, 2015, it does not have the required 60-day delay.

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. With the exception of the 60-day delay in effective date, our review of the procedural steps taken indicates that 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: Ann Stallion
Deputy Director/ODRM
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 (SNFs) FOR FY 2016,
SNF VALUE-BASED PURCHASING PROGRAM, SNF QUALITY
REPORTING PROGRAM, AND STAFFING DATA COLLECTION”
(RIN: 0938-AS44)

(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 \$430 million in aggregate payments to skilled nursing facilities (SNFs) during fiscal year (FY) 2016 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 \$144 million.

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

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

On April 20, 2015, CMS published a proposed rule. 80 Fed. Reg. 22,044. CMS received 53 timely 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 that in the FY 2016 SNF prospective payment system (PPS) proposed rule (80 Fed. Reg. 22,082), it solicited public comment on that rule's information collection requirements as they relate to PRA. According to CMS, of all of the comments received on the proposed rule, only one was related to its position that all of the proposed information collection requirements were exempt from PRA. CMS states that, consistent with the proposed rule, the final rule

maintains that the information collection requirements are exempt from PRA. CMS referred readers to the FY 2016 SNF PPS proposed rule for details.

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 Nos. 12,866 and 13,563 (Regulatory Planning and Review)

CMS determined that this final rule is economically significant under the Orders. 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.