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B-328342

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2017*

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2017" (RIN: 0938-AS78). 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. 52,056.

The final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for federal fiscal year (FY) 2017. This rule includes the classification and weighting factors for the IRF prospective payment system's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2017. This final rule also revises and updates quality measures and reporting requirements under the IRF quality reporting program.

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; INPATIENT REHABILITATION FACILITY
PROSPECTIVE PAYMENT SYSTEM FOR
FEDERAL FISCAL YEAR 2017"
(RIN: 0938-AS78)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid (CMS) performed an economic analysis of this final rule. CMS estimated that this final rule will result in transfers of \$145 million from the federal government to Medicare providers that are inpatient rehabilitation facilities (IRFs) in fiscal year (FY) 2017. CMS also estimated that the costs for IRFs to submit data for the quality reporting program will be \$5,231,398.17. Overall, CMS projects the estimated payments per discharge for IRFs in FY 2017 will increase by 1.9 percent, compared with the estimated payments in FY 2016. CMS further estimates that IRF payments per discharge will increase by 2.0 percent in urban areas and 1.2 percent in rural areas, compared with estimated FY 2016 payments. CMS estimates that payments per discharge to rehabilitation units will increase 2.2 percent in urban areas and 1.5 percent in rural areas. In addition, CMS estimates that payments per discharge to freestanding rehabilitation hospitals will increase 1.8 percent in urban areas and 0.0 percent in rural areas. Overall, CMS estimates IRFs will experience a net increase in payments as a result of the proposed policies in this final rule.

(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 have a significant impact on a substantial number of small entities. CMS further determined that this final rule will not have a substantial impact of a significant 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 determined that this final rule will not mandate spending costs on state, local, or tribal governments, in the aggregate, or by the private sector, of greater than \$146 million (\$100 million adjusted for inflation).

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

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

On April 25, 2016, CMS published a proposed rule. 81 Fed. Reg. 24,178. CMS received 61 timely responses from the public, many of which contained multiple comments, including comments from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, health care industry organizations, and health care consulting

firms. CMS provided a summary of the public comments that it received, and its responses in the final rule.

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

CMS determined that this final rule contains information collection requirements under the Act. In this final rule, CMS adopted five new measures associated with data collection and reporting for its quality reporting program. CMS stated that it made its burden estimates in accordance with Office of Management and Budget (OMB) Control Number 0938-0842. CMS estimates that the total cost related to the newly proposed measures will be \$4,625.46 per IRF annually, or \$5,231,398.17 for all IRFs annually.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of sections 1102, 1871, and 1886 of the Social Security Act and section 124 of Public Law 106–113. 42 U.S.C. §§ 1302, 1395hh, 1395ww, 1395ww note; Pub. L. No. 106-113, App. F, § 124, 113 Stat. 1501, 1501A-332 (Nov. 29, 1999).

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

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

Executive Order No. 13,132 (Federalism)

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