



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-330308

September 4, 2018

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

The Honorable Greg Walden
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

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

Subject: *Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2019 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs (Promoting Interoperability Programs) Requirements for Eligible Hospitals, Critical Access Hospitals, and Eligible Professionals; Medicare Cost Reporting Requirements; and Physician Certification and Recertification of Claims*

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 and Medicaid Services (CMS) entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2019 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs (Promoting Interoperability Programs) Requirements for Eligible Hospitals, Critical Access Hospitals, and Eligible Professionals; Medicare Cost Reporting Requirements; and Physician Certification and Recertification of Claims” (RIN: 0938-AT27). We received the rule on August 6, 2018. It was published in the *Federal Register* as a final rule August 17, 2018. 83 Fed. Reg. 41,144. The effective date of the final rule is October 1, 2018.

The final rule revises the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital-related costs of acute care hospitals to implement changes arising from CMS's continuing experience with these systems for FY 2019. CMS stated that some of these changes implement certain statutory provisions contained in the 21st Century Cures Act and the Bipartisan Budget Act of 2018 and other legislation. CMS stated that it is also making changes relating to Medicare graduate medical education (GME) affiliation agreements for new urban teaching hospitals.

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). The rule was received by Congress on August 7, 2018, and was published in the *Federal Register* on August 17, 2018. 83 Fed. Reg. 41,144. The rule has a stated effective date of October 1, 2018. 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. 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

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 AND MEDICAID SERVICES
ENTITLED

“MEDICARE PROGRAM; HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS FOR
ACUTE CARE HOSPITALS AND THE LONG-TERM CARE HOSPITAL PROSPECTIVE
PAYMENT SYSTEM AND POLICY CHANGES AND FISCAL YEAR 2019 RATES; QUALITY
REPORTING REQUIREMENTS FOR SPECIFIC PROVIDERS; MEDICARE AND MEDICAID
ELECTRONIC HEALTH RECORD (EHR) INCENTIVE PROGRAMS (PROMOTING
INTEROPERABILITY PROGRAMS) REQUIREMENTS FOR ELIGIBLE HOSPITALS, CRITICAL
ACCESS HOSPITALS, AND ELIGIBLE PROFESSIONALS; MEDICARE COST REPORTING
REQUIREMENTS; AND PHYSICIAN CERTIFICATION AND RECERTIFICATION OF CLAIMS”
(RIN: 0938-AT27)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) estimated the costs and benefits of this final rule. CMS stated that the applicable percentage increase to the inpatient prospective payment systems (IPPS) required by statute in conjunction with other payment changes in this final rule will result in an estimated \$4.8 billion increase in FY 2019 payments, primarily driven by a combined \$4.4 billion increase in FY 2018 operating payments and uncompensated care payments, and a combined \$0.4 billion increase in FY 2019 capital payments, new technology add-on payments, and low-volume hospital payments.

CMS stated that the changes in this final rule will further the goals of the IPPS, which include creating incentives for hospitals to operate efficiently and minimize unnecessary costs, while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs in delivering necessary care to Medicare beneficiaries.

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

CMS believes that the provisions of this final rule relating to acute care hospitals will have a significant impact on small entities. CMS discussed a range of policies, provided descriptions of the statutory provisions that are addressed, identified the finalized policies, and presented rationales for CMS's decisions and, where relevant, alternatives were considered. CMS identified these discussions as constituting its Regulatory Flexibility 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 will not mandate any requirements for state, local, or tribal governments, and that it will not affect private sector costs.

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

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

On May 7, 2018, CMS published a proposed rule. 83 Fed. Reg. 20,164. In the final rule, CMS summarized public comments received, presented responses, and stated its final determinations on those issues.

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

CMS determined that in accordance with PRA, it solicited public comment in the proposed rule on the sections of this final rule that contain information collection requirements. CMS discussed the finalized proposals to the information collection requests in the final rule and provided a table in the final rule summarizing the burden estimates.

Statutory authorization for the rule

CMS stated that it promulgated this final rule pursuant to 42 U.S.C. §§ 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww; sections 123 and 124 of subtitle A of title I of Public Law (Pub. L.) 106–113 (113 Stat. 1501A–332); section 307 of subtitle A of title III of Pub.L. 106–554; section 114 of 110–173; section 4302 of Pub. L. 111–5; sections 3106 and 10312 of Pub. L. 111–148; section 1206 of Pub. L. 113–67; section 112 of Pub. L. 113–93; section 231 of Pub. L. 114–113; sections 15004, 15006, 15007, 15008, 15009, and 15010 of Pub. L. 114–255; and section 51005 of Division E of title X of Pub. L. 115–123.

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

CMS found that this final rule is economically significant under the Order. CMS stated that the rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS stated that it examined the impacts of this final rule as required by the Order.