



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

B-331317

August 27, 2019

The Honorable Chuck Grassley  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

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

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

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; FY 2020 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements*

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; FY 2020 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements" (RIN: 0938-AT71). We received the rule on August 14, 2019. It was published in the *Federal Register* as a final rule on August 6, 2019. 84 Fed. Reg. 38484. The effective date of the rule is October 1, 2019.

According to CMS, the final rule updates the hospice wage index, payment rates, and cap amount for fiscal year 2020. CMS states that the rule also rebases the continuous home care, general inpatient care, and the inpatient respite care per diem payment rates in a budget-neutral manner to more accurately align Medicare payments with the costs of providing care. In addition, CMS states that the rule modifies the election statement by requiring an addendum that includes information aimed at increasing coverage transparency for a patient under a hospice election. Finally, the rule includes changes to the Hospice 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). The final rule was published in the *Federal Register* on August 6, 2019. 84 Fed. Reg. 38484. The rule has a stated effective date of October 1, 2019. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II  
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; FY 2020 HOSPICE WAGE INDEX  
AND PAYMENT RATE UPDATE AND  
HOSPICE QUALITY REPORTING REQUIREMENTS”  
(RIN: 0938-AT71)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) estimates that aggregate payments to hospitals in Fiscal Year (FY) 2020 will increase by \$520 million, or 2.6 percent, compared to payments in FY 2019. CMS estimates that in FY 2020, hospices in urban and rural areas will experience, on average, 2.7 percent and 1.8 percent increases, respectively, in estimated payments compared to FY 2019. Hospices providing services in the South Atlantic, Middle Atlantic, and East North Central regions will experience the largest estimated increases in payments of 4.5 percent, 2.6 percent, and 2.6 percent, respectively. Hospices serving patients in the West North Central and outlying regions would experience, on average, the lowest estimated increases of 1.4 percent and –0.3 percent, respectively, in FY 2020 payments.

(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 create a significant economic impact on a substantial number of small entities. CMS also determined that this rule will not have a significant impact on the operations of a substantial 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

The agency determined that the rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$154 million or more.

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

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

On April 25, 2019, CMS published a proposed rule. 84 Fed. Reg. 17570. CMS received comments on the proposed rule from individual commenters, hospices, industry associations, and other stakeholders, including comments from the Medicare Payment Advisory Commission. CMS summarized comments and provided responses in the rule.

CMS also noted that the final rule incorporated certain conforming changes that were not proposed in the proposed rule, and that it was adopting them under a “good cause” waiver of proposed rulemaking. CMS stated that the specific changes in the regulations codify the final policies that were described in the proposed rule and do not reflect any substantive changes.

Therefore, CMS found that undertaking further notice and comment procedures to incorporate these corrections in the final rule was unnecessary and contrary to the public interest.

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

CMS determined that this final rule contains information collection requirements (ICRs) under the Act. CMS solicited public comment on ICRs arising from an aspect of the rule that, according to CMS, modifies the hospice election statement by requiring an addendum that includes information aimed at increasing coverage transparency for patients under a hospice election. CMS states that it is finalizing regulations which will require an election statement addendum entitled “Patient Notification of Hospice Non-Covered Items, Services, and Drugs” that must be issued, on request, to the patient (or representative) within 5 days of the hospice election in order to ensure, according to CMS, that Medicare beneficiaries are fully informed as to whether all items, services, and drugs identified on the hospice plan of care will be furnished by the hospice. In the rule, CMS estimated the burden for one-time form development by each hospice, the burden for the hospice to complete the addendum for each hospice election, and the burden reduction for non-hospice providers with use of the addendum. CMS states that it submitted a copy of this final rule to the Office of Management and Budget (OMB) for its review of the rule’s information collection and recordkeeping requirements, and states that the requirements are not effective until they have been approved by OMB.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of 42 U.S.C. §§ 1302, 1395hh.

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

CMS estimates that this rulemaking is economically significant as measured by the \$100 million threshold in the Order. The rule was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not impose substantial direct costs on state or local governments.