



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

B-331301

August 20, 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2020*

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; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2020” (RIN: 0938-AT75). We received the rule on August 2, 2019. It was published in the *Federal Register* as a final rule on August 7, 2019. 84 Fed. Reg. 38728. The stated effective date of the rule is October 1, 2019.

The final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2020. The rule also amends existing regulation to reflect the revised assessment schedule under the Patient Driven Payment Model (PDPM). Additionally, the rule revises the definition of group therapy under the SNF PPS and implements a subregulatory process for updating the code lists—the International Classification of Diseases, Tenth Version codes—used under the PDPM. In addition, the final rule updates the requirements of the SNF Quality Reporting Program and the SNF Value-Based Purchasing Program.

The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of the 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 the House of Representatives on August 2, 2019, and published in the *Federal Register* on August 7, 2019. 165 Cong. Rec. H7492 (Aug. 6, 2019); 84 Fed. Reg. 38728. The rule has a stated effective date of October 1, 2019. Therefore the 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; PROSPECTIVE PAYMENT SYSTEM AND  
CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES;  
UPDATES TO THE QUALITY REPORTING PROGRAM  
AND VALUE-BASED PURCHASING PROGRAM  
FOR FEDERAL FISCAL YEAR 2020”  
(RIN: 0938-AT75)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) estimates that the overall payments for skilled nursing facilities (SNFs) under this final rule will increase by approximately \$851 million, or 2.4 percent, compared with those in fiscal year (FY) 2019. This \$851 million is a transfer from the federal government to SNF Medicare providers. CMS estimates that in FY 2020 under this rule, SNFs in urban and rural areas will experience, on average, a 1.7 percent increase and 6.2 percent increase, respectively, in payments compared with FY 2019. CMS also estimates that providers in the urban outlying region will experience the largest increase in payments of approximately 60.5 percent and providers in the urban Middle Atlantic region will experience the largest decrease in payments of 0.8 percent.

CMS also estimates that under this rule the cost for SNFs to submit data for the SNF Quality Reporting Program (QRP) will be \$29 million and that costs associated with this program will occur in FY 2021 and likely continue into future years. Finally, CMS estimates that under this rule the FY 2020 SNF Value-Based Purchasing Program will result in transfers from the federal government to SNF Medicare providers of \$320.4 million.

(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 for FY 2020. CMS also determined that this final rule will not have a significant impact on a substantial number of small rural hospitals for FY 2020.

(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 impose no mandates on state, local, or tribal governments or on the private sector.

(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. 17620. CMS received 63 public comments from individuals, providers, corporations, government agencies, private citizens, trade associations, and major organizations. CMS responded to comments in the final rule.

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

CMS stated that it intends to submit certain changes to the Office of Management and Budget (OMB) regarding the information collection requirement currently approved under OMB Control Number 0938–1140. According to CMS, the changes do not impose any new or revised burden, but they revise CMS’s SNF QRP requirements by adding 59.5 items across the prospective payment system 5-day and PPS discharge assessments. CMS adjusted the costs to account for more recent wage data. CMS estimates that total number of responses and total burden hours related to OMB Control Number 0938–1140 will remain 4,905,042 and 4,169,286 respectively, but the total cost will increase by \$7,455,663—from \$280,421,251 to \$287,876,914.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of sections 1302, 1395d(d), 1395f(b), 1395g, 1395l, 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww of title 42, United States Code; section 124 of Public Law 106-113; section 3201 of Public Law 112-96; section 632 of Public Law 112-240; section 217 of Public Law 113-93; section 204 of Public Law 113-295; and section 808 of Public Law 114-27.

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

CMS determined that this final rule is economically significant under the Order, and it has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.