



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

B-331465

October 16, 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

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicaid Program; State Disproportionate Share Hospital Allotment Reductions*

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 "Medicaid Program; State Disproportionate Share Hospital Allotment Reductions" (RIN: 0938-AS63). The House of Representatives received the rule on September 25, 2019. 165 Cong. Rec. H8092 (daily ed. Oct. 4, 2019). The *Congressional Record* does not reflect the date of receipt by the Senate. We received the rule on October 1, 2019. It was published in the *Federal Register* as a final rule on September 25, 2019. 84 Fed. Reg. 50308. The effective date of the rule is November 25, 2019.

This final rule establishes the Disproportionate Share Hospital (DSH) Health Reform Methodology (DHRM) for the 2020 fiscal year. It also defines "total hospital cost" and clarifies state data submission requirements. Under this rule CMS will use the total estimated Medicaid service expenditures in the calculation of the Low DSH Adjustment Factor. The rule adjusts the weighting of statutorily defined factors required to be included in the DHRM. Finally, this rule removes reference to certain fiscal years.

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

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 & MEDICAID SERVICES
ENTITLED
“MEDICAID PROGRAM; STATE DISPROPORTIONATE
SHARE HOSPITAL ALLOTMENT REDUCTIONS”
(RIN: 0938-AS63)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS) estimates the total annualized reduction transfers in disproportionate share hospital (DSH) allotments from the federal government to the states due to the assumed reduced number of uninsured and uncompensated care is -\$7,215.7 million, assuming a 7 percent discount rate, and -\$7,283.1, assuming a 3 percent discount rate.

HHS stated it anticipates that the DSH allotment reductions will have a direct effect on the ability for some or all states to maintain state-wide Medicaid DSH payments at fiscal year (FY) 2017 levels. HHS also states that this final rule will reduce state DSH allotments by \$44 billion for FY 2020 through FY 2025. Under this rule, HHS further anticipates that certain providers will be affected through the reduction of state DSH payments that states would need to implement in order to comply with their reduced annual state DSH allotments. However, HHS states that it cannot predict how this rule would affect individual providers or specific groups of providers.

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

HHS certifies that this final rule will not have a significant economic impact on a substantial number of small entities (including hospitals and providers). HHS also certifies that this final 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

HHS determined that this final rule will not mandate any requirements for state, local, or tribal governments, nor will it 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 July 28, 2017, HHS published a proposed rule. 82 Fed. Reg. 35155. HHS received 140 public comments on the proposed rule from organizations, individuals, health care providers, advocacy groups, and states. HHS described each proposed provision, summarized the public comments received on each provision, and responded to the comments.

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

HHS determined that this final rule contains no new or revised information collection requirements under the Act and that the rule need not be reviewed by the Office of Management and Budget (OMB) under the Act.

Statutory authorization for the rule

HHS promulgated this final rule under sections 1302 and 1396r-8 of title 42, United States Code.

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

HHS determined that it is economically significant under the Order and stated that it submitted this final rule to OMB for review.

Executive Order No. 13,132 (Federalism)

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