



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

B-331585

November 25, 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 and Medicaid Programs; CY 2020 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; Home Health Quality Reporting Requirements; and Home Infusion Therapy 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 and Medicaid Programs; CY 2020 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; Home Health Quality Reporting Requirements; and Home Infusion Therapy Requirements" (RIN: 0938-AT68). We received the rule on November 5, 2019. It was published in the *Federal Register* as a final rule with comment period on November 8, 2019. 84 Fed. Reg. 60478. The effective date of the rule is January 1, 2020.

The final rule updates the home health prospective payment system (HH PPS) payment rates and wage index for calendar year (CY) 2020 and implements the patient driven groupings model, a revised case-mix adjustment methodology, for home health services. The final rule also implements a change in the unit of payment from 60-day episodes of care to 30-day periods of care, and finalizes a 30-day payment amount for CY 2020. In addition, the final rule modifies the payment regulations pertaining to the content of the home health plan of care,

allows therapist assistants to furnish maintenance therapy, and changes the split percentage payment approach under HH PPS. For the home health value based purchasing (HHVBP) model, the rule finalizes provisions regarding public reporting requirements. For the home health quality reporting program (HH QRP), the rule finalizes several updates and a proposal to re-designate the current HH QRP regulations in a different section of the regulations and codify other current policies in that new regulatory section. Lastly, the final rule makes routine updates to the home infusion therapy payment rates for CY 2020, payment provisions for home infusion therapy payment rates for CY 2021 and subsequent years, and solicits comments on options to enhance future efforts to improve policies related to coverage of eligible drugs for home infusion therapy.

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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons for the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). CMS stated that the notice-and-comment procedures are contrary to the public interest because the specific changes made to the regulations are simply technical corrections in the language and do not reflect any additional substantive changes.

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 AND MEDICAID PROGRAMS; CY 2020 HOME HEALTH PROSPECTIVE  
PAYMENT SYSTEM RATE UPDATE; HOME HEALTH VALUE-BASED PURCHASING  
MODEL; HOME HEALTH QUALITY REPORTING REQUIREMENTS;  
AND HOME INFUSION THERAPY REQUIREMENTS”  
(RIN: 0938-AT68)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimates that the overall economic impact of the home health prospective payment system (HH PPS) payment rate update is \$250 million in increased payments to home health agencies (HHAs) in calendar year (CY) 2020. CMS also estimates that the overall economic impact of the home health value based purchasing model for CYs 2018 through 2022 is \$378 million in total savings to Medicare from a reduction in necessary hospitalizations and skilled nursing facility usage as a result of greater quality improvements to the home health industry. For the new home health quality reporting program (HH QRP) requirements, CMS stated that the total addition in costs beginning in CY 2021 is estimated to be \$171.7 million. For the CY 2020 temporary transitional payments for home infusion therapy services, CMS stated that the overall economic impact is an estimated \$1.2 million decrease in payments to home infusion therapy suppliers. In addition, CMS estimates that the overall economic impact of the CY 2021 payments for home infusion therapy services is \$2 million in decreased payments to eligible home infusion therapy suppliers.

Additionally, CMS stated that the benefits of the CY 2020 HH PPS payment rate update is to ensure home health payments are consistent with statutory payment authority for CY 2020. For the CY temporary transitional payments for home infusion therapy services, CMS stated that the benefits are to ensure such payments are consistent with statutory authority for CY 2020. Lastly, CMS stated that the benefit of the CY 2021 payments for home infusion therapy services is to ensure that such payments are consistent with statutory authority for CY 2021.

(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 have a significant economic impact on a substantial number of small entities. CMS prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of need, (2) a description of the overall impact, (3) a description of the anticipated effects, (4) a detailed economic analysis, and (5) a description of alternatives considered. CMS also determined that this final rule will not have a significant economic impact on the operations 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 is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$150 million or more.

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

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

CMS solicited comments on certain portions of this final rule, such as the durable medical equipment portion. In addition, CMS noted that it had received comments related to certain other provisions, such as the patient-driven groupings model and the rural add-on payments for CYs 2020 through 2022.

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

CMS stated that this final rule will increase burdens under an existing information collection requirement (ICR), which was assigned control number 0938-1279 by the Office of Management and Budget (OMB). CMS estimates this final rule will increase the total annual burden by \$171,705,794.10 for all HHAs annually.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to sections 1302, 1395, 1395hh, and 1395rr of title 42, United States Code.

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

CMS estimates that this final rule is economically significant under the Order.

Executive Order No. 13,132 (Federalism)

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