



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

B-332481

September 14, 2020

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 2021 Hospice Wage Index and Payment Rate Update*

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 (HHS), Centers for Medicare & Medicaid Services (CMS) entitled "Medicare Program; FY 2021 Hospice Wage Index and Payment Rate Update" (RIN: 0938-AU09). We received the rule on August 28, 2020. It was published in the *Federal Register* as a final rule on August 4, 2020. 85 Fed. Reg. 47070. The stated effective date of the final rule is October 1, 2020.

The agency states that the final rule updates the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2021. According to the agency, this rule also revises the hospice wage index to reflect the current Office of Management and Budget area delineations, with a 5 percent cap on wage index decreases. In addition, the agency states that this rule responds to comments on the modified election statement and the addendum examples that were posted on the Hospice Center webpage to assist hospices in understanding the content requirements finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, effective for hospice elections beginning on and after October 1, 2020.

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). This final rule was published in the *Federal Register* on August 4, 2020. 85 Fed. Reg. 47070. The *Congressional Record* indicates the Senate received the final rule on September 2, 2020, but does not indicate when the House received the rule. 166 Cong. Rec. S5548 (daily ed. Sept. 10, 2020). The agency provided delivery confirmation showing the House of Representatives received the final rule on September 1, 2020. E-mail from Deputy Director, Office of Documents and Regulations Management, HHS, to Senior Attorney, GAO, *Subject: RIN 0938-AU09 - Hospice Wage Index* (Sept. 4, 2020). The final rule has a stated effective date of October 1, 2020. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

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 2021 HOSPICE WAGE INDEX
AND PAYMENT RATE UPDATE”
(RIN: 0938-AU09)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) has prepared an accounting statement showing an estimated \$540 million in transfers to hospices in fiscal year (FY) 2021. All expenditures are classified as transfers to hospices.

For FY 2021, CMS estimates the annualized net burden for hospice providers with the one-time form development and completion of election statement addendum to be \$12.8 million. According to CMS, this burden is slightly higher than the estimated \$11.3 million in the FY 2020 Hospice Wage Index and Payment Rate Update final rule primarily because there were more eligible hospice elections using FY 2019 hospice claims data compared to the FY 2017 hospice claims data used in the previous calculation. CMS estimates the annualized monetized net reduction in burden for non-hospice providers with the regulations change at 42 C.F.R. § 418.24, Election Statement Addendum, to be \$19.3 million. According to CMS, this would result in a total annualized net reduction in burden with the election statement addendum in FY 2021 to be \$6.5 million. CMS states that this updated estimate is not included in the accounting statement in this final rule because the agency included these burden estimates in the accounting statement in the FY 2020 Hospice Wage Index and Payment Rate Update final rule. 84 Fed. Reg. 38543.

(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 has also determined that the 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

CMS determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$156 million (\$100 million, adjusted for inflation) 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 15, 2020, CMS published a proposed rule. 85 Fed. Reg. 20953. CMS received comments from various stakeholders including hospices, national industry associations, MedPAC, and others. CMS summarized and responded to comments in this final rule.

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

CMS determined that this final rule contains no new or revised information collection requirements under the Act.

Statutory authorization for the rule

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

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

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

Executive Order No. 13,132 (Federalism)

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