



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

B-333873

February 2, 2022

The Honorable Ron Wyden
Chairman
The Honorable
Ranking Member Mike Crapo
Committee on Finance
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
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; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; Changes to Medicare Graduate Medical Education Payments for Teaching Hospitals; Changes to Organ Acquisition Payment Policies*

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; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; Changes to Medicare Graduate Medical Education Payments for Teaching Hospitals; Changes to Organ Acquisition Payment Policies" (RIN: 0938-AU44). We received the rule on December 27, 2021. It was published in the *Federal Register* as a final rule on December 27, 2021. 86 Fed. Reg. 73416. The effective date is February 25, 2022.

CMS stated this final rule finalizes certain provisions of the fiscal year 2022 IPPS/LTCH PPS proposed rule. 86 Fed. Reg. 25070. These provisions implement policies based on legislative changes relative to Medicare graduate medical education for teaching hospitals provided by the Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. CC, 134 Stat 1182, 2967 (Dec. 27, 2020); and changes, clarifications, and codifications for Medicare organ acquisition payment policies relative to organ procurement organizations, transplant hospitals, and donor community hospitals.

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). Here, the rule was received by the House on August 20, 2021. 167 Cong. Rec. H4522 (Sep. 14, 2021). The rule was published on December 27, 2021. 86 Fed. Reg. 73416. The rule was received by the Senate on January 10, 2022. 168 Cong. Rec. S350 (daily ed. Jan. 19, 2022). It has an effective date of February 25, 2022. Therefore, based on the date of receipt by the Senate, the rule does not have the required 60-day delay.

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; HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS
FOR ACUTE CARE HOSPITALS; CHANGES TO MEDICARE GRADUATE
MEDICAL EDUCATION PAYMENTS FOR TEACHING HOSPITALS;
CHANGES TO ORGAN ACQUISITION PAYMENT POLICIES”
(RIN: 0938-AU44)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) conducted an economic analysis of this final rule. CMS stated that, for fiscal years 2021 through 2031, Medicare payments to teaching hospitals are estimated to increase by \$3.3 billion. CMS further stated that this increase in cost would provide an additional 1,000 Graduate Medical Education (GME) positions, make changes relating to the determination of both urban and rural hospitals' full-time employee resident limits, and changes to the resident limits of hospitals that hosted a small number of residents for a short duration.

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

CMS stated the analyses discussed in the Regulatory Impact Analysis of the final rule constitutes its regulatory flexibility analysis. This analysis included (1) a statement of need of the rule, (2) a description of the overall impact of the rule, (3) a detailed economic analysis, (4) a regulatory review cost estimation, (5) alternatives considered, (6) an accounting statement and table, and (7) a description of agency actions to minimize effects on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

CMS determined this final rule would not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$158 million in any one year.

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

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

On May 10, 2021, CMS published a proposed rule. 86 Fed. Reg. 25070. CMS stated it received approximately 28,000 comments in response to the proposed rule. CMS further stated it has addressed approximately 570 of those comments in this final rule. CMS went on to state that it is not addressing proposed revisions to the treatment of section 1115 waiver days for the purposes of the disproportionate share hospital adjustment in this rule but expects to revisit the issue in future rulemaking. Finally, CMS stated it is not addressing proposed revisions to the Medicare organ counting policy in this rule but may revisit it in future rulemaking.

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

CMS stated it is currently soliciting public comments as required by the PRA and, as a result, has not submitted a collection of information requirement to the Office of Management and Budget (OMB) for review and approval.

Statutory authorization for the rule

CMS promulgated this final rule under sections 1302, 1395d, 1395f, 1395g, 1395l, 1395x, 1395hh, 1395rr, 1395tt, and 1395ww of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB's Office of Information and Regulatory Affairs has determined this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

CMS determined this final rule will not have a substantial direct effect on state or local governments, preempt states, or otherwise have a Federalism implication.