



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

B-334499

August 4, 2022

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
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; FY 2023 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting 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 Program; FY 2023 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements" (RIN: 0938-AU83). We received the rule on July 29, 2022. It was published in the *Federal Register* as a final rule on July 29, 2022. 87 Fed. Reg. 45669. The effective date is October 1, 2022.

CMS states that this final rule updates the hospice wage index, payment rates, and aggregate cap amount for Fiscal Year (FY) 2023. More specifically, CMS states that this rule: (1) establishes a permanent mitigation policy to smooth the impact of year-to-year changes in hospice payments related to changes in the hospice wage index; (2) updates the Hospice Quality Reporting Program (HQRP) and discusses further development of the Hospice Outcomes and Patient Evaluation (HOPE) assessment instrument; (3) updates the Quality Measures (QMs) that will be in effect in FY 2023 for the HQRP and future QMs; (4) updates the Consumer Assessment of Healthcare Providers and Systems, Hospice Survey Mode Experiment, as well as discusses a request for information on health equity and updates hospice survey and enforcement procedures.

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, reading "Shirley A. Jones". The signature is fluid and cursive, with the first name "Shirley" being more prominent and the last name "Jones" written in a similar 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 2023 HOSPICE WAGE INDEX
AND PAYMENT RATE UPDATE AND HOSPICE QUALITY
REPORTING REQUIREMENTS”
(RIN: 0938-AU83)

(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 estimates that aggregate payments to hospices in Fiscal Year (FY) 2023 will increase by \$825 million compared to payments in FY 2022, and that hospices in both rural and urban areas will experience, on average, a 3.8 percent increase in estimated payments compared to FY 2022. CMS also estimates that hospices providing services in the Pacific and West South Central regions would experience the largest estimated increases in payments of 4.4 percent and 4.3 percent, respectively, and CMS estimates that hospices serving patients in the New England region would experience, on average, the lowest estimated increase of 3.3 percent in FY 2023 payments.

(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 would have a significant economic impact on a substantial number of small entities. CMS estimates that the net impact of this rule is a 3.8 percent or approximately an \$825 million increase in revenue to hospices in FY 2023. In addition, CMS estimates that small hospices would experience a greater increase (4.1 percent) compared to large hospices (3.8 percent). CMS states that, because this rule only affects hospices, it 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 stated 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 \$165 million or more in any year.

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

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

On April 4, 2022, CMS published a proposed rule. 87 Fed. Reg. 19442. CMS stated that it received approximately 73 comments from stakeholders including national hospice associations, state associations, hospices, health systems, electronic health record vendors, and individuals. CMS stated that it reviewed each commenter’s letter and grouped related comments by category. CMS responded to the comments by category in this final rule.

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

CMS determined that this final rule contains no 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. 12866 (Regulatory Planning and Review)

CMS determined that this final rule is economically significant under the Order and submitted it to the Office of Management and Budget for review.

Executive Order No. 13132 (Federalism)

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