



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

B-334500

August 9, 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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2023 and Updates to the IRF Quality Reporting Program*

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2023 and Updates to the IRF Quality Reporting Program” (RIN: 0938-AU78). We received the rule on July 29, 2022. It was published in the *Federal Register* as a final rule on August 1, 2022. 87 Fed. Reg. 47038. The effective date is October 1, 2022.

According to CMS, the final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for fiscal year (FY) 2023. CMS stated that, as required by statute, the final rule includes the classification and weighting factors for the IRF prospective payment system’s case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2023. In addition, CMS stated the final rule codifies CMS’s existing teaching status adjustment policy through amendments to the regulation text and updates and clarifies the IRF teaching policy with respect to IRF hospital closures and displaced residents. Finally, CMS stated the final rule establishes a permanent cap policy to

smooth the impact of year-to-year changes in IRF payments related to decreases in the IRF wage index and includes updates for the IRF Quality Reporting Program.

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 style with a large initial 'S' and a long, sweeping underline.

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; INPATIENT REHABILITATION FACILITY  
PROSPECTIVE PAYMENT SYSTEM FOR FEDERAL FISCAL YEAR 2023  
AND UPDATES TO THE IRF QUALITY REPORTING PROGRAM”  
(RIN: 0938-AU78)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the final rule would lead to an increase in transfers from the federal government to inpatient rehabilitation facility Medicare providers in the amount of \$275,000,000, due to changes in the Inpatient Rehabilitation Facility Prospective Payment System. CMS further estimated changes in information collection requirements (ICRs) would result in a cost increase of \$31,783,532.15, due to changes in reporting requirements, and an increase of \$21,085.26, due to regulatory review costs.

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

CMS determined the final rule would not have a significant economic impact on a substantial number of small entities. CMS also determined the final rule would not have a significant economic impact on 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 the final rule does not mandate any requirements for state, local, or tribal governments, or for the private sector.

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

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

On April 6, 2022, CMS published a proposed rule. 87 Fed. Reg. 20218. CMS received 61 timely responses from the public, many of which contained multiple comments. The comments came from trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, health care industry organizations, and health care consulting firms. CMS responded to the comments in the final rule.

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

CMS determined the final rule impacted ICRs associated with Office of Management and Budget (OMB) Control Number 0938-0842. CMS estimated the final rule would increase the total associated burden hours by 475,178, and total costs by \$31,783,532.15.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that OMB's Office of Information and Regulatory Affairs determined that the final rule is economically significant under the Order, and that OMB had reviewed the final rule.

Executive Order No. 13132 (Federalism)

CMS determined this final rule will not have a substantial effect on state and local governments, preempt state law, or otherwise have a federalism implication.