



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

B-334511

August 11, 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Changes to the Requirements for the Director of Food and Nutrition Services and Physical Environment Requirements in Long-Term Care Facilities*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Changes to the Requirements for the Director of Food and Nutrition Services and Physical Environment Requirements in Long-Term Care Facilities" (RINs: 0938-AU76 and 0938-AT36). We received the rule on August 2, 2022. It was published in the *Federal Register* as a final rule on August 3, 2022. 87 Fed. Reg. 47502. The effective date is October 1, 2022.

According to CMS, the final rule updates payment rates, forecast error adjustments, diagnosis code mappings, the Patient Driven Payment Model parity adjustment, the Skilled Nursing Facilities Quality Reporting Program, and the Skilled Nursing Facilities Value-Based Purchasing Program. CMS also stated the final rule establishes a permanent cap policy to smooth the

impact of year-to-year changes in Skilled Nursing Facilities payments related to changes in the Skilled Nursing Facilities wage index. CMS further stated the final rule commences the application of a risk adjustment for the Skilled Nursing Facilities Readmission Measure for COVID-19 beginning in fiscal year 2023. Finally, CMS stated the final rule finalizes changes to the long-term care facility fire safety provisions referencing the National Fire Protection Association Life Safety Code, and Director of Food and Nutrition Services requirements.

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 final rule was published in the *Federal Register* on August 3, 2022. 87 Fed. Reg. 47502. The final rule has a stated effective date of October 1, 2022. 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; PROSPECTIVE PAYMENT SYSTEM AND
CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES; UPDATES TO THE
QUALITY REPORTING PROGRAM AND VALUE-BASED PURCHASING PROGRAM FOR
FEDERAL FISCAL YEAR 2023; CHANGES TO THE REQUIREMENTS
FOR THE DIRECTOR OF FOOD AND NUTRITION SERVICES AND PHYSICAL
ENVIRONMENT REQUIREMENTS IN LONG-TERM CARE FACILITIES”
(RINS: 0938-AU76 AND 0938-AT36)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the final rule would lead to increases in aggregate payments to the Skilled Nursing Facilities Prospective Payment System in fiscal year 2023 in the amount of \$904,000,000. CMS further estimated the final rule would increase aggregate costs to the Skilled Nursing Facilities Quality Reporting Program in the amount of \$30,949,079.36. Finally, CMS estimated the final rule would reduce aggregate costs to the Skilled Nursing Facilities Value-Based Purchasing Program in the amount of \$185,550,000.

(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 will impose no mandates on state, local, or tribal governments, or on 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 15, 2022, CMS published a proposed rule. 87 Fed. Reg. 22720. CMS received 6,970 public comments from individuals, providers, corporations, government agencies, private citizens, trade associations, and major organizations. CMS responded to the comments in the final rule.

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

CMS determined the final rule does not contain or revise any information collection requirements subject to the Act.

Statutory authorization for the rule

CMS promulgated the final rule pursuant to sections 1302, 1320a-7, 1395d, 1395f, 1395g, 1395i, 1395l, 1395x, 1395hh, 1395rr, 1395tt, 1395ww, and 1396r of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs has determined the final rule is economically significant and the rule was reviewed by OMB.

Executive Order No. 13132 (Federalism)

CMS determined the final rule will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.