



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

B-334522

August 19, 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; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-Qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation*

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 and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-Qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation" (RIN: 0938-AU84). We received the rule on August 4, 2022. It was published in the *Federal Register* as a final rule on August 10, 2022. 87 Fed. Reg. 48780. The effective date is October 1, 2022.

According to CMS, the final rule will revise the Medicare hospital inpatient prospective payment systems for operating and capital-related costs of acute care hospitals, make changes relating to Medicare graduate medical education for teaching hospitals, and update the payment policies and the annual payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals. CMS further stated the final rule will establish new requirements and revise existing requirements for eligible hospitals and critical access hospitals participating in the Medicare Promoting Interoperability Program, as well as update policies for the Hospital Readmissions Reduction Program, Hospital Inpatient Quality Reporting Program, Hospital Value-Based Purchasing Program, Hospital-Acquired Condition Reduction Program, PPS-Exempt Cancer Hospital Reporting Program, and the Long-Term Care Hospital Quality Reporting Program. CMS stated it will also revise the hospital and critical access hospital conditions of participation for infection prevention and control and antibiotic stewardship programs, and codify and clarify policies related to the costs incurred for qualified and non-qualified deferred compensation plans. Lastly, according to CMS, the final rule will provide updates on the Rural Community Hospital Demonstration Program and the Frontier Community Health Integration Project.

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 on August 10, 2022. 87 Fed. Reg. 48780. The effective date is 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 fluid and cursive, with the first letters of each name being capitalized and prominent.

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 AND THE LONG-TERM CARE  
HOSPITAL PROSPECTIVE PAYMENT SYSTEM AND POLICY CHANGES  
AND FISCAL YEAR 2023 RATES; QUALITY PROGRAMS AND MEDICARE PROMOTING  
INTEROPERABILITY PROGRAM REQUIREMENTS FOR ELIGIBLE HOSPITALS  
AND CRITICAL ACCESS HOSPITALS; COSTS INCURRED FOR QUALIFIED  
AND NON-QUALIFIED DEFERRED COMPENSATION PLANS; AND CHANGES TO  
HOSPITAL AND CRITICAL ACCESS HOSPITAL CONDITIONS OF PARTICIPATION”  
(RIN: 0938-AU84)

(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 payments from the federal government to inpatient prospective payment system Medicare providers in the amount of \$1.4 billion. CMS further estimated the final rule would increase payments from the federal government to long-term care hospital Medicare providers in the amount of \$71 million. CMS summarized the costs, benefits, and transfers associated with specific provisions.

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

CMS stated the final rule would have a significant economic impact on a substantial number of small entities and included the analysis in the final rule. CMS also described the impact the final rule would have on 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 the final rule would not mandate any requirements that meet the threshold for state, local, or tribal governments, nor would it affect private sector costs.

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

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

On May 10, 2022, CMS published a proposed rule. 87 Fed. Reg. 28108. CMS received comments and addressed them in the final rule.

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

CMS determined the final rule contained information collection requirements (ICRs) subject to the Act. The ICRs address areas such as the hospital wage index, payment for low-volume

hospitals, the Hospital Inpatient Quality Reporting Program, the PPS-Exempt Cancer Hospital Quality Reporting Program, the Hospital Value-Based Purchasing Program, the Hospital-Acquired Condition Reduction Program, the Hospital Readmissions Reduction Program, the Medicare Promoting Interoperability Program, the Long-Term Care Hospital Quality Reporting Program, costs incurred for qualified and non-qualified deferred compensation plans, and conditions of participation requirements for hospitals and critical access hospitals to continue reporting data for COVID-19 and influenza after the public health emergency ends as determined by the Secretary. CMS estimated the burdens for ICRs in the final rule.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated the final rule has been reviewed by OMB.

Executive Order No. 13132 (Federalism)

CMS determined the final rule would not have a substantial direct effect on state or local governments, preempt states, or otherwise have a federalism implication.