



441 G St. N.W.  
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October 5, 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; CY 2023 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts*

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; CY 2023 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts" (RIN: 0938-AU71). We received the rule on September 28, 2022. It was published in the *Federal Register* as a notice on September 29, 2022. 87 Fed. Reg. 59094. The effective date is January 1, 2023.

According to CMS, the final rule announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2023 under Medicare's Hospital Insurance Program. CMS stated the Medicare statute specifies the formulae used to determine these amounts.

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 cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the printed name and title.

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; CY 2023 INPATIENT HOSPITAL DEDUCTIBLE  
AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS”  
(RIN: 0938-AU71)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the final rule would create annual transfers from beneficiaries to providers in the amount of \$1,210,000,000.

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

CMS stated the Secretary of Health and Human Services certified the final rule would not have a significant economic impact on a substantial number of small entities. CMS also stated the Secretary certified 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 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 \$165 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.*

CMS waived notice and comment procedures for good cause. CMS determined it had good cause because the statute requires that the agency determine and publish the inpatient hospital deductible and hospital and extended care services coinsurance amounts for each calendar year in accordance with the statutory formulae, and CMS is simply notifying the public of the changes to the deductible and coinsurance amounts for 2023. CMS further stated it calculated the inpatient hospital deductible and hospital and extended care services coinsurance amounts as directed by the statute; the statute establishes both when the deductible and coinsurance amounts must be published and the information that the Secretary of Health and Human Services must factor into the deductible and coinsurance amounts, so CMS does not have any discretion in that regard.

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

CMS determined the final rule did not contain information collection requirements subject to PRA.

Statutory authorization for the rule

CMS promulgated the final rule pursuant to section 1395e of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated the Office of Management and Budget determined the final rule was economically significant.

Executive Order No. 13132 (Federalism)

CMS determined the final rule will not have a substantial direct effect on state or local governments, preempt state law, or otherwise have federalism implications.