



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

B-335491

August 15, 2023

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
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 2024 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice Quality Reporting Program Requirements, and Hospice Certifying Physician Provider Enrollment 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 2024 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice Quality Reporting Program Requirements, and Hospice Certifying Physician Provider Enrollment Requirements" (RIN: 0938-AV10). We received the rule on July 26, 2023. It was published in the *Federal Register* as a final rule on August 2, 2023. 88 Fed. Reg. 51164. The effective date is October 1, 2023. The implementation date for the provider enrollment provisions in this final rule is May 1, 2024.

According to CMS, the final rule updates the hospice wage index, payment rates, and aggregate cap amount for Fiscal Year 2024. CMS stated the final rule discusses the comments received regarding information related to the provision of higher levels of hospice care; spending patterns for non-hospice services provided during the election of the hospice benefit; ownership transparency; equipping patients and caregivers with information to inform hospice selection;

and ways to examine health equity under the hospice benefit. CMS additionally stated the final rule also finalizes conforming regulations text changes related to the expiration of the COVID-19 public health emergency. Also, CMS stated the final rule updates the Hospice Quality Reporting Program; discusses the Hospice Outcomes and Patient Evaluation tool; provides an update on Health Equity and future quality measures; and provides updates on the Consumer Assessment of Healthcare Providers and Systems, Hospice Survey Mode Experiment. CMS further stated the final rule also codifies hospice data submission thresholds and discusses updates to hospice survey and enforcement procedures. Finally, CMS stated the final rule requires hospice certifying physicians to be Medicare-enrolled or to have validly opted out.

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,
Centers for Medicare and Medicaid 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 2024 HOSPICE WAGE INDEX AND PAYMENT RATE UPDATE,
HOSPICE CONDITIONS OF PARTICIPATION UPDATES, HOSPICE QUALITY REPORTING
PROGRAM REQUIREMENTS, AND HOSPICE CERTIFYING PHYSICIAN PROVIDER
ENROLLMENT REQUIREMENTS”
(RIN: 0938-AV10)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the final rule would create transfers of \$780 million from the federal government to Medicare hospices. CMS further estimated the final rule would create costs of \$41.2 million associated with changes in annual payment update reductions due to data submission requirements.

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

CMS certified the final rule would 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 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 determined the final rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$177 million or more 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.*

On April 4, 2023, CMS published a proposed rule. 88 Fed. Reg. 20022. CMS received comments on the proposal and addressed them in the final rule.

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

CMS determined the final rule contains information collection requirements (ICRs). The ICRs are associated with Office of Management and Budget (OMB) Control Number 0938-1135. CMS estimated the ICRs to have an annual burden of 230 hours at a cost of \$52,866.

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 the final rule has been reviewed by OMB.

Executive Order No. 13132 (Federalism)

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