U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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B-338917

November 20, 2026

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

The Honorable Brett Guthrie
Chairman
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: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; and Quality Reporting Programs; including the Hospital Outpatient Quality Reporting Program and Ambulatory Surgical Center Quality Program; Request for Information on Strengthening the Standardization and Comparability of Hospital Price Transparency (HPT) Data; Prior Authorization; Accrediting Organization (AO) Deeming for Emergency Medical Treatment and Labor Act (EMTALA); and Notices of Closure of Teaching Hospitals and Opportunities To Apply for Available Slots*

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 Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; and Quality Reporting Programs; including the Hospital Outpatient Quality Reporting Program and Ambulatory Surgical Center Quality Program; Request for Information on Strengthening the Standardization and Comparability of Hospital Price Transparency (HPT) Data; Prior Authorization; Accrediting Organization (AO) Deeming for Emergency Medical Treatment and Labor Act (EMTALA); and Notices of Closure of Teaching Hospitals and Opportunities To Apply for Available Slots" (RIN: 0938-AV83). We received the rule on November 9, 2026. It was published in the *Federal Register* on

November 6, 2026. 91 Fed. Reg. 70284. The stated effective date of the rule is January 1, 2027.

According to CMS, this rule revises the Medicare Hospital Outpatient Prospective Payment System (OPPS) and the Medicare Ambulatory Surgical Center (ASC) payment system for calendar year 2027 based on the agency's continuing experience with these systems. CMS stated that the rule also describes the changes to the amounts and factors used to determine the payment rates for Medicare services paid under OPPS and those paid under the ASC payment systems. In addition, CMS noted that the rule updates and refines the requirements for the Hospital Outpatient Quality Reporting Program and the ASC Quality Reporting Program. CMS clarified that the rule contains no changes to the Rural Emergency Hospital Quality Reporting Program. In the rule, CMS finalized the expansion of the prior authorization requirement to include additional Botulinum Toxin Injection services and also finalized implementation of certain provisions of the Consolidated Appropriations Act, 2026, for off-campus outpatient departments of a provider. Additionally, in the rule, CMS announced notices of closure of teaching hospitals and opportunities to apply for available slots. CMS further stated that the rule also finalizes the policy that hospital accrediting organizations with deeming authority may assess compliance with certain Emergency Medical Treatment and Labor Act administrative requirements under section 489.20 of title 42, *Code of Federal Regulations*, during accreditation and reaccreditation surveys.

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 rule was published in the *Federal Register* on November 6, 2026. 91 Fed. Reg. 70284. The House of Representatives and the Senate both received the rule on November 9, 2026. 172 Cong. Rec. H6145 (daily ed. Nov. 10, 2026); 172 Cong. Rec. S5722 (daily ed. Nov. 17, 2026). The rule has a stated effective date of January 1, 2027. Therefore, the stated effective date is less than 60 days from the date of publication in the *Federal Register* and less than 60 days from the date of receipt by Congress.[1]

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

[1] CMS stated in the rule that it believes further notice and public procedure are unnecessary, and that it would be impracticable and contrary to the public interest to delay the effective date of the rule. 91 Fed. Reg. at 70759. According to CMS, delaying the effective date of the rule by 60 days would result in certain policies not being effective at the beginning of the payment year, and CMS would be compelled to continue to use obsolete reimbursement rates which will disadvantage health care providers and suppliers. *Id*. CMS also stated that waiving the delayed effective date requirement is in the public interest and necessary to comply with statutory requirements, to ensure that the payment policies for these systems are effective on an annual basis, and to promote an orderly transition to a new payment year. *Id*. However, the exception at section 808(2) only applies when the agency has found good cause to waive notice and public procedure requirements when promulgating the rule and incorporates the finding and a brief statement therefor in the rule. 5 U.S.C. § 808(2). Here, CMS published the rule as a "final rule with comment period" and stated that it would receive comments on the rule until January 4, 2027. 91 Fed. Reg. at 70284. Additionally, CMS published a proposed rule, 91 Fed. Reg. 41734 (July 7, 2026), on which it solicited comments. Therefore, the exception does not apply.

about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact me at (202) 512-8156.



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Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
Regulations Coordinator
Department of Health and Human Services

ENCLOSURE

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 OUTPATIENT PROSPECTIVE PAYMENT AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEMS; AND QUALITY REPORTING PROGRAMS; INCLUDING THE HOSPITAL OUTPATIENT QUALITY REPORTING PROGRAM AND AMBULATORY SURGICAL CENTER QUALITY PROGRAM; REQUEST FOR INFORMATION ON STRENGTHENING THE STANDARDIZATION AND COMPARABILITY OF HOSPITAL PRICE TRANSPARENCY (HPT) DATA; PRIOR AUTHORIZATION; ACCREDITING ORGANIZATION (AO) DEEMING FOR EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA); AND NOTICES OF CLOSURE OF TEACHING HOSPITALS AND OPPORTUNITIES TO APPLY FOR AVAILABLE SLOTS"
(RIN: 0938-AV83)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared an analysis of the costs and benefits of this rule. *See* 91 Fed. Reg. 70284, 70738–58 (Nov. 6, 2026). CMS estimated that the total increase in federal government expenditures under the Medicare Hospital Outpatient Prospective Payment System (OPPS) for Calendar Year (CY) 2027, compared to CY 2026, due to the changes to the OPPS in the rule will be approximately $1.78 billion. *Id*. at 70738. Additionally, CMS estimated that the total increase (from changes to the Medicare Ambulatory Surgical Center (ASC) provisions in this the rule, as well as from enrollment, utilization, and case-mix changes) in Medicare expenditures (not including beneficiary cost-sharing) under the ASC payment system for CY 2027 compared to CY 2026, to be approximately $560 million. *Id*. at 70739.

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

CMS stated that it expects this rule will have a significant economic impact on a substantial number of small entities. 91 Fed. Reg. at 70757. CMS also stated that the Secretary of HHS has certified that the rule will have a significant economic impact on the operations of a substantial number of small rural hospitals. *Id*. at 70758. CMS explained that the rule contains a regulatory flexibility analysis and a regulatory impact analysis. *Id*.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

CMS determined that this rule will 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 an amount more than the Act's applicable threshold in any one year. 91 Fed. Reg. at 70758.

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

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

On July 7, 2026, CMS published a proposed rule. 91 Fed. Reg. 41734. CMS stated that it received comments in response to the proposed rule and responded to these comments in the rule. 91 Fed. Reg. at 70284–70738.

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

CMS determined that this rule contains information collection requirements under the Act. 91 Fed. Reg. at 70726. In the rule, CMS stated that it solicited public comment for the sections of the rule that contain information collection requirements. *Id*.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that the Office of Management and Budget's Office of Information and Regulatory Affairs has determined this rule is significant per section 3(f)(1) of the Order. 91 Fed. Reg. at 70738. Therefore, CMS stated that it has prepared a regulatory impact analysis that presents the costs and benefits of the rule. *Id*.

Executive Order No. 13132 (Federalism)

CMS determined that the rule will not have a substantial direct effect on state, local, or tribal governments, preempt state law, or otherwise have a federalism implication. 91 Fed. Reg. at 70758.