



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-329119

June 6, 2017

The Honorable Orrin G. Hatch
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Greg Walden
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Kevin Brady
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 and Medicaid Services: Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model (CJR)*

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 and Medicaid Services (CMS) entitled “Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model (CJR)” (RIN: 0938-AS90). We received the rule on May 24, 2017. It was published in the *Federal Register* as a final rule on January 3, 2017, with an effective date of February 18, 2017, except for some amendatory instructions which are effective July 1, 2017. 82 Fed. Reg. 180.

The final rule implements three new Medicare Parts A and B episode payment modes, a Cardiac Rehabilitation (CR) Incentive Payment model, and modifications to the existing Comprehensive Care for Joint Replacement model under section 1115A of the Social Security Act.

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). This final rule was published in the *Federal Register* on January 3, 2017. 82 Fed. Reg. 180. We received it on May 24, 2017. It has a stated effective date of February 18, 2017. 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. With the exception of the 60-day delay in effective date requirement, our review of the procedural steps taken indicates that CMS complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Agnes Thomas
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 AND MEDICAID SERVICES
ENTITLED
“MEDICARE PROGRAM; ADVANCING CARE COORDINATION THROUGH
EPISODE PAYMENT MODELS (EPMs); CARDIAC REHABILITATION
INCENTIVE PAYMENT MODEL; AND CHANGES TO THE
COMPREHENSIVE CARE FOR JOINT REPLACEMENT MODEL (CJR)”
(RIN: 0938-AS90)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) estimates that the financial impact of the Acute Myocardial Infarction, Coronary Artery Bypass Graft, and Surgical hip/femur fracture treatment Episode payment model (EPM) proposed in the final rule would be a net federal savings of \$159 million over a 5-year performance period. The financial impact of the Comprehensive Care for Joint Replacement model as modified in the final rule would be an estimated net federal decrease in savings of \$26 million over a 5-year period. CMS also found that the financial impact of the Cardiac Rehabilitation incentive payment model would be a net change in federal spending between \$29 million in additional costs and \$32 million in savings to the Medicare program over an 8-year period.

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

CMS determined that this final rule will not have a significant impact on a substantial number of small entities.

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

CMS found that this rule does not include any mandate that would result in spending by state, local, or tribal governments, in the aggregate, or by the private sector in the amount of \$146 million in any 1 year.

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

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

On August 2, 2016, CMS published a proposed rule. 81 Fed. Reg. 50,794. CMS received approximately 175 comments. CMS responded to comments in the final rule.

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

CMS found that there are three primary sets of information collection activities that EPM participants may be engaged in: activities related to quality reporting, activities related to

Advanced Alternative Payment model participation, and ad hoc reporting of beneficiary notification upon request by CMS.

Statutory authorization for the rule

CMS stated that it promulgated this rule under 42 U.S.C. §§ 1302, 1315(a), and 1395hh.

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS stated that this final rule triggered the criteria of the Order and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule did not explicitly or implicitly pre-empt state law, have a substantial direct effect on state or local governments, or otherwise have a federalism implication.