



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

B-329284

August 10, 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2018, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, Survey Team Composition, and Correction of the Performance Period for the NHSN HCP Influenza Vaccination Immunization Reporting Measure in the ESRD QIP for PY 2020*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2018, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, Survey Team Composition, and Correction of the Performance Period for the NHSN HCP Influenza Vaccination Immunization Reporting Measure in the ESRD QIP for PY 2020” (RIN: 0938-AS96). We received the rule on August 2, 2017. It was published in the *Federal Register* as a final rule on August 4, 2017. 82 Fed. Reg. 36,530.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year (FY) 2018. It also revises and rebases the market basket index by updating the base year from 2010 to 2014 and by adding a new cost category for Installation, Maintenance, and Repair Services. The rule also finalizes revisions to the SNF

Quality Reporting Program, including measure and standardized resident assessment data policies and policies related to public display. In addition, it finalizes policies for the SNF Value-Based Purchasing Program that will affect Medicare payment to SNFs beginning in FY 2019. The final rule also clarifies the regulatory requirements for team composition for surveys conducted for investigating a complaint and aligns regulatory provisions for investigation of complaints with the statutory requirements. The final rule also finalizes the performance period for the National Healthcare Safety Network Healthcare Personnel Influenza Vaccination Reporting Measure included in the End-Stage Renal Disease Quality Incentive Program for Payment Year 2020.

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 received on August 2, 2017, and published in the *Federal Register* on August 4, 2017. 82 Fed. Reg. 36,530. It has a stated effective date of October 1, 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. Our review of the procedural steps taken indicates that, other than the 60-day delay, 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

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; PROSPECTIVE PAYMENT SYSTEM AND
CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES FOR FY 2018,
SNF VALUE-BASED PURCHASING PROGRAM, SNF QUALITY
REPORTING PROGRAM, SURVEY TEAM COMPOSITION, AND CORRECTION OF
THE PERFORMANCE PERIOD FOR THE NHSN HCP INFLUENZA VACCINATION
IMMUNIZATION REPORTING MEASURE IN THE ESRD QIP FOR PY 2020”
(RIN: 0938-AS96)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) analyzed the costs and benefits of this final rule. CMS estimated the overall economic impact of this rule will be a transfer of \$370 million from the federal government to skilled nursing facilities (SNFs) in the aggregate. CMS also estimated the overall cost will be \$29 million for SNFs to submit data for the SNF Quality Reporting Program under this rule.

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

CMS determined this final rule will not have a significant impact on a substantial number of small entities. CMS also determined that this final rule will not have a significant 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 this final rule will not impose any mandate on state, local, or tribal governments, or on the private sector.

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

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

On May 4, 2017, CMS published a proposed rule. 82 Fed. Reg. 21,014. CMS received 247 comments on the proposed rule from individuals, providers, corporations, government agencies, trade associations, and other organizations. CMS responded to the comments in the final rule.

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

CMS determined that some of the provisions of this final rule will impose no additional information collection requirements, impose no additional reporting burdens, or will not affect existing burden estimates. However, CMS determined that other provisions of this final rule will

have an effect on burden estimates, but are exempt from review under the Act. 42 U.S.C. § 1395l(m). CMS estimated the change in burden for these provisions. For provisions concerning the new measure “Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury,” CMS estimated the total cost of reporting will be reduced by 8.5 minutes of clinical staff time per stay or \$1,837 per SNF annually, or \$28,377,493 for all SNFs annually. For the provisions concerning the four functional outcome measures, CMS estimated the total burden will increase by 697,531 hours with an estimated cost of \$19.69 per stay or, in aggregate, an annual cost of \$56,829,551.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of 1888 of the Social Security Act. 42 U.S.C. § 1395yy.

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

CMS determined this final rule is an economically significant rule under the Order.

Executive Order No. 13,132 (Federalism)

CMS determined this final rule has no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.