



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

B-329286

August 17, 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 & Medicaid Services: Medicare Program; FY 2018 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting 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 2018 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements" (RIN: 0938-AT00). We received the rule on August 2, 2017. It was published in the *Federal Register* as a final rule on August 4, 2017, with an effective date of October 1, 2017. 82 Fed. Reg. 36,638.

The final rule will update the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2018. Additionally, this final rule includes new quality measures and provides an update on the hospice quality reporting program.

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 August 4, 2017. 82 Fed. Reg. 36,638. It was received August 2, 2017, and 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. 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: Kathy Applewhite
Correspondence and Regulation Specialist
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; FY 2018 HOSPICE WAGE INDEX
AND PAYMENT RATE UPDATE AND HOSPICE
QUALITY REPORTING REQUIREMENTS”
(RIN: 0938-AT00)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) estimates that the aggregate impact of the payment provisions in this final rule will result in an increase of \$180 million in payments to hospices resulting from the hospice payment update percentage of 1.0 percent. CMS estimates that in fiscal year (FY) 2018, hospices in urban and rural areas will experience, on average, 1.0 percent and 1.1 percent increases, respectively, in estimated payments compared to FY 2017. Additionally, hospices providing services in the urban Pacific and rural Middle Atlantic regions will experience the largest estimated increases in payments of 1.7 percent and 1.6 percent, respectively. Finally, CMS stated that hospices serving patients in urban areas in the New England region will experience, on average, the lowest estimated increase of 0.3 percent in FY 2018 payments.

(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 create a significant economic impact on a substantial number of small entities. CMS also determined that this final rule will not have a significant 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 stated that this final rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$148 million or more.

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

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

On May 3, 2017, CMS published a proposed rule. 82 Fed. Reg. 20,750. CMS received approximately 89 public comments on the proposed rule, including comments from MedPAC hospice agencies, national provider associations, patient organizations, nurses, and advocacy groups. CMS responded to the comments in the final rule.

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

CMS stated that the final rule contains information collection requirements (ICRs). The two ICRs are *Hospice Item Set* (OMB Control Number 0938-1153) and *Summary of CAHPS Hospice Survey Information Collection Requirements* (OMB Control Number 0938-1257). CMS estimated the total burden hours of the CAHPS Hospice Survey is 165,959.57 burden hours at a cost of \$7,710,481.60.

Statutory authorization for the rule

CMS stated that this rule was promulgated pursuant to section 1814(i) of the Social Security Act.

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

CMS stated that this final rule is “economically significant” as measured by the \$100 million threshold. The final rule was reviewed by the Office of Management and Budget (OMB). CMS also stated that it prepared a regulatory impact analysis.

Executive Order No. 13,132 (Federalism)

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