



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

B-329617

December 11, 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 and Medicaid Programs; CY 2018 Home Health Prospective Payment System Rate Update and CY 2019 Case-Mix Adjustment Methodology Refinements; Home Health Value-Based Purchasing Model; and Home Health 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 and Medicaid Services (CMS) entitled "Medicare and Medicaid Programs; CY 2018 Home Health Prospective Payment System Rate Update and CY 2019 Case-Mix Adjustment Methodology Refinements; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements" (RIN: 0938-AT01). The rule was received on November 7, 2017. It was published in the *Federal Register* as a final rule on November 7, 2017. 82 Fed. Reg. 51,676.

The final rule updates the home health prospective payment system payment rates and also updates the case-mix weights. The rule implements the third year of a 3-year phase-in of a reduction to the national, standardized 60-day episode payment to account for estimated case-mix growth. The rule also finalizes changes to the Home Health Value-Based Purchasing Model and to the Home Health 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 November 7, 2017. 82 Fed. Reg. 51,676. It was received November 7, 2017, and has a stated effective date of January 1, 2018. 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: Vanessa Jones
Deputy Director, ODRM
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 AND MEDICAID PROGRAMS; CY 2018 HOME HEALTH
PROSPECTIVE PAYMENT SYSTEM RATE UPDATE AND
CY 2019 CASE-MIX ADJUSTMENT METHODOLOGY REFINEMENTS;
HOME HEALTH VALUE-BASED PURCHASING MODEL;
AND HOME HEALTH QUALITY REPORTING REQUIREMENTS”
(RIN: 0938-AT01)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) reports that the rule will cost Home Health Agencies (HHA) \$80 million of Home Health Prospective Payment System payments in CY 2018.

CMS estimates HHAs will save \$146 million due to changes to the Home Health Quality Reporting Program made by the rule.

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

CMS estimated that almost all HHAs are small entities as that term is used in the RFA. Because of this, CMS determined that the rule would have a significant economic impact on a substantial number of small entities. CMS provided tables and analysis as the Regulatory Flexibility Analysis in the final rule.

CMS stated the rule will not have a significant economic impact on the operations 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 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 \$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.

CMS published the proposed rule on July 28, 2017. 82 Fed. Reg. 35,270. CMS received 1,349 comments and responded to them in the final rule. The final rule was published on November 7, 2017. 82 Fed. Reg. 51,676.

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

CMS has submitted a revised information collection request to the Office of Management and Budget for approval. CMS estimates that the associated costs of this information request will decrease by \$145,986,343.50 for all HHAs annually (\$12,016.33 per HHA annually). The agency also estimates the time burden will decrease by 2,016,386 hours for all HHAs annually (166 hours per HHA annually).

Statutory authorization for the rule

CMS states the rule was promulgated under 42 U.S.C §§ 1302, 1395(hh).

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

CMS states the rule is a major rule under the Order and has prepared a Regulatory Impact Analysis including the costs and benefits in the final rule.

Executive Order No. 13,132 (Federalism)

CMS determined the rule will not have substantial direct effects on the rights, roles, and responsibilities of states, local, or tribal governments.