



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

B-329619

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 Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2018; Medicare Shared Savings Program Requirements; and Medicare Diabetes Prevention Program*

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; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2018; Medicare Shared Savings Program Requirements; and Medicare Diabetes Prevention Program” (RIN: 0938-AT02). We received the rule on November 7, 2017. It was published in the *Federal Register* as a final rule on November 15, 2017, with an effective date of January 1, 2018. 82 Fed. Reg. 52,976.

The final rule addresses changes to the Medicare physician fee schedule (PFS) and other Medicare Part B payment policies such as changes to the Medicare Shared Savings Program, to ensure that CMS’s payment systems are updated to reflect changes in medical practice and the relative value of services, as well as changes in the statute. Additionally, the final rule includes policies that CMS stated are necessary to begin offering the expanded Medicare Diabetes Prevention Program model.

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 15, 2017. 82 Fed. Reg. 52,976. It was received on November 7, 2017, and has a stated effective date of January 1, 2018. 82 Fed. Reg. 52,976. 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 PROGRAM; REVISIONS TO PAYMENT POLICIES
UNDER THE PHYSICIAN FEE SCHEDULE AND OTHER REVISIONS
TO PART B FOR CY 2018; MEDICARE SHARED SAVINGS PROGRAM
REQUIREMENTS; AND MEDICARE DIABETES PREVENTION PROGRAM”
(RIN: 0938-AT02)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) provided a summary of the costs and benefits of the final rule. CMS estimated an annualized monetized transfer of \$0.3 billion for the Physician Fee Schedule Conversion Factor update, which would result in a monetized transfer from the federal government to physicians and other practitioners and providers and suppliers who receive payment under Medicare. CMS also estimated an annualized monetized transfer of \$0.1 billion from beneficiaries to the federal government. CMS stated that the information collection request costs are \$296 million and the regulatory familiarization costs are \$2 million. Finally, CMS determined the total costs savings are \$182 million.

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

CMS determined that approximately 95 percent of practitioners, other providers, and suppliers are considered to be small entities, based upon the Small Business Association’s standards. CMS stated that the effects of changes to payment rates for practitioners, alternative options considered to the proposed payment rates, and specific alternatives for individual codes are discussed in the final rule.

(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 final rule will impose no mandates 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 July 21, 2017, CMS published a proposed rule. 82 Fed. Reg. 33,950. CMS responded to the comments in the final rule.

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

CMS stated that a copy of the final rule was submitted to the Office of Management and Budget (OMB) for its review of the final rule's information collection and burden requirements. CMS also included a table in the final rule summarizing the annual requirements and burdens of the information collection requests.

Statutory authorization for the rule

CMS stated that this rule was promulgated pursuant to sections 1102, 1834, 1871, 1881, 1893, and 1899 of the Social Security Act.

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

CMS found that the final rule was economically significant as measured by the \$100 million threshold. CMS also stated that it prepared a Regulatory Impact Analysis presenting the costs and benefits of the final rule.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule does not impose any costs on state or local governments and that the requirements of the Order are not applicable.