



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

B-329628

December 13, 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

Subject: *Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicaid Program; Final FY 2015 and Preliminary FY 2017 Disproportionate Share Hospital Allotments, and Final FY 2015 and Preliminary FY 2017 Institutions for Mental Diseases Disproportionate Share Hospital Limits*

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 "Medicaid Program; Final FY 2015 and Preliminary FY 2017 Disproportionate Share Hospital Allotments, and Final FY 2015 and Preliminary FY 2017 Institutions for Mental Diseases Disproportionate Share Hospital Limits" (RIN: 0938-ZB43). We received the rule on November 29, 2017. It was published in the *Federal Register* as a notice on November 3, 2017. 82 Fed. Reg. 51,259. The notice is effective December 4, 2017.

The notice announces the final federal share disproportionate share hospital (DSH) allotments for FY 2015 and the preliminary federal share DSH allotments for FY 2017. The rule also announces the final FY 2015 and the preliminary FY 2017 limitations on aggregate DSH payments that states may make to institutions for mental disease and other mental health facilities.

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 notice was published in the *Federal Register* on November 3, 2017. 82 Fed. Reg. 51,259. It was received on November 29, 2017, and has an effective date of December 4, 2017. Therefore the notice 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

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
“MEDICAID PROGRAM; FINAL FY 2015 AND PRELIMINARY FY 2017
DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS, AND
FINAL FY 2015 AND PRELIMINARY FY 2017 INSTITUTIONS FOR
MENTAL DISEASES DISPROPORTIONATE SHARE HOSPITAL LIMITS”
(RIN: 0938-ZB43)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) states the final federal share FY 2015 disproportionate share hospital (DSH) allotments are \$11 million more than the preliminary FY 2015 DSH allotments published in the *Federal Register* on February 2, 2016. 81 Fed. Reg. 5448. The increase in the final FY 2015 DSH allotments is due to the difference between the actual percentage change in the Consumer Price Index for Urban Areas (CIP-U) for FY 2014 used in the calculation of the final FY 2015 allotments.

CMS also states the preliminary FY 2017 DSH allotments have increased by approximately \$118 million more than the preliminary FY 2016 DSH allotments published in the *Federal Register* on October 26, 2016. 81 Fed. Reg. 74,432. The increase in the preliminary FY 2017 DSH allotments is due to the application of the statutory formula for calculating DSH allotments under which the prior fiscal year allotments are increased by the percentage increase in CPI-U for the prior fiscal year.

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

CMS states the rule will not have a significant economic impact on a substantial number of small entities. CMS also states the rule will not have a significant economic 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 states the rule will have no consequential effect on spending by state, local, or tribal governments, in the aggregate 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.

The Affordable Care Act amended Medicaid DSH provisions, adding section 1923(f)(7) of the Social Security Act which would have required reductions to states' fiscal year DSH allotments from FY 2014 through FY 2020. Subsequent legislation, most recently, by Medicare Access

and CHIP Reauthorization Act of 2015 (Pub. L. No. 114-10) delayed the start of these reductions until FY 2018. According to CMS, because there are no reductions to DSH allotments for FY 2015 and FY 2017 under section 1923(f)(7) of the Social Security Act, this rule only contains the state-specific final FY 2015 DSH allotments and preliminary FY 2017 DSH allotments as calculated under the statute without application of the reductions that would have been imposed under the Affordable Care Act provisions beginning with FY 2014.

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

CMS states the rule does not impose any new or revised information collection or recordkeeping requirements or burdens.

Statutory authorization for the rule

CMS promulgated the rule under 42 U.S.C. § 1396r-4.

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 included in the notice.

Executive Order No. 13,132 (Federalism)

CMS states the notice does not impose any costs on state or local governments or otherwise have federalism implications.