U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

B-329682

April 26, 2018

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; CY 2018 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our amended report[1] on a major rule promulgated by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) entitled "Medicare Program; CY 2018 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts" (RIN: 0938-AT05). We received the rule on December 20, 2017. It was published in the *Federal Register* as a notice on November 21, 2017. 82 Fed. Reg. 55,367.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2018 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2018, the inpatient hospital deductible will be $1,340. The daily coinsurance amounts for CY 2018 will be: $335 for the 61st through 90th day of hospitalization in a benefit period; $670 for lifetime reserve days; and $167.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

[1] We are issuing this amended report to correct a statement in the original report dated January 3, 2018, that CMS did not comply with the 60-day delay in effective requirement of 5 U.S.C. § 801(a)(3)(A).

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 has a stated effective date of January 1, 2018. We received the notice on December 20, 2017, and it was published in the *Federal Register* on November 21, 2017. 82 Fed. Reg. 55,367. Therefore, this notice does not have a 60-day delay in effective date.

However, any rule which an agency for good cause finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, may take effect at such time as the agency determines." 5 U.S.C. § 808(2). As set forth in the enclosed report, CMS found good cause to waive publication of a proposed rule and solicitation of public comment and thus the 60-day delay requirement does not apply.

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 agency's submissions to us 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

ENCLOSURE

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; CY 2018 INPATIENT HOSPITAL DEDUCTIBLE
AND HOSPITAL AND EXTENDED CARE SERVICES
COINSURANCE AMOUNTS"
(RIN: 0938-AT05)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) estimates the total increase in costs to beneficiaries is about $550 million (rounded to the nearest $10 million) due to: (1) the increase in the deductible and coinsurance amounts; and (2) the increase in the number of deductibles and daily co-insurance amounts paid. CMS determines the increase in cost to beneficiaries by calculating the difference between the 2017 and 2018 deductible and coinsurance amounts multiplied by the estimated increase in the number of deductible and coinsurance amounts paid.

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

CMS states this notice will not have a significant economic impact on a substantial number of small entities. CMS also states the notice will not have a significant impact on the operations of a substantial number of small rural hospitals. For these reasons, CMS did not perform an RFA analysis.

(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 notice does not impose mandates that will have a consequential effect of $148 million or more 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.

CMS states it did not publish a proposed rule or solicit public comments. CMS states it believes the notice does not constitute agency rulemaking because the agency is merely following the statutory formulae and has no discretion over the amount or time periods. CMS states that, to the extent the notice constitutes interpretations of the statute's requirements and procedures, they are interpretative rules not subject to notice and comment rulemaking under APA. CMS also states that, to the extent the notice is subject to notice and comment rulemaking, the agency finds good cause to waive the requirement. CMS further states that under APA the agency may waive notice and comment procedures if it finds good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. CMS finds such

good cause exists because the amounts and time period contained in the notice are simply applications of the statutory formulae and rules over which CMS has no discretion to change.

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

CMS states this notice does not impose information collection requirements.

Statutory authorization for the rule

CMS stated this notice was issued under section 1813 under the Social Security Act.

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

CMS states the notice is economically significant under the Order and that the Office of Management and Budget has reviewed the notice.

Executive Order No. 13,132 (Federalism)

CMS states the notice will not have a substantial direct effect on state or local governments, preempt state law, or otherwise have federalism implications.