



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-330279

August 20, 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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2019*

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2019” (RIN: 0938-AT25). We received the rule on August 2, 2018. It was published in the *Federal Register* as a final rule August 6, 2018. 83 Fed. Reg. 38,514. The effective date of the final rule is October 1, 2018.

The final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for federal fiscal year (FY) 2019. CMS stated that this final rule includes the classification and weighting factors for the IRF prospective payment system’s (PPS) case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2019. This final rule also adopted a new measure removal factor, removes two measures from the IRF Quality Reporting Program measure set, and codifies a number of program requirements in CMS’s regulations.

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). The rule was published in the *Federal Register* on August 6, 2018. 83 Fed. Reg. 38,514. The rule has a stated effective date of October 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. 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; INPATIENT REHABILITATION FACILITY
PROSPECTIVE PAYMENT SYSTEM FOR FEDERAL FISCAL YEAR 2019”
(RIN: 0938-AT25)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) summarized the costs of this final rule. CMS estimated a \$105 million increase for FY 2018 inpatient rehabilitation facilities (IRF) prospective payment system (PPS). Additionally, CMS estimated that costs associated with the proposals to revise certain IRF coverage requirements under the IRF quality reporting program will result in \$23 million reduction in costs in FY 2019 for IRFs. Finally, CMS estimated that the provisions in this final rule will result in an estimated \$18.5 million reduction in Medicare Part B spending from physicians billing one fewer visit to Medicare Part B.

(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 have a significant impact on a substantial number of small entities. CMS further determined that this final rule will not have a substantial impact on a significant 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 found that this final rule does not mandate any requirements for state, local, or tribal governments, or for the private sector.

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

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

On May 8, 2018, CMS published a proposed rule. 83 Fed. Reg. 20,972. CMS received 109 timely responses from the public, including comments from trade associations; inpatient rehabilitation facilities; individual physicians, therapists, clinicians; health care industry organizations; and health care consulting firms. CMS responded to comments in the final rule.

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

CMS stated that this final rule amends collection of information requirements for updates related to the IRF PPS and the IRF quality reporting program (QRP). Overall, CMS estimates that the total cost savings from the updates related to the IRF PPS for all IRF providers will be

approximately \$10.5 million annually. CMS estimated that the IRF QRP measure removals will result in a burden reduction of \$2,223 per IRF annually, and \$2,503,630 for all IRFs annually.

Statutory authorization for the rule

CMS stated that it promulgated this rule pursuant to 42 U.S.C. §§ 1302 and 1395hh.

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

CMS found that this final rule is economically significant under the Order. The rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not have a substantial effect on state and local governments, preempt state law, or otherwise have a federalism implication.