



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

B-330283

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNF) Final Rule for FY 2019, SNF Value-Based Purchasing Program, and SNF Quality Reporting 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNF) Final Rule for FY 2019, SNF Value-Based Purchasing Program, and SNF Quality Reporting Program" (RIN: 0938-AT24). We received the rule on August 2, 2018. It was published in the *Federal Register* as a final rule August 8, 2018. 83 Fed. Reg. 39,162. The effective date of the final rule is October 1, 2018.

The final rule updates the payment rates used under the prospective payment system for skilled nursing facilities for fiscal year 2019. It also replaces the existing case-mix classification methodology, the Resource Utilization Groups, Version IV model, with a revised case-mix methodology called the Patient-Driven Payment Model beginning October 1, 2019. The final rule finalizes revisions to the regulation text that describes a beneficiary's SNF "resident" status under the consolidated billing provision and the required content of the SNF level of care certification. The final rule also finalizes updates to the SNF Quality Reporting Program and the Skilled Nursing Facility Value-Based Purchasing 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 August 8, 2018. 83 Fed. Reg. 39,162. It 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

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; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES (SNF)
FINAL RULE FOR FY 2019, SNF VALUE-BASED PURCHASING PROGRAM,
AND SNF QUALITY REPORTING PROGRAM”
(RIN: 0938-AT24)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) analyzed the costs and benefits of this final rule. CMS estimated the overall economic impact of the skilled nursing facilities (SNFs) prospective payment system (PPS) payment rate update will be an estimated increase of \$820 million in aggregate payments to SNFs during fiscal year (FY) 2019. CMS also estimated the overall economic impact of the SNF value-based purchasing (VBP) program changes will be an estimated reduction of \$211 million in aggregate payments to SNFs during FY 2019.

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

CMS determined this final rule will not have a significant impact on a substantial number of small entities. CMS also determined that this final rule will not have a significant 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 determined this final rule will not impose any mandate 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 May 8, 2018, CMS published a proposed rule. 83 Fed. Reg. 21,018. CMS received 290 comments from individuals, providers, corporations, government agencies, private citizens, trade associations, and other organizations. CMS responded to the comments in the final rule.

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

CMS states that the final rule contains information collection requirements regarding the SNF PPS assessment schedule under the patient-driven payment model. The requirements and burden will be submitted to the Office of Management and Budget (OMB) under control number 0938-1140 (CMS-10387). CMS estimated that the requirement will have an annualized cost of \$275,147,890. This final rule finalizes revisions to the current SNF PPS assessment schedule

to require only two scheduled assessments (as opposed to the current requirement for five scheduled assessments) for each SNF stay. CMS estimated that this will result in a savings of 2,913,013 administrative hours, and a cost savings of \$195,925,878.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of section 1888 of the Social Security Act. 42 U.S.C. § 1395yy.

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

CMS has determined this final rule is an economically significant rule under the Order. The final rule was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS has determined this final rule has no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.