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

B-330537

December 6, 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 & Medicaid Services: Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs*

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 & Medicaid Services (CMS) entitled "Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs" (RIN: 0938-AT30). We received the rule on November 7, 2018. It was published in the *Federal Register* as a final rule with comment period on November 21, 2018. 83 Fed. Reg. 58,818. The effective date of the final rule is January 1, 2019.

This final rule with comment period revises the Medicare hospital outpatient prospective payment system (OPPS) and the Medicare ambulatory surgical center (ASC) payment system for calendar year 2019 to implement changes arising from CMS's continuing experience with these systems. CMS describes the changes to the amounts and factors used to determine the payment rates for Medicare services paid under OPPS and those paid under the ASC payment system. In addition, this final rule updates and refines the requirements for the Hospital Outpatient Quality Reporting Program and the ASC Quality Reporting Program. CMS is also updating the Hospital Consumer Assessment of Healthcare Providers and Systems Survey measure under the Hospital Inpatient Quality Reporting Program by removing the

Communication about Pain questions, and retaining two measures that were proposed for removal, the Catheter-Associated Urinary Tract Infection Outcome Measure and Central Line-Associated Bloodstream Infection Outcome Measure, in the PPS-Exempt Cancer Hospital Quality Reporting Program beginning with the fiscal year 2021 program year.

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 received by Congress on November 2, 2018, and was published in the *Federal Register* on November 21, 2018. 83 Fed. Reg. 58,818. The rule has a stated effective date of January 1, 2019. Therefore, the final rule does not have a 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

Julia C. Matta
Managing Associate General Counsel

Enclosure

cc: Kathy Applewhite
Correspondence and Regulations Specialist
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: CHANGES TO HOSPITAL OUTPATIENT
PROSPECTIVE PAYMENT AND AMBULATORY SURGICAL CENTER
PAYMENT SYSTEMS AND QUALITY REPORTING PROGRAMS"
(RIN: 0938-AT30)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) analyzed the costs and benefits of this final rule with comment period. CMS estimates that the hospital outpatient prospective payment system (OPPS) outpatient department fee schedule for calendar year 2019 will result in an annualized monetized transfer of $440 million from the federal government to outpatient hospitals and other providers who receive payment under the hospital OPPS. CMS also estimates that the update to the ambulatory surgical center (ASC) payment system for CY 2019 will result in an annualized monetized transfer of $80 million from the federal government to Medicare providers and suppliers. CMS estimates that the reduction in information collection burden will have a cost savings of $28.2 million and regulatory familiarization will have a cost of $2.6 million.

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

For purposes of the Act, CMS estimated that most hospitals are considered small businesses according to the Small Business Administration's size standards with total revenues of $38.5 million or less in any single year or by the hospital's not-for-profit status. Most ASCs and most community mental health centers are considered small businesses with total revenues of $15 million or less in any single year. CMS estimated that this final rule with comment period will increase payments to small rural hospitals by less than 3 percent; therefore, CMS concluded it should not have a significant impact on approximately 616 small rural hospitals. CMS stated that the final rule's preamble and the analysis in the RFA section provide a regulatory flexibility analysis and a regulatory impact analysis.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

CMS determined that this final rule with comment period 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. §§ 551*et seq.*

On July 31, 2018, CMS published a proposed rule. 83 Fed. Reg. 37,046. CMS received over 2,990 timely pieces of correspondence on the proposed rule. CMS summarized and responded

to the public comments that were within the scope of the proposed rule in the final rule with comment period.

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

CMS determined that this final rule with comment period includes information collection requests under the Act entitled “Hospital Outpatient Quality Reporting Program,” “Ambulatory Surgical Center Quality Reporting Program,” “Hospital Inpatient Reporting Program – Update to the HCAHPS Survey Measure,” and “PPS-Exempt Center Hospital Quality Reporting Program – Additional Policies,” and that combined will reduce the paperwork burden by 782,686 hours and reduce the cost by $28.2 million.

Statutory authorization for the rule

CMS promulgated this final rule with comment period under the authority of sections 273, 1302, 1320b-8, and 1395*l*(t), and 1395hh of title 42, United States Code.

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

CMS determined that this final rule with comment period is an economically significant rule, and accordingly it was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule with comment period will not have a substantial direct effect on state, local, or tribal governments; preempt state law; or otherwise have a federalism implication. CMS estimates that OPPS payments to governmental hospitals (including state and local governmental hospitals) will increase by 0.5 percent under this final rule with comment period.