



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

B-331304

August 20, 2019

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Inpatient Rehabilitation Facility (IRF) Prospective Payment System for Federal Fiscal Year 2020 and Updates to the IRF 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 & Medicaid Services (CMS) entitled “Medicare Program; Inpatient Rehabilitation Facility (IRF) Prospective Payment System for Federal Fiscal Year 2020 and Updates to the IRF Quality Reporting Program” (RIN: 0938-AT67). We received the rule on August 2, 2019. It was published in the *Federal Register* as a final rule on August 8, 2019. 84 Fed. Reg. 39054. The effective date of the rule is October 1, 2019.

CMS stated the final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRF) for federal fiscal year (FY) 2020. CMS further stated the final rule includes the classification and weighting factors for the IRF prospective payment system’s case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2020, among other things.

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 final rule was received by the House of

Representatives on August 2, 2019. 165 Cong. Rec. H7491 (daily ed. August 6, 2019). The final rule was published in the *Federal Register* on August 8, 2019. 84 Fed. Reg. 39054. The rule has a stated effective date of October 1, 2019. Therefore, the 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
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 & MEDICAID SERVICES
ENTITLED
“MEDICARE PROGRAM; INPATIENT REHABILITATION
FACILITY (IRF) PROSPECTIVE PAYMENT SYSTEM
FOR FEDERAL FISCAL YEAR 2020 AND UPDATES
TO THE IRF QUALITY REPORTING PROGRAM”
(RIN: 0938-AT67)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) stated the final rule would transfer \$210 million from the federal government to inpatient rehabilitation facilities (IRF) Medicare providers in FY 2020. CMS also stated the final rule would impose \$8.2 million in costs on inpatient rehabilitation facilities due to new quality program reporting requirements.

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

CMS stated the final rule will not have a significant impact on a substantial number of small entities. CMS further stated the final rule will not have a significant impact on a substantial number of 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 stated the 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. §§ 551*et seq.*

On April 24, 2019, CMS published a notice of proposed rulemaking. 84 Fed. Reg. 17244. CMS stated it received 1,257 timely responses from the public, many of which contained multiple comments on the proposed rule. CMS stated it received comments from various trade associations, IRFs, 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 the final rule affects information collection requirements (ICR) under the Act. For the ICR under OMB Control number 0938-0842, CMS estimated an increase cost of \$8,234,450 for all IRFs annually.

Statutory authorization for the rule

CMS stated it promulgated the rule pursuant to sections 1302 and 1395hh of title 42, United States Code.

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

CMS stated that it estimated the final rule was economically significant and that the rule had been reviewed by the Office of Management and Budget. CMS further stated a Regulatory Impact Analysis was included in the final rule.

Executive Order No. 13,132 (Federalism)

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