



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

B-331321

August 30, 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; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2020 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Promoting Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals*

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; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2020 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Promoting Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals” (RIN: 0938-AT73). We received the rule on August 14, 2019. It was published in the *Federal Register* as a final rule on August 16, 2019. 84 Fed. Reg. 42044. The effective date of the rule is October 1, 2019.

CMS states the final rule revises the Medicare hospital inpatient prospective payment systems for operating and capital-related costs of acute care hospitals to implement changes arising from its continuing experience with these systems for FY 2020 and to implement certain recent legislation. According to CMS, the final rule also updates the payment policies and the annual

payment rates for the Medicare prospective payment system for inpatient hospital services provided by long-term care hospitals for FY 2020. CMS also states the final rule establishes new requirements or revising existing requirements for quality reporting by specific Medicare providers and also establishes new requirements for eligible hospitals and critical access hospitals participating in the Medicare and Medicaid Promoting Interoperability Programs.

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 published in the *Federal Register* as a final rule on August 16, 2019. 84 Fed. Reg. 42044. The rule has an effective date of October 1, 2019. 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 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; HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS
FOR ACUTE CARE HOSPITALS AND THE LONG-TERM CARE
HOSPITAL PROSPECTIVE PAYMENT SYSTEM AND POLICY CHANGES AND
FISCAL YEAR 2020 RATES; QUALITY REPORTING REQUIREMENTS FOR
SPECIFIC PROVIDERS; MEDICARE AND MEDICAID PROMOTING
INTEROPERABILITY PROGRAMS REQUIREMENTS FOR
ELIGIBLE HOSPITALS AND CRITICAL ACCESS HOSPITALS”
(RIN: 0938-AT73)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the costs and benefits of the final rule. CMS stated the applicable percentage increase to the inpatient prospective payment systems (IPPS) rates required by statute, in conjunction with other payment changes in the final rule, will result in an estimated \$3.9 billion increase in FY 2020 from the federal government to IPPS providers, primarily driven by a combined \$3.5 billion increase in uncompensated care payments, and a net increase of \$0.4 billion primarily resulting from estimated changes in FY 2020 capital payments and new technology add-on payments. Also, CMS estimated long-term care hospitals (LTCH) would experience an increase in payments by \$43 million in FY 2020 from the federal government to LTCH providers.

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

CMS believes the provisions of the final rule relating to acute care hospitals will have a significant impact on small entities because the final rule will affect payments to a substantial number of small rural hospitals, as well as other classes of hospitals, and the effects on some hospitals may be significant. According to CMS, the final rule contains a range of policies, describes the statutory provisions that are addressed, identifies the policies, and presents the rationales for the agency’s decisions, and, where relevant, alternatives that were considered; CMS identified these discussions as constituting its Regulatory Flexibility 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 the final rule will not mandate any requirements for state, local, or tribal governments, and that it will not affect private sector costs.

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

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

On May 3, 2019, CMS published a proposed rule. 84 Fed. Reg. 19158. CMS responded to comments in the final rule.

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

CMS determined that the final rule contains information collection requirements (ICR) under the Act. CMS discussed the finalized portions of the ICRs in the final rule. CMS estimated the changes to the ICRs in the final rule would increase total burden hours by 39,252 and would increase total cost by \$2,235,397.

Statutory authorization for the rule

According to CMS, the final rule was promulgated pursuant to 42 U.S.C. §§ 1302, 1395d, 1395f, 1395g, 1395i, 1395x, 1395hh, 1395rr, 1395tt, and 1395ww.

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

CMS stated that, in accordance with the provisions of the Order, the final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS stated that it examined the impacts of the final rule as required by the Order.