U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

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October 11, 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 and Medicaid Programs; Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies, and Hospital and Critical Access Hospital Changes to Promote Innovation, Flexibility, and Improvement in Patient Care*

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 and Medicaid Programs; Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies, and Hospital and Critical Access Hospital Changes to Promote Innovation, Flexibility, and Improvement in Patient Care" (RIN: 0938-AS59). We received the rule on October 1, 2019. It was published in the *Federal Register* as a final rule on September 30, 2019. 84 Fed. Reg. 51836. The effective date of the rule is November 29, 2019.

According to CMS, the rule empowers patients to be active participants in the discharge planning process and complements efforts around interoperability that focus on the seamless exchange of patient information between health care settings by revising the discharge planning requirements that hospitals (including short-term acute-care hospitals, long-term care hospitals, rehabilitation hospitals, psychiatric hospitals, children's hospitals, and cancer hospitals), critical access hospitals, and home health agencies must meet in order to participate in the Medicare

and Medicaid programs. This final rule also, according to CMS, implements discharge planning requirements which will give patients and their families access to information that will help them to make informed decisions about their post-acute care, while addressing their goals of care and treatment preferences, which may ultimately reduce their chances of being re-hospitalized. It also updates one provision regarding patient rights in hospitals, intended to promote innovation and flexibility and to improve patient care, according to CMS.

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* on September 30, 2019. 84 Fed. Reg. 51836. It was received by the House of Representatives on October 2, 2019. 165 Cong. Rec. H8100 (Oct. 8, 2019). The *Congressional Record* does not reflect the date of receipt by the Senate. The rule has a stated effective date of November 29, 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

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 & MEDICAID SERVICES
ENTITLED
"MEDICARE AND MEDICAID PROGRAMS; REVISIONS TO REQUIREMENTS FOR DISCHARGE PLANNING FOR HOSPITALS, CRITICAL ACCESS HOSPITALS, AND HOME HEALTH AGENCIES, AND HOSPITAL AND CRITICAL ACCESS HOSPITAL CHANGES TO PROMOTE INNOVATION, FLEXIBILITY, AND IMPROVEMENT IN PATIENT CARE"
(RIN: 0938-AS59)

(i) Cost-benefit analysis

The Department for Health and Human Services, Centers for Medicare & Medicaid Services (CMS) conducted an economic analysis of this final rule. CMS determined the qualitative benefits of this rule are potential reductions in morbidity, mortality, and medical costs for hospital, home health agency (HHA), and critical access hospital (CAH) patients. CMS did not quantify or monetize any benefits of this rule. According to CMS, the annualized monetized costs of discharge planning to medical care providers is estimated to be $220 million, with a low estimate of $170 million and a high estimate of $280 million, from 2019 to 2028.

(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 economic impact on a substantial number of small entities, and CMS certified that a Final Regulatory Flexibility Analysis was not required. Nevertheless, CMS stated that the Regulatory Impact Analysis and the preamble it provided in the final rule together meet the RFA requirements for such an analysis. CMS also determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

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

CMS determined that this final rule will have an effect on affected entities of approximately $215 million per year, which is above the threshold of $154 million ($100 million, adjusted for inflation). According to CMS, virtually all of these costs will impact HHAs. CMS stated that the Regulatory Impact Analysis and the other preamble sections in the final rule together meet the UMRA requirements for analysis under the Act.

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

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

On November 3, 2015, CMS published a proposed rule on discharge planning requirements for hospitals, CAHs, and post-acute care settings. 80 Fed. Reg. 68126. CMS received 299 comments from individuals, health care professionals and corporations, national associations

and coalitions, state health departments, patient advocacy organizations, and individual facilities that will be impacted by the rule. CMS responded to comments in the final rule.

On June 16, 2016, CMS published a proposed rule on a number of conditions of participation requirements that hospitals and CAHs must meet in order to participate in the Medicare and Medicaid programs. 81 Fed. Reg. 39448. CMS received 200 comments, of which a small portion was centered on the proposed patient's right to access his or her own medical information requirement, according to CMS. The provision that CMS is finalizing here ensures, according to CMS, a patient's right to access his or her own medical information from a hospital, and this is the only provision of that rule that CMS is finalizing in this final rule. CMS responded to comments pertaining to that provision in this final rule.

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

CMS determined that this rule contains information collection requirements (ICRs) under the Act. CMS solicited public comments for ICRs for the following sections: (1) ICRs regarding hospital discharge planning; (2) ICRs regarding CAH discharge planning; and (3) ICRs regarding home health discharge planning. With regard to hospital discharge planning and CAH discharge planning, CMS stated that it believed hospitals were already following most of these requirements, and CMS did not assess any additional burden beyond an estimate in the Regulatory Impact Analysis for a one-time cost to hospitals to modify their policies and procedures in order to ensure that they are meeting the requirements of the rule. With regard to home health discharge planning, CMS estimated the burden to be approximately $215 million annually. CMS stated that the ICR related to the home health agency conditions of participation (Office of Management and Budget (OMB) Control Number 0938-1299) will be revised and sent to OMB.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of sections 1302 and 1395hh of title 42, United States Code.

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

CMS estimates that this rulemaking is economically significant as measured by the $100 million threshold in the Order. The rule was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

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