



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

B-331657

December 16, 2019

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

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; CY 2020 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts*

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; CY 2020 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts" (RIN: 0938-AT76). We received the rule on December 4, 2019. It was published in the *Federal Register* as a notice on November 13, 2019. 84 Fed. Reg. 61619. The effective date of the rule is January 1, 2020.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2020 under Medicare's Hospital Insurance Program. The Medicare statute specifies the formulae used to determine these amounts. For CY 2020, the inpatient hospital deductible will be \$1,408. The daily coinsurance amounts for CY 2020 will be \$352 for the 61st through the 90th day of hospitalization in a benefit period; \$704 for lifetime reserve days; and \$176 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

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 60-day delay in effective date can be waived however if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although CMS did not specifically mention CRA's 60-day delay in the effective date requirement, the agency found good cause to waive notice-and-comment procedures and incorporated a brief statement of reasons in this rule. Specifically, CMS stated the calculated inpatient hospital deductible and hospital and

extended care services coinsurance amounts were determined as directed by statute; the statute establishes both when the deductible and coinsurance amounts must be published and the information that the Secretary of Health and Human Services must factor into the deductible and coinsurance amounts. Because of this, CMS determined it did not have discretion on how to set the rates, and this notice simply notifies the public of the updates to the amounts in accordance with the statute.

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; CY 2020 INPATIENT HOSPITAL
DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES
COINSURANCE AMOUNTS”
(RIN: 0938-AT76)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the total increase in costs to beneficiaries is about \$590 million due to: (1) the increase in the deductible and coinsurance amounts, and (2) the increase in the number of deductibles and daily coinsurance amounts paid.

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

CMS certified the notice would not have a significant economic impact on a substantial number of small entities. CMS also certified the notice will not have a significant economic 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 the notice will not impose mandates that will have a consequential effect of \$154 million or more (\$100 million, adjusted for inflation) 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.*

CMS waived the notice-and-comment rulemaking procedures for good cause. CMS claimed good cause because, according to CMS, the calculated inpatient hospital deductible and hospital and extended care services coinsurance amounts were determined as directed by statute; the statute establishes both when the deductible and coinsurance amounts must be published and the information that the Secretary must factor into the deductible and coinsurance amounts. Because of this, CMS determined it did not have discretion on how to set the rates, and this notice simply notifies the public of the updates to the amounts in accordance with the statute.

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

CMS stated the notice does not impose any information collection requirements governed by the Act.

Statutory authorization for the rule

CMS promulgated the notice pursuant to section 1395e of title 42, United States Code.

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

CMS stated the notice was economically significant under the Order and had been reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined the notice will not have a substantial direct effect on state or local governments, preempt state law, or otherwise have federalism implications.