



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

B-332434

August 24, 2020

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021” (RIN: 0938-AU13). We received the rule on August 12, 2020. It was published in the *Federal Register* as a final rule on August 5, 2020. 85 Fed. Reg. 47594. The effective date of the final rule is October 1, 2020.

According to CMS, this final rule updates the prospective payment rates for skilled nursing facilities (SNF) for fiscal year (FY) 2021, as required by section 1888(e)(4)(E) of the Social Security Act (the Act), 42 U.S.C. § 1395yy(e)(4)(E), and publishes certain information relating to the payment update, as required by section 1888(e)(4)(H) of the Act, 42 U.S.C. § 1395yy(e)(4)(H). In addition, according to CMS, the rule changes code mappings used under the SNF prospective payment system for classifying patients into case-mix groups, updates Office of Management and Budget delineations used to identify a facility’s status as an urban or

rural facility and to calculate the wage index, and updates the SNF Value-Based Purchasing Program. Finally, according to CMS, the rule also makes two minor revisions in the regulation text.

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 published in the *Federal Register* on August 5, 2020. 85 Fed. Reg. 47594. However, as of August 24, 2020, receipt of the rule is not reflected by either House of Congress in the *Congressional Record*. According to an HHS official, the Senate received the rule on August 20, 2020, and the House of Representatives received the rule on August 18, 2020. See E-mail from Regulations Coordinator, Immediate Office of the Secretary, HHS, to Senior Attorney, Appropriations Law Group, Office of the General Counsel, GAO (Aug. 20, 2020, 11:30 AM EST). The rule has a stated effective date of October 1, 2020. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

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; PROSPECTIVE PAYMENT SYSTEM AND
CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES;
UPDATES TO THE VALUE-BASED PURCHASING PROGRAM
FOR FEDERAL FISCAL YEAR 2021”
(RIN: 0938-AU13)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) conducted an economic analysis of this final rule for fiscal year (FY) 2021. According to CMS, the economic impact of the rule’s update to the FY 2021 skilled nursing facilities (SNF) prospective payment system (PPS) payment rate is an estimated increase of \$750 million in aggregate payments to SNFs during FY 2021. Additionally, according to CMS, the economic impact of the rule’s updates to the SNF Value-Based Purchasing Program is an estimated decrease of \$199.54 million in aggregate payments to SNFs during FY 2021.

(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. CMS also determined that the 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, 2 U.S.C. §§ 1532-1535

CMS determined that this final rule will not impose mandates 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.*

On April 15, 2020, CMS published a proposed rule, entitled “Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021.” 85 Fed. Reg. 20914. According to CMS, it received 47 public comments on the provisions implemented within this final rule from the proposed rule. CMS stated that comments were submitted by individuals, providers, corporations, government agencies, private citizens, trade associations, and major organizations on the FY 2021 SNF PPS proposed rule. According to CMS, the rule provides brief summaries of these provisions, summaries of the public comments received regarding these provisions, and its responses to those public comments.

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

CMS determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to various provisions of title 42, United States Code.

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

CMS determined that this final rule is economically significant under the Order and submitted the rule to the Office of Management and Budget (OMB) for its review.

Executive Order No. 13,132 (Federalism)

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