



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

B-332733

November 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; CY 2021 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 2021 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts" (RIN: 0938-AU14). We received this notice on November 13, 2020. It was published in the *Federal Register* as a notice on November 12, 2020. 85 Fed. Reg. 71916. The effective date of the rule is January 1, 2021.

According to CMS, this notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2021 under Medicare's Hospital Insurance Program (Medicare Part A). CMS noted the Medicare statute specifies the formulae used to determine these amounts. CMS states, for CY 2021, the inpatient hospital deductible will be \$1,484. According to CMS, the daily coinsurance amounts for CY 2021 will be: \$371 for the 61st through 90th day of hospitalization in a benefit period; \$742 for lifetime reserve days; and \$185.50 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 the CRA's 60-day delay in effective date requirement, CMS stated that notice and comment procedures are unnecessary for this notice and the agency finds good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act, if such procedures may be construed to be required at all. CMS stated further that this notice, is simply notifying the public of the updates to the inpatient hospital deductible and the hospital and extended care services coinsurance amounts, in accordance with 42 U.S.C. § 1395w-27a, for CY 2021. CMS asserts that even if notice and comment procedures were required for this notice, for the reasons stated above, it finds good cause to waive the delay in effective date of this notice, as additional delay would be contrary to the public interest under the statute. See 42 U.S.C. § 1395w-27a(e)(1)(B)(ii). Finally CMS stated it believes that any potential delay in the effective date of this notice, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

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: Vanessa Jones  
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 2021 INPATIENT HOSPITAL  
DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE  
SERVICES COINSURANCE AMOUNTS  
(RIN: 0938-AU14)

(i) Cost-benefit analysis

In its submission to us, the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) indicated that it did not prepare an analysis of the costs and benefits of this notice. Even so, CMS provided information about the estimated total increase in costs to beneficiaries. According to CMS the estimated cost to beneficiaries is about \$2,450 million (rounded to the nearest \$10 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. CMS stated, it determined the increase in cost to beneficiaries by calculating the difference between the 2020 and 2021 deductible and coinsurance amounts multiplied by the estimated increase in the number of deductible and coinsurance amounts paid.

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

CMS determined that this notice will not have a significant economic impact on a substantial number of small entities, nor 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 notice does not impose mandates that will have a consequential effect of \$156 million (\$100 million, adjusted for inflation) or more 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 asserts that even if notice and comment procedures were required for this notice, it found good cause to waive the delay in effective date of this notice, as additional delay would be contrary to the public interest under 42 U.S.C. § 1395w-27a(e)(1)(B)(ii). CMS stated, it believes that any potential delay in the effective date of this notice, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

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

CMS determined that this notice does not impose information collection requirements.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to section 1395e of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated, although it does not consider this notice to constitute a substantive rule, what is presented in this notice is economically significant under the Order.

Executive Order No. 13132 (Federalism)

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