

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

B-333478

August 10, 2021

The Honorable Ron Wyden  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2022 and Updates to the IRF Quality Reporting Program; Payment for Complex Rehabilitative Wheelchairs and Related Accessories (Including Seating Systems) and Seat and Back Cushions Furnished in Connection with Such Wheelchairs*

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2022 and Updates to the IRF Quality Reporting Program; Payment for Complex Rehabilitative Wheelchairs and Related Accessories (Including Seating Systems) and Seat and Back Cushions Furnished in Connection with Such Wheelchairs” (RIN: 0938-AU38; 0938-AT21; 0938-AU17). We received the rule on August 2, 2021. It was published in the *Federal Register* as final rule on August 4, 2021. 86 Fed. Reg. 42362. The effective date is October 1, 2021.

The final rule, according to CMS, updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for fiscal year (FY) 2022. CMS stated that the rule includes the classification and weighting factors for the IRF prospective payment system’s case-mix groups and a description of the methodologies and data used in computing the prospective payment

rates for FY 2022. The rule, according to CMS, also includes updates for the IRF Quality Reporting Program. In addition, CMS stated that it is finalizing a Medicare provision adopted in an interim final rule related to fee schedule adjustments for wheelchair accessories and set and back cushions furnished in connection with group 3 or higher complex rehabilitative power wheelchairs, as well as changes to the regulations related to payment for these and other items.

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 on August 4, 2021. 86 Fed. Reg. 42362. The rule has a stated effective date of October 1, 2021. The *Congressional Record* does not yet reflect when the House of Representatives or the Senate received the rule. However, based on the date of publication, the 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; INPATIENT REHABILITATION FACILITY  
PROSPECTIVE PAYMENT SYSTEM FOR FEDERAL FISCAL YEAR 2022  
AND UPDATES TO THE IRF QUALITY REPORTING PROGRAM;  
PAYMENT FOR COMPLEX REHABILITATIVE WHEELCHAIRS AND RELATED  
ACCESSORIES (INCLUDING SEATING SYSTEMS) AND SEAT AND  
BACK CUSHIONS FURNISHED IN CONNECTION WITH SUCH WHEELCHAIRS”  
(RIN: 0938-AU38; 0938-AT21; 0938-AU17)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) stated that it estimated that the impact of the changes and updates described in this final rule would be a net estimated increase of \$130 million in payments to inpatient rehabilitation facility (IRF) providers. CMS estimated that the economic impact of the rule would be an increase in cost to IRFs of \$503,100. CMS further estimated that the economic impact of the rule’s provisions related to complex power wheelchair accessories would be \$130 million in increased payments to durable medical equipment (DME) suppliers. Lastly, CMS stated that the economic impact of the rule’s provisions related to complex manual wheelchairs would be an estimated \$40 million in increased payments to DME suppliers.

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

CMS certified that this final rule will not have a significant impact on a substantial number of small entities. CMS also stated that it estimates an overall impact for rural inpatient rehabilitation facilities in all areas between -0.1 percent and 3.0 percent.

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

CMS stated that this final rule does not mandate any requirements for state, local, or tribal governments, or for 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 November 4, 2020, CMS published a proposed rule to revise the definition of “item” under the Competitive Bidding Program (CBP) at 42 C.F.R. § 414.402 to exclude complex rehabilitative manual wheelchairs and certain other manual wheelchairs and related accessories when furnished in connection with such wheelchairs from the CBP. 85 Fed. Reg. 70358. CMS received 11 timely responses from wheelchair suppliers, manufacturers, and a national coalition of consumers and clinicians. On April 12, 2021, CMS published a proposed rule to update the

IRF prospective payment system for fiscal year 2022 and the IRF Quality Reporting Program for fiscal years 2022 and 2023. 86 Fed. Reg. 19086. CMS received 50 timely responses from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, health care industry organizations, and health care consulting firms. CMS responded to comments in this final rule.

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

CMS stated that this final rule does not impose any new information collection requirements under PRA.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to sections 1302, 1395hh, and 1395rr(b)(1) of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs has determined that this final rule is economically significant. CMS stated that the rule has been reviewed by OMB.

Executive Order No. 13132 (Federalism)

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