

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

B-333479

August 11, 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; FY 2022 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates for Fiscal Year Beginning October 1, 2021 (FY 2022)*

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; FY 2022 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates for Fiscal Year Beginning October 1, 2021 (FY 2022)” (RIN: 0938-AU40). We received the rule on August 2, 2021. It was published in the *Federal Register* as a final rule on August 4, 2021. 86 Fed. Reg. 42608. The effective date is October 1, 2021.

According to CMS, the final rule updates the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPF), which includes psychiatric hospitals and excludes psychiatric units of an acute care hospital or critical access hospital. CMS stated the final rule also updates and clarifies the IPF teaching policy with respect to IPF hospital closures and displaced residents and finalizes a technical change to one of the 2016-based IPF market basket price proxies. In addition, CMS stated the final rule finalizes proposals on quality measures and reporting requirements under the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program.

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 on August 4, 2021. 86 Fed. Reg. 42608. The *Congressional Record* does not indicate when the House of Representatives or the Senate received the final rule. The final rule has a stated effective date of October 1, 2021. 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". The signature is written in black ink and is positioned above the typed name and title.

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; FY 2022 INPATIENT PSYCHIATRIC  
FACILITIES PROSPECTIVE PAYMENT SYSTEM AND QUALITY  
REPORTING UPDATES FOR FISCAL YEAR  
BEGINNING OCTOBER 1, 2021 (FY 2022)”  
(RIN: 0938-AU40)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the final rule would impose regulatory review costs of \$0.2 million in fiscal year 2022, and reduce cost savings by \$0.44 million, at a 3 percent discount rate, and \$0.51 million, at a 7 percent discount rate, from fiscal years 2023 through 2031. CMS also estimated the final rule would lead to transfers of \$80 million from the federal government to Inpatient Psychiatric Facilities (IPF) Medicare providers in fiscal year 2022.

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

CMS estimated that the overall revenue impact of this final rule on all IPFs is to increase estimated Medicare payments by approximately 2.1 percent. As a result, since the estimated impact of this final rule is a net increase in revenue across almost all categories of IPFs, CMS determined that this final rule will have a positive revenue impact on a substantial number of small entities. CMS also certified the final rule would 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 final rule does not mandate any requirements for state, local, or tribal governments, or for the private sector, and would not impose a mandate that will result in the expenditure by state, local, and tribal governments, or by 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 13, 2021, CMS published a proposed rule. 86 Fed. Reg. 19480. CMS received 898 unique comments on the final rule and responded to them in the final rule.

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

CMS determined the final rule contains information collection requirements (ICRs) subject to the Act. The ICRs are associated with Office of Management and Budget (OMB) Control Numbers 0938-0050, 0938-1171, and 0920-1317. CMS estimated the total burden associated with these ICRs in the final rule.

Statutory authorization for the rule

CMS promulgated the final rule pursuant to sections 1302 and 1395hh of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated OMB had reviewed the final rule and determined it was economically significant.

Executive Order No. 13132 (Federalism)

CMS determined the final rule does not impose substantial direct costs on state or local governments or preempt state law.