



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

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June 5, 2014

The Honorable Ron Wyden
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Dave Camp
Chairman
The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs*

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; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs" (RIN: 0938-AR37). We received the rule on May 20, 2014. It was published in the *Federal Register* as a final rule on May 23, 2014. 79 Fed. Reg. 29,844.

The final rule will revise the Medicare Advantage (MA) program (Part C) regulations and prescription drug benefit program (Part D) regulations to implement statutory requirements, improve program efficiencies, and clarify program requirements. The final rule also includes several provisions designed to improve payment accuracy.

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. Our review of the procedural steps taken indicates that CMS complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Deputy Director, ODRM
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; CONTRACT YEAR 2015 POLICY AND
TECHNICAL CHANGES TO THE MEDICARE ADVANTAGE AND
THE MEDICARE PRESCRIPTION DRUG BENEFIT PROGRAMS"
(RIN: 0938-AR37)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) discussed the costs and benefits of this final rule. CMS estimated the savings to the federal government regarding the eligibility of enrollment for incarcerated individuals, which could save the Medicare Advantage (MA) program up to \$27 million in 2015, increasing to \$103 million in 2024 (total of \$650 million over this period), and could save the Part D program (includes the Part D portion of MA prescription drug plans) up to \$46 million in 2015, increasing to \$153 million in 2024 (total of \$965 million over this period). CMS further estimated the savings from implementing these provisions will be \$73 million in CY 2015. The savings will increase annually. In CY 2024, the federal government savings from implementing these provisions will be \$256 million. For the entire estimated period, CYs 2015 through 2024, CMS estimated the total federal government (Medicare) impact to result in savings of approximately \$1.615 billion. CMS stated that these savings do not represent net social benefits because they consist of transfers of value from drug manufacturers, pharmacies, and incarcerated individuals to the federal government, MA organizations, Part D sponsors and beneficiaries who continue in the programs.

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

CMS determined that the final rule will have minimal impact on small entities. In addition, CMS determined that this final 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 require spending during at least one year by state, local, or tribal governments in aggregate, or by the private sector of \$100 million (\$141 million adjusted for inflation).

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On January 10, 2014, CMS published a proposed rule. 79 Fed. Reg. 1,918. CMS received approximately 7,600 items of timely correspondence containing comments on the proposed rule. CMS stated that while it is finalizing several of the provisions from the proposed rule, there

are a number of provisions from the proposed rule (for example, enrollment eligibility criteria for individuals not lawfully present in the United States) that CMS intends to address later and a few which they do not intend to finalize. CMS also noted that some of the public comments were outside of the scope of the proposed rule. These out-of-scope public comments were not addressed in this final rule. Summaries of the public comments that were within the scope of the proposed rule and CMS responses to those public comments are set forth in the various sections of the final rule under the appropriate heading. However, CMS noted that in the final rule it did not address comments received with respect to the provisions of the proposed rule that it did not finalize. Rather, CMS stated that it will address them at a later time, in a subsequent rulemaking document, as appropriate.

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

CMS determined that this final rule with comment period contains information collection requirements under the Act. CMS estimates that the fiscal year reporting, recordkeeping, and cost burdens associated with the information collection requirements will be \$48,343.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of section 9701 of title 31 and sections 300e, 300e–5, and 300e–9, 1302, 1395w–101 through 1395w–152, 1395hh of title 42, United States Code.

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

CMS stated that this final rule has been designated an “economically significant” rule under section 3(f)(1) of Executive Order 12,866, and it was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule does not impose substantial direct requirement costs on state and local governments, will not preempt state law, and does not otherwise have federalism implications under the Order.