



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

B-325991

July 1, 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; Additional Extension of the Payment Adjustment for Low-Volume Hospitals and the Medicare-Dependent Hospital (MDH) Program Under the Hospital Inpatient Prospective Payment Systems (IPPS) for Acute Care Hospitals for Fiscal Year 2014*

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; Additional Extension of the Payment Adjustment for Low-Volume Hospitals and the Medicare-Dependent Hospital (MDH) Program Under the Hospital Inpatient Prospective Payment Systems (IPPS) for Acute Care Hospitals for Fiscal Year 2014" (RIN: 0938-ZB17). We received the rule on June 13, 2014. It was published in the *Federal Register* as an extension of a payment adjustment and a program on June 17, 2014. 79 Fed. Reg. 34,444.

The notice announces changes to the payment adjustment for low-volume hospitals and to the Medicare-dependent hospital (MDH) program under the hospital inpatient prospective payment systems (IPPS) for the second half of FY 2014 (April 1, 2014, through September 30, 2014) in

accordance with sections 105 and 106, respectively, of the Protecting Access to Medicare Act of 2014 (PAMA).¹

The Congressional Review Act 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 notice has a stated effective date of June 12, 2014. Under the rule's stated applicability dates, the provisions of the rule are applicable for discharges on or after April 1, 2014, and on or before September 30, 2014. The rule was received on June 13, 2014, and published in the *Federal Register* on June 17, 2014. Therefore, the notice does not have the required 60-day delay in effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that notice and public procedures thereon are 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. § 808(2). CMS found good cause that notice and public procedures were unnecessary and contrary to the public interest in the case of this final rule and therefore the 60-day delay is not required. CMS explained that the policies being publicized do not constitute agency rulemaking and do not require a notice and comment period. Rather, the statute, as amended by PAMA, has already required that the agency make these changes, and CMS is simply notifying the public of the extension of the changes to the payment adjustment for low-volume hospitals and the MDH program that was effective April 1, 2014. Finally, CMS states that to the extent any of the policies articulated in the document constitute interpretations of the statute's requirements or procedures that will be used to implement the statute's directive, they are interpretive rules, general statements of policy, and rules of agency procedure or practice, which are not subject to notice and comment rulemaking or a delayed 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. 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
Department of Health and Human Services

¹ Pub. L. No. 113-93, 128 Stat. 1040, 1042 (2014).

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; ADDITIONAL EXTENSION OF THE
PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS AND
THE MEDICARE-DEPENDENT HOSPITAL (MDH) PROGRAM
UNDER THE HOSPITAL INPATIENT PROSPECTIVE
PAYMENT SYSTEMS (IPPS) FOR ACUTE CARE
HOSPITALS FOR FISCAL YEAR 2014"
(RIN: 0938-ZB17)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) estimated the impact of this rule. The earlier FY 2014 IPPS/LTCH PPS final rule and the FY 2014 IPPS IFC included an impact analysis for the changes to IPPS included in those rules. 78 Fed. Reg. 51,037 (Aug. 19, 2013) and 79 Fed. Reg. 15,022 (Mar. 18, 2014), respectively. The CMS rule updates those impacts to IPPS to reflect the changes made by sections 105 and 106 of PAMA. Since these sections were not budget neutral, the overall estimates for hospitals have changed from CMS's estimates that were published in the FY 2014 IPPS/LTCH PPS final rule. CMS estimates that the changes in the FY 2014 IPPS payments, including the changes announced in the CMS document, will result in an approximate \$1.68 billion increase in total payments to IPPS hospitals relative to FY 2013 rather than the \$1.44 billion increase CMS projected in the FY 2014 IPPS IFC. CMS states that the rule will result in estimated annualized monetized transfers from the federal government to IPPS Medicare providers of \$227 million for fiscal year 2014.

(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 have a significant economic impact on a substantial number of small entities and therefore conducted a final regulatory flexibility analysis. This analysis included a statement of the need, a discussion of the overall impact, the anticipated effects, and an accounting statement and table. CMS stated that due to the prescriptive nature of the statutory provisions, no alternatives were considered.

(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 will not mandate any requirements for state, local, or tribal governments, nor will it affect private sector costs.

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

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

CMS found it unnecessary to undertake notice and comment rulemaking for this rule because it sets forth the requirements for the extension of the changes to the payment adjustment for low-volume hospitals and the MDH program as prescribed in statute and as a result, issued this notification to the public. As the changes outlined have already taken effect, CMS stated that it would also be impracticable to undertake notice and comment rulemaking. For the reasons outlined, CMS found that a waiver of any delay in effective date, if it were otherwise applicable, is necessary to comply with the requirements of PAMA. Therefore, CMS also found good cause to waive notice and comment procedures as well as any delay in effective date, if such procedures or delays are required at all.

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

CMS determined that this notice does not impose information collection and recordkeeping requirements under the Act.

Statutory authorization for the rule

CMS published this notice in accordance with sections 105 and 106 of the Protecting Access to Medicare Act of 2014. Pub. L. No. 113-93, §§ 105-106, 128 Stat. 1040, 1042 (2014).

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

CMS determined that the changes announced in the notice are economically significant under the Order, and it was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice will not have a substantial effect on state and local governments.