



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

B-326168

August 20, 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 M. 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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015" (RIN: 0938-AS07). We received the rule on July 31, 2014. It was published in the *Federal Register* as a final rule on August 5, 2014. 79 Fed. Reg. 45,628.

The final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2015. In addition, it adopts the most recent Office of Management and Budget (OMB) statistical area delineations to identify a facility's urban or rural status for the purpose of determining which set of rate tables will apply to the facility and to determine the SNF PPS wage index, including a 1-year transition with a blended wage index for all providers for FY 2015. This final rule also contains a revision to policies related to the Change of Therapy (COT) Other Medicare Required Assessment (OMRA). This final rule includes a discussion of a provision related to the Affordable Care Act involving Civil Money Penalties. Finally, this final rule discusses the SNF therapy payment research currently

underway within CMS, observed trends related to therapy utilization among SNF providers, and the agency's commitment to accelerating health information exchange in SNFs.

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). This final rule was received by Congress on July 31, 2014, and published on August 5, 2014. 160 Cong. Rec. H7240 (Aug. 1, 2014); 79 Fed. Reg. 45,628. The stated effective date for this final rule is October 1, 2014. Therefore, this final rule does not have the required 60-day delay.

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. With the exception of the 60-day delay in effective date, 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

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; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR
SKILLED NURSING FACILITIES FOR FY 2015"
(RIN: 0938-AS07)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) summarized the costs, transfers, and benefits of this final rule by estimating that the aggregate impact of the rule will be an increase of \$750 million in aggregate payments to skilled nursing facilities (SNFs) during FY 2015 resulting from the SNF market basket update to the payment rates, as adjusted by the forecast error correction and multifactor productivity adjustment.

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

CMS determined that this final rule will not have a significant economic impact on a substantial number of small entities or 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 impose spending costs on state, local, or tribal governments, in the aggregate, or on the private sector, of \$141 million.

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

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

On May 6, 2014, CMS published a proposed rule. 79 Fed. Reg. 25,767. CMS received 26 timely public comments on the proposed rule from individual providers, corporations, government agencies, private citizens, trade associations, and major organizations, to which CMS responded in the final rule.

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

CMS determined that this final rule does not contain any new or revised recordkeeping, reporting, or third-party disclosure requirements. Consequently, CMS states that this rule does not require additional OMB review/approval under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). CMS summarized and responded to the comments received on the proposed rule.

Statutory authorization for the rule

CMS promulgated this rule under the authority of section 1888(e) of the Social Security Act, as amended. 42 U.S.C. § 1395yy(e).

Executive Order No. 12,866 and 13,563 (Regulatory Planning and Review)

CMS determined that this final rule is economically significant under the Orders. The rule has been reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.