



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

B-326170

August 21, 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; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2014 (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; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2014 (FY 2015)” (RIN: 0938-AS08). We received the rule on July 31, 2014. It was published in the *Federal Register* as a final rule on August 6, 2014. 79 Fed. Reg. 45,938.

This final rule updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs). These changes will be applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2014, through September 30, 2015. This final rule also implements the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) and the International Classification of Diseases, 10th Revision, Procedure Coding System (ICD-10-PCS) codes; finalizes a new methodology for updating the cost of living adjustment; and finalizes new quality measures and reporting requirements under the IPF quality reporting program.

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 final rule has a stated effective date of October 1, 2014. The rule was received on July 31, 2014, and published in the *Federal Register* on August 6, 2014. 179 Cong. Rec. H7240 (Aug. 1, 2014); 79 Fed. Reg. 45,938. Therefore, the final rule does not have the required 60-day delay in 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. 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; INPATIENT PSYCHIATRIC FACILITIES
PROSPECTIVE PAYMENT SYSTEM—UPDATE FOR
FISCAL YEAR BEGINNING OCTOBER 1, 2014 (FY 2015)"
(RIN: 0938-AS08)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) summarized the impact of this final rule. CMS estimates that the overall economic impact of this final rule will be \$120 million in increased payments to inpatient psychiatric facilities (IPFs) during FY 2015. CMS also estimated that the total costs in fiscal year 2015 for IPFs as a result of the final new quality reporting requirements will be \$33,372,508.

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

Because CMS lacks data on individual hospital receipts, it did not determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, CMS assumed that all IPFs are small entities. CMS estimates that the overall revenue impact of this rule on all IPFs is to increase Medicare payments by approximately 2.5 percent. As a result, since the estimated impact of this final rule is a net increase in revenue across all categories of IPFs, CMS determined that this final rule will have a positive revenue impact on a substantial number of small entities.

(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 by the private sector, of \$141 million (\$100 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 May 6, 2014, CMS published a notice of proposed rulemaking. 79 Fed. Reg. 26,040. CMS received 28 public comments from hospital and hospital-based associations. CMS summarized and responded to the comments in the final rule.

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

CMS determined that this final rule contains information collection requirements under the Act. CMS estimates the additional burden of complying with the reporting requirements under

section VIII of this rule will be 427 hours per facility for the FY 2017 payment determination and subsequent years. This results in a total burden of 4,065 hours or \$257,802.30. CMS submitted this rule to the Office of Management and Budget (OMB) for review under the Act.

Statutory authorization for the rule

The final rule is authorized by section 1886(s) of the Social Security Act, which was added by section 3401(f) of the Patient Protection and Affordable Care Act (Public Law 111-148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

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

CMS determined that this final rule is economically significant under the Order and was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

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