



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

B-327286

August 20, 2015

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

The Honorable Fred Upton  
Chairman  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Paul Ryan  
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; FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements*

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 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements" (RIN: 0938-AS39). We received the rule on July 31, 2015. It was published in the *Federal Register* as a final rule on August 6, 2015. 80 Fed. Reg. 47,142.

This final rule updates the hospice payment rates and the wage index for fiscal year (FY) 2016, including implementing the last year of the phase-out of the wage index budget neutrality adjustment factor. This rule also finalizes CMS's proposals to differentiate payments for routine home care based on the beneficiary's length of stay and implement a service intensity add-on payment for services provided in the last 7 days of a beneficiary's life, if certain criteria are met. In addition, this rule implements changes to the aggregate cap calculation, aligns the cap accounting year for both the inpatient cap and the hospice aggregate cap with the federal fiscal year starting in FY 2017, makes changes to the hospice quality reporting program, clarifies a requirement for diagnosis reporting on the hospice claim, and discusses recent hospice payment reform research and analyses.

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 has a stated effective date of October 1, 2015. This rule also states that the implementation date for the routine home care rates and the service intensity add-on payment rates is January 1, 2016. The rule was received by the House of Representatives on July 31, 2015, and by the Senate on August 3, 2015. 161 Cong. Rec. H5787 (Aug. 4, 2015); 161 Cong. Rec. S6292 (Aug. 4, 2015). It was then published in the *Federal Register* on August 6, 2015. 80 Fed. Reg. 47,142. Therefore, the portions of this rule which purport to have an effective date of October 1, 2015, do 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 requirement, 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; FY 2016 HOSPICE WAGE INDEX  
AND PAYMENT RATE UPDATE AND  
HOSPICE QUALITY REPORTING REQUIREMENTS”  
(RIN: 0938-AS39)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) did an economic analysis of this final rule. CMS estimated the overall effect of this final rule will be a \$160 million increase in Medicare payments to hospices. CMS’s estimated \$160 million increase in payments for fiscal year (FY) 2016 reflects the distributional effects of the 1.6 percent FY 2016 hospice payment update percentage (\$250 million increase), the use of updated wage index data and the phase-out of the wage index budget neutrality adjustment factor (-0.7 percent/\$120 million decrease), and the implementation of the new Office of Management and Budget’s (OMB’s) Core-Based Statistical Area delineations for FY 2016 hospice wage index with a 1-year transition (0.2 percent/\$30 million increase). CMS stated that the service intensity add-on payment will not result in aggregate changes to estimate hospice payments for FY 2016 as it will be implemented in a budget neutral manner through an overall reduction to the routine home care payment rate for all hospices.

(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 create a significant economic 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 is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$144 million or more (\$100 million in 1995 dollars, 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 5, 2015, CMS published a proposed rule. 80 Fed. Reg. 25,832. CMS responded to comments in the final rule.

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

CMS determined that this final rule does not impose additional information collection requirements. CMS did note that all information collection requirements discussed in this final rule have been approved by OMB and, consequently, CMS concluded that there is no need for review by OMB under the authority of the Act.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of sections 1102 and 1871 of the Social Security Act. 42 U.S.C. §§ 1302, 1395hh.

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

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

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not impose substantial burden on state or local governments.