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November 19, 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 Kevin Brady
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 and Medicaid Programs; CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health 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 and Medicaid Programs; CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements" (RIN: 0938-AS46). We received the rule on October 30, 2015. It was published in the *Federal Register* as a final rule on November 5, 2015. 80 Fed. Reg. 68,624.

This final rule updates Home Health Prospective Payment System (HH PPS) rates, including the national, standardized 60-day episode payment rates, the national per-visit rates, and the non-routine medical supply (NRS) conversion factor under the Medicare prospective payment system for home health agencies (HHAs). This rule implements the third year of the 4-year phase-in of the rebasing adjustments to the HH PPS payment rates. According to CMS, this rule updates the HH PPS case-mix weights using the most current, complete data available at the time of rulemaking and provides a clarification regarding the use of the "initial encounter" seventh character applicable to certain ICD-10-CM code categories. This final rule also

finalizes reductions to the national, standardized 60-day episode payment rate in calendar years 2016, 2017, and 2018 of 0.97 percent in each year to account for estimated case-mix growth unrelated to increases in patient acuity (nominal case-mix growth) between 2012 and 2014. In addition, this rule implements a home health value-based purchasing under which all Medicare-certified HHAs in selected states will be required to participate. Lastly, this rule finalizes minor changes to the home health quality reporting program and minor technical regulations text changes.

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 January 1, 2016. The rule was received by the Senate and the House of Representatives on October 30, 2015. 161 Cong. Rec. S7813 (Nov. 5, 2015); 161 Cong. Rec. H7622 (Nov. 3, 2015). However, it was published in the *Federal Register* on November 5, 2015. 80 Fed. Reg. 68,624. Therefore, the final rule does not have the full required 60-day delay in its 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, other than the 60-day delay requirement, 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 AND MEDICAID PROGRAMS; CY 2016 HOME HEALTH
PROSPECTIVE PAYMENT SYSTEM RATE UPDATE; HOME HEALTH
VALUE-BASED PURCHASING MODEL; AND
HOME HEALTH QUALITY REPORTING REQUIREMENTS"
(RIN: 0938-AS46)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) included in this final rule an economic analysis. CMS estimates that the net impact of this rule will be a decrease of 1.4 percent, or \$260 million, in Medicare payments to Home Health Agencies (HHAs) in 2016. The \$260 million decrease in estimated payments reflects the effects of the 1.9 percent 2016 home health payment update percentage (\$345 million increase), a 0.9 percent decrease in payments due to the 0.97 percent reduction to the national, standardized 60-day episode payment rate in 2016 to account for nominal case-mix growth from 2012 through 2014 (\$165 million decrease), and a 2.4 percent decrease in payments due to the third year of the 4-year phase-in of the rebasing adjustments. CMS also estimates that this final rule will result in no net impact on Medicare payments to HHAs competing in the Home Health Value-Based Purchasing (HHVBP) Model for 2016. However, CMS estimates the overall economic impact of the HHVBP Model provision to be \$380 million in total savings from a reduction in unnecessary hospitalizations and skilled nursing facility usage as a result of greater quality improvements in the home health industry over the life of the HHVBP Model.

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

For the purposes of RFA, CMS estimates that almost all HHAs are small entities. CMS concluded that the policies finalized in this rule will result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of HHAs. Therefore, CMS determined this final rule will have a significant economic impact on a substantial number of small entities. CMS stated that the Regulatory Impact Analysis, together with the rest of the preamble to the final rule, constitutes the Final Regulatory Flexibility Analysis for this final rule.

(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 have no consequential effect on state, local, or tribal governments or on the private sector.

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

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

On July 10, 2015, CMS published a proposed rule. 80 Fed. Reg. 39,840. CMS received 118 timely comments on the proposed rule from the public. CMS summarized and responded to the comments in the final rule.

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

While CMS determined that this final rule contains information collection requirements, CMS also determined that this rule does not add new, nor revise any of the existing information collection requirements, or burden estimate. The information collection requirements discussed in this rule for the Outcome and Assessment Information Set (OASIS–C1) data item set had been previously approved by the Office of Management and Budget (OMB) on February 6, 2014. The extension of OASIS–C1/ICD–9 version was reapproved under OMB control number 0938–0760 with a current expiration date of March 31, 2018. CMS noted that this version of the OASIS will be discontinued once the OASIS–C1/ICD–10 version is approved and implemented. In addition, to facilitate the reporting of OASIS data as it relates to the implementation of ICD–10, CMS submitted a new request for approval to OMB for the OASIS–C1/ICD–10 version. The proposed revised OASIS item was announced in a *Federal Register* notice and received OMB approval and assigned OMB control number 0938–1279. 80 Fed. Reg. 15,797.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of sections 1102 and 1872 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 and it was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not have substantial direct effects on the rights, roles, and responsibilities of states, or local or tribal governments.