



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

B-327564

November 24, 2015

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

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 Program; CY 2016 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts*

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; CY 2016 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts" (RIN: 0938-AS36). We received the rule on November 13, 2015. It was published in the *Federal Register* as a notice on November 16, 2015. 80 Fed. Reg. 70,808.

The notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2016 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2016, the inpatient hospital deductible will be \$1,288. The daily coinsurance amounts for CY 2016 will be: (1) \$322 for the 61st through 90th day of hospitalization in a benefit period; (2) \$644 for lifetime reserve days; and (3) \$161 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

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 notice has a stated effective date of January 1, 2016. The notice was received by Congress on November 13, 2015, and published in the *Federal Register* on November 16, 2015. 161 Cong. Rec. S8016 (Nov. 17, 2015); 80 Fed. Reg. 70,808. Therefore, this notice does not have a 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 delay is impracticable, unnecessary, or contrary to the public interest, and the agency

incorporates a statement of the findings and their reasons in the rule issued. 5 U.S.C. § 553(d)(3), 808(2). CMS found that that a delay is unnecessary here because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and CMS could exercise no discretion in following the formulae. Moreover, CMS found that the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest.

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, 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; CY 2016 INPATIENT HOSPITAL  
DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE  
SERVICES COINSURANCE AMOUNTS"  
(RIN: 0938-AS36)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) estimates that the total increase in costs to beneficiaries associated with this notice is about \$610 million due to (1) the increase in the deductible and coinsurance amounts, and (2) the increase in the number of deductibles and daily coinsurance amounts paid. CMS determined the increase in costs to beneficiaries by calculating the difference between the 2015 and 2016 deductible and coinsurance amounts multiplied by the increase in the number of deductible and coinsurance amounts paid.

(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 not have a significant economic impact on a substantial number of small entities. CMS also determined that this notice will not have a significant impact on the operations of a substantial number of 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 notice does not impose mandates that will have a consequential effect of \$144 million (\$100 million adjusted for inflation) or more 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 (APA), 5 U.S.C. §§ 551 et seq.

CMS did not publish a proposed notice to provide a period for public comment. CMS waived that procedure because it found good cause that prior notice and comment were impracticable, unnecessary, or contrary to the public interest. Specifically, CMS found that the procedure for notice and comment was unnecessary here, because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and CMS could exercise no discretion in following the formulae. Moreover, CMS found that the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest.

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

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

Statutory authorization for the rule

CMS published this notice under the authority of section 1813(b)(2) of the Social Security Act. 42 U.S.C. § 1395e-2(b)(2).

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

CMS determined that this notice is economically significant under the Order and noted that the notice was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice does not impose any costs on state or local governments, preempt state law, or have federalism implications.