U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

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November 16, 2016

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 2017 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 2017 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements" (RIN: 0938-AS80). We received the rule on November 2, 2016. It was published in the *Federal Register* as a final rule on November 3, 2016. 81 Fed. Reg. 76,702.

The final rule updates the Home Health Prospective Payment System (HH PPS) payment rates, including the national, standardized 60-day episode payment rates, the national per-visit rates, and the non-routine medical supply conversion factor; effective for home health episodes of care ending on or after January 1, 2017. The CMS rule also implements the last year of the 4-year phase-in of the rebasing adjustments to the HH PPS payment rates; updates the HH PPS case-mix weights using the most current, complete data available at the time of rulemaking; implements the second year of a 3-year phase-in of a reduction to the national, standardized 60-day episode payment to account for estimated case-mix growth unrelated to

increases in patient acuity (that is, nominal case-mix growth) between CY 2012 and CY 2014; finalizes changes to the methodology used to calculate payments made under the HH PPS for high-cost "outlier" episodes of care; implements changes in payment for furnishing Negative Pressure Wound Therapy using a disposable device for patients under a home health plan of care; discusses CMS's efforts to monitor the potential impacts of the rebasing adjustments; includes an update on subsequent research and analysis as a result of the findings from the home health study; and finalizes changes to the Home Health Value-Based Purchasing Model, which was implemented on January 1, 2016; and updates to the Home Health Quality Reporting Program.

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, 2017. The rule was received by GAO on November 2, 2016, and was published in the *Federal Register* on November 3, 2016. Therefore, the final rule does not have the 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, with the exception of the 60-day delay in effective date, 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: Agnes Thomas
Regulations Coordinator
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 2017 HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE; HOME HEALTH VALUE-BASED PURCHASING MODEL; AND HOME HEALTH QUALITY REPORTING REQUIREMENTS"
(RIN: 0938-AS80)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) provided an analysis of the costs and benefits of the final rule for the Home Health Prospective Payment System (HH PPS) rate update; home health value-based purchasing model; and home health quality reporting requirements. According to CMS, for the provision relating to the Calendar Year (CY) 2017 HH PPS payment rate update, the overall economic impact is an estimated −$130 million (−0.7 percent) in payments (net transfers) to home health agencies (HHAs). CMS further states that for the provision relating to the CY 2017 Home Health Value-Based Purchasing (HHVBP) Model, the overall economic impact for CY 2018 through 2022, is an estimated $378 million in total savings assuming a very conservative savings estimate of a 6 percent annual reduction in unnecessary hospitalizations and a 1.0 percent annual reduction in skilled nursing facility (SNF) admissions as a result of greater quality improvements in the home health (HH) industry. As for payments to HHAs, according to CMS, there are no aggregate increases or decreases to the HHAs competing in the model.

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

CMS states that it defines a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This final rule is applicable exclusively to HHAs. Therefore, CMS determined this rule would not have a significant economic impact on the operations of small rural hospitals.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. §§ 1532-1535

According to CMS, UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. CMS states that the final rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of $146 million or more.

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

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

On July 5, 2016, CMS published a proposed rule for CY 2017 in the *Federal Register*. 81 Fed. Reg. 43,714. CMS received 83 timely comments from the public, including comments from

home health agencies, national provider associations, patient and other advocacy organizations, nurses, and device manufacturers. CMS provided a summary of the public comments received, and responded.

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

According to CMS, while this final rule contains information collection requirements, this rule does not add new, nor revise any of the existing information collection requirements, or burden estimate. The information collection requirements discussed in the final rule for the Outcome and Assessment Information Set (OASIS) OASIS-C1 data item set had been previously approved by the Office of Management and Budget (OMB) on February 6, 2014, and scheduled for implementation on October 1, 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. 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 under the PRA process. CMS states that the extension of OASIS-C1/ICD-9 will be discontinued as the OASIS-C1/ICD-10 version was approved under OMB Control Number 0938-1279 with a current expiration date of May 31, 2018. To satisfy statutory requirements that HHAs submit standardized patient assessment data and create consistency in the lookback period across selected OASIS items, CMS has created a modified version of the OASIS, OASIS-C2. The OASIS-C2 version will replace the OASIS-C1/ICD-10 and will be effective for data collected with an assessment completion date on and after January 1, 2017. CMS states that it is requesting a new OMB control number for the OASIS-C2 version under the PRA process. CMS states that the new information collection request is currently pending OMB approval.

Statutory authorization for the rule

The final rule was promulgated under the authority of sections 1102, 1871, and 1895 of the Social Security Act (42 U.S.C. §§ 1302, 1395hh, and 1395fff).

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

According to CMS, the net transfer impacts related to the changes in payments under the HH PPS for CY 2017 are estimated to be −$130 million. CMS states that the savings impacts related to the HHVBP model are estimated at a total projected 5-year gross savings of $378 million assuming a very conservative savings estimate of a 6 percent annual reduction in hospitalizations and a 1.0 percent annual reduction in SNF admissions. Therefore, CMS states that the final rule is economically significant as measured by the $100 million threshold. Accordingly, CMS states that it prepared a Regulatory Impact Analysis that presents the costs and benefits of the rulemaking and, in accordance with the provisions of the Order, the rule was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS states that it reviewed the final rule under the threshold criteria under the Federalism Order and determined that it will not have substantial direct effects on the rights, roles, and responsibilities of states, local, or tribal governments.