



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-322716

November 21, 2011

The Honorable Max Baucus
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; Home Health Prospective Payment System Rate Update for Calendar Year 2012*

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; Home Health Prospective Payment System Rate Update for Calendar Year 2012" (RIN: 0938-AQ30). We received the rule on November 2, 2011. It was published in the *Federal Register* as a final rule on November 4, 2011. 76 Fed. Reg. 68,526.

The final rule sets forth updates to the home health prospective payment system (HH PPS) rates, including the national standardized 60-day episode rates; the national per-visit rates; and the low utilization payment amount under the Medicare

PPS for home health agencies effective January 1, 2012. This rule applies a 1.4 percent update factor to the episode rates, which reflects a 1 percent reduction applied to the 2.4 percent market basket update factor, as mandated by the Affordable Care Act. The final rule also updates the wage index used under the HH PPS, and further reduces home health payments to account for continued nominal growth in case-mix which is unrelated to changes in patient health status.

The final rule, a major rule under the Congressional Review Act (CRA), has an announced effective date of January 1, 2012. 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). We received the rule on November 2, 2011, and it was not published in the *Federal Register* until November 4, 2011. 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 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: Ann Stallion
Program Manager
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; HOME HEALTH PROSPECTIVE
PAYMENT SYSTEM RATE UPDATE FOR CY 2012"
(RIN: 0938-AQ30)

(i) Cost-benefit analysis

CMS prepared a cost-benefit analysis in conjunction with the final rule. CMS estimates that the net impact of the proposals in this rule is approximately \$430 million in calendar year (CY) 2012 savings. The \$430 million impact due to the proposed CY 2012 HH PPS rule reflects the distributional effects of an updated wage index (\$10 million increase) plus the 1.4 percent HH PPS payment update percentage (\$280 million increase), for a total increase of \$290 million. The 3.79 percent case-mix adjustment applicable to the national standardized 60-day episode rates (\$720 million decrease) plus the combined wage index and HH PPS payment update percentage (\$290 million increase) results in a total savings of \$430 million in CY 2012. The \$430 million in savings is a 2.31 percent decrease in expenditures when comparing the current CY 2011 HH PPS to the CY 2012 HH PPS.

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

CMS determined that the final rule will have a significant economic impact on a substantial number of small entities. CMS's analysis revealed a 2.62 percent decrease in estimated payments to small home health agencies. CMS determined that the final rule will 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, 2 U.S.C. §§ 1532-1535

CMS determined that the final rule is not anticipated to impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, of \$136 million or more.

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

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

CMS published a notice of proposed rulemaking in the *Federal Register* on July 12, 2011. 76 Fed. Reg. 40,988. CMS responded to comments on the proposed rule in the final rule. 76 Fed. Reg. 68,526.

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

The final rule does not impose any new information collection and recordkeeping requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by section 1895 of the Social Security Act, as amended.

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

CMS determined that the final rule is economically significant under the Order, and the rule has been reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

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