



United States Government Accountability Office
Washington, DC 20548

B-323759

August 10, 2012

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; Hospice Wage Index for Fiscal Year 2013*

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 (HHS), Centers for Medicare & Medicaid Services, entitled "Medicare Program; Hospice Wage Index for Fiscal Year 2013" (RIN: 0938-AR17). We received the rule on July 25, 2012. It was published in the *Federal Register* as a notice on July 27, 2012. 77 Fed. Reg. 44,242.

The notice sets forth the hospice wage index for fiscal year (FY) 2013 and will continue the phase-out of the wage index budget neutrality adjustment factor (BNAF), with an additional 15 percent BNAF reduction, for a total BNAF reduction through FY 2013 of 55 percent. The notice clarifies that providers should report

additional diagnoses on hospice claims. HHS states that the notice also updates the public on the status of hospice payment reform and the quality reporting program.

Enclosed is our assessment of HHS'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 HHS 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; HOSPICE WAGE INDEX
FOR FISCAL YEAR 2013"
(RIN: 0938-AR17)

(i) Cost-benefit analysis

HHS prepared a cost-benefit analysis in conjunction with the final rule. HHS estimated that Medicare payments to hospices in FY 2013 are anticipated to decrease by \$10 million due to the wage index data, and to decrease by \$90 billion due to the additional 15 percent reduction in the budget neutrality adjustment factor (BNAF). However, the final market basket update of 1.6 percent, which will be officially communicated in the summer through administrative instruction, is anticipated to increase Medicare payments by \$240 million. Therefore, the total effect on Medicare hospice payments is estimated to be a \$140 million increase.

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

HHS determined that the notice will not create a significant economic impact on a substantial number of small entities. HHS also determined that the notice would 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

HHS determined that the notice is not anticipated to have an effect of \$139 million 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, 5 U.S.C. §§ 551 et seq.

HHS found it was unnecessary to undertake notice and comment rulemaking because the notice does not make any substantive changes in policy, but reflects the application of previously established methodologies which permit no discretion

on the part of HHS. Therefore, HHS found good cause under 5 U.S.C. § 553(b)(3)(B) to waive notice and comment procedures under the Administrative Procedure Act.

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

HHS stated that the notice does not impose information collection requirements as defined by the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Social Security Act, and by 42 C.F.R. part 418.

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

Under the Executive Order, the notice was designated economically significant and submitted to the Office of Management and Budget for review.

Executive Order No. 13,132 (Federalism)

HHS determined that the final rule will not have an impact on the rights, roles, and responsibilities of state, local, or tribal governments.