



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

B-325032

August 15, 2013

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 Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Dave Camp
Chairman
The Honorable Sander 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; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2013 (FY 2014)*

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; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2013 (FY 2014)” (RIN: 0938-AR63). We received the rule on July 30, 2013. It was published in the *Federal Register* as a notice on August 1, 2013. 78 Fed. Reg. 46,734.

The notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs). These changes are applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2013, through September 30, 2014, the stated effective date.

It is relevant to note that CMS had previously indicated that it did not intend to update the regression analysis and recalculate the federal per diem base rate and the patient- and facility-level adjustments until CMS completes its regression analysis, thus CMS stated that it was

important to delay updating the adjustment factors derived from the regression analysis. (69 Fed. Reg. 66,922). Further, in the May 6, 2011, IPF prospective payment system (76 Fed. Reg. 26,432), CMS changed the payment rate update period to a rate year that coincides with a fiscal year update. Previously, these updates were published each spring. (71 Fed. Reg. 27,041). Therefore, CMS changed the publication date so that update notices are now published in the *Federal Register* in the summer--to be effective on October 1.

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
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; INPATIENT PSYCHIATRIC FACILITIES
PROSPECTIVE PAYMENT SYSTEM—UPDATE FOR FISCAL YEAR
BEGINNING OCTOBER 1, 2013 (FY 2014)"
(RIN: 0938-AR63)

(i) Cost-benefit analysis

CMS estimated that the total impact of these changes for FY 2014 payments compared to FY 2013 payments will be a net increase of approximately \$115 million. This reflects a \$100 million increase from the update to the payment rates, as well as a \$15 million increase as a result of the update to the outlier threshold amount. Outlier payments are estimated to increase from 1.7 percent in FY 2013 to 2.0 percent in FY 2014.

(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 have a positive revenue 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 the notice will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of \$141 million.

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

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

CMS stated that it ordinarily publishes a notice of proposed rulemaking in the *Federal Register* to provide a period for public comment before the provisions of a rule take effect. CMS stated that it can waive this procedure, however, if it found good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of finding and its reasons in the notice. Consequently, CMS found it is unnecessary to undertake notice and comment rulemaking for this action because the updates in the notice do not reflect any substantive changes in policy, but merely reflect the application of previously established methodologies. Therefore CMS determined, that for good cause, CMS waived notice and comment procedures under 5 U.S.C 553(b)(3)(B).

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

The notice does not contain any information collection requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by section 1886(s) of the Social Security Act, which was added by section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111-148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152).

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

CMS determined that the notice is economically significant under Executive Order 12,866, and the final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that this notice would not have a substantial effect on state and local governments.