



United States Government Accountability Office
Washington, DC 20548

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August 18, 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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2012; Changes in Size and Square Footage of Inpatient Rehabilitation Units and Inpatient Psychiatric Units*

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 Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2012; Changes in Size and Square Footage of Inpatient Rehabilitation Units and Inpatient Psychiatric Units" (RIN: 0938-AQ28). We received the rule on August 1, 2011. It was published in the *Federal Register* as a final rule on August 5, 2011. 76 Fed. Reg. 47,836.

The final rule establishes a new quality reporting program that provides for a 2-percent reduction in the annual increase factor beginning in 2014 for failure to report quality data to the Secretary of Health and Human Services as required by section 3004 of the Patient Protection and Affordable Care Act. The final rule also updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for federal fiscal year (FY) 2012 (for discharges occurring on or after October 1, 2011, and on or before September 30, 2012) as required under section 1886(j)(3)(C) of the Social Security Act.

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 REHABILITATION FACILITY
PROSPECTIVE PAYMENT SYSTEM FOR FEDERAL
FISCAL YEAR 2012; CHANGES IN SIZE AND
SQUARE FOOTAGE OF INPATIENT REHABILITATION UNITS
AND INPATIENT PSYCHIATRIC UNITS"
(RIN: 0938-AQ28)

(i) Cost-benefit analysis

CMS performed an economic analysis, and it determined that the overall impact of the final rule would be an increase of approximately \$150 million for estimated fiscal year (FY) 2012 payments compared to estimated FY 2011 payments. This reflects an increase of \$120 million from the update to the payment rates, and an increase of \$30 million due to the update to the outlier threshold amount to increase estimated outlier payments from approximately 2.6 percent in FY 2011 to 3 percent in FY 2012.

(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 not have a significant economic impact on a substantial number of small entities or on 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 final rule will not impose costs on state, local, or tribal governments, in the aggregate, or by the private sector, of \$136 million.

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

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

On April 29, 2011, CMS published a proposed rule in the *Federal Register*. 76 Fed. Reg. 24,214. CMS received approximately 46 timely responses from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists,

clinicians, health care industry organizations, and health care consulting firms. CMS responded to the comments in the final rule. 76 Fed. Reg. 47,836.

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

The final rule does not impose any new information collection requirements under the Act; however, it does make changes to associated information collection requirements. For purposes of calculating the FY 2014 Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS) increase factor, CMS will require IRFs to submit data on two quality measures beginning October 1, 2012. These quality measures are catheter associated urinary tract infections (CAUTI) and pressure ulcers that are new or have worsened. CMS will require the information regarding the CAUTI rate per 1,000 urinary catheter days, to be submitted through the Centers for Disease Control (CDC)/National Health Safety Network (NHSN), which is a web-based tool hosted by the CDC. These collections are currently authorized under Office of Management and Budget (OMB) Control Number 0920-0666. CMS estimates that registering and training to use the NHSN will result in an estimated burden of 4,500 hours at an estimated cost of \$187,321. Once trained, facilities will need to submit two forms. The Urinary Tract Infection form is estimated by CMS to result in annual burden of 6.75 hours and a cost of \$186.16 for each IRF, and a total annual cost for all IRFS of 7,776 hours and a cost of \$214,445. The second form, the denominator form, is estimated by CMS to result in annual burden of 30 hours and a cost of \$1,247.70 for each IRF, and a total annual burden for all IRFS of 34,560 hours and a cost of \$1,437,350. CMS estimates that there will be no additional burden associated with collecting the information related to pressure ulcers.

Statutory authorization for the rule

The final rule is authorized by section 3004 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-152 (March 30, 2010), and section 1886(j) of the Social Security Act.

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

The final rule has been designated as economically significant under the Executive Order, and the final rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

The final rule will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.