



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

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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 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; FY 2014 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements; and Updates on Payment Reform*

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; FY 2014 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements; and Updates on Payment Reform" (RIN: 0938-AR64). We received the rule on August 2, 2013. It was published in the *Federal Register* as a final rule on August 7, 2013, with an effective date of October 1, 2013. 78 Fed. Reg. 48,234.

The final rule sets forth the hospice payment rates and the wage index for fiscal year (FY) 2014, and continues the phase out of the wage index budget neutrality adjustment factor (BNAF). Including the 15 percent BNAF reduction for FY 2014, the total 5-year cumulative BNAF reduction in FY 2014 will be 70 percent. The BNAF phase-out will continue with successive 15 percent reductions in FY 2015 and FY 2016. This final rule also clarifies how hospices are to report diagnoses on hospice claims and provides updates to the public on hospice payment reform. Additionally, this final rule changes the requirements for the hospice quality reporting program by discontinuing currently reported measures and implementing a Hospice Item Set with seven National Quality Forum (NQF) endorsed measures beginning July 1, 2014, as

proposed. Finally, this final rule will implement the hospice Experience of Care Survey on January 1, 2015, as proposed.

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: Annie Lamb  
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 PROGRAM; FY 2014 HOSPICE WAGE INDEX  
AND PAYMENT RATE UPDATE; HOSPICE QUALITY  
REPORTING REQUIREMENTS; AND  
UPDATES ON PAYMENT REFORM"  
(RIN: 0938-AR64)

(i) Cost-benefit analysis

HHS summarized the costs, benefits, and transfers of the final rule. HHS states that the total cost to hospice providers, for submitting data to the Hospice Item Set starting in July 2014, is \$14.3 million. Additionally, HHS believes that the overall economic impact of this final rule is an estimated \$160 million in increased payments to hospices.

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

For purposes of the RFA, HHS estimates that almost all hospices are small entities as that term is used in the RFA. According to HHS, the great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than \$7.0 million to \$34.5 million in any 1 year), or being nonprofit organizations. While the SBA does not define a size threshold in terms of annual revenues for hospices, HHS notes that it does define one for home health agencies (\$14 million; see [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table\(1\).pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf)). For purposes of the final rule, because the hospice benefit is a home-based benefit, HHS is applying the SBA definition of "small" for home health agencies to hospices; HHS will use this definition of "small" in determining if this final rule has a significant impact on a substantial number of small entities (for example, hospices).

HHS estimates that 95 percent of hospices have Medicare revenues below \$14 million or are nonprofit organizations and therefore are considered small entities. HHS's practice in interpreting the RFA is to consider effects economically "significant" only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. As HHS notes above, the combined effect of the updated wage data, the additional 15 percent BNAF reduction, and the final FY 2014 hospice payment update percentage of 1.7 percent results in an increase in estimated hospice payments of 1.0 percent for FY 2014. For small and medium hospices (as defined by routine home care days), the estimated effects on revenue when accounting for the updated wage data, the additional 15 percent BNAF reduction, and the final FY 2014 hospice payment update percentage reflect increases in payments of 0.8 percent and 1.0 percent, respectively. Therefore, the Secretary of HHS has determined that this final rule will not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires HHS to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural

hospitals. For purposes of section 1102(b) of the Act, HHS defines a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. The final rule only affects hospices. Therefore, the Secretary has determined that the final rule 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

HHS 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 \$141 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 May 10, 2013, HHS published the FY 2014 hospice proposed rule which included clarifications, proposals, and updates. 78 Fed. Reg. 27,823.

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

Under the Paperwork Reduction Act of 1995, HHS is required to provide 60-day notice in the *Federal Register* and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. HHS states that on April 29, 2013, it published both 60-day and 30-day notices in the *Federal Register* with comment periods to solicit public comment for information collection requirements. 78 Fed. Reg. 25,089.

Statutory authorization for the rule

HHS states that the final rule is authorized under 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)

The final rule has been designated as economically significant and has been reviewed by OMB. HHS prepared a regulatory impact analysis (RIA) that to the best of its ability presents the costs and benefits of the rulemaking.

Executive Order No. 13,132 (Federalism)

HHS reviewed the final rule and determined that it will not have substantial direct effects on the rights, roles, and responsibilities of states, local, or tribal governments.