U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-326469

December 19, 2014

The Honorable Ron Wyden
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 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; Requirements for the Medicare Incentive Reward Program and Provider Enrollment*

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; Requirements for the Medicare Incentive Reward Program and Provider Enrollment" (RIN: 0938-AP01). We received the rule on December 3, 2014. It was published in the *Federal Register* as a final rule on December 5, 2014, with an effective date of February 3, 2015. 79 Fed. Reg. 72,500.

The final rule implements various provider enrollment requirements including (1) expanding the instances in which a felony conviction can serve as a basis for denial or revocation of a provider's or supplier's enrollment; (2) if certain criteria are met, enabling CMS to deny enrollment if the enrolling provider, supplier, or owner thereof had an ownership relationship with a previously enrolled provider or supplier that had a Medicare debt; (3) enabling CMS to revoke Medicare billing privileges if it determines that the provider or supplier has a pattern or practice of submitting claims that fail to meet Medicare requirements; and (4) limiting the ability of ambulance suppliers to backbill for services performed prior to enrollment.

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
Deputy Director, ODRM
Department of Health and Human Services

ENCLOSURE

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; REQUIREMENTS FOR THE
MEDICARE INCENTIVE REWARD PROGRAM
AND PROVIDER ENROLLMENT"
(RIN: 0938-AP01)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) summarized the costs and impacts of this final rule. CMS encountered several uncertainties in estimating the economic impact of many of the provisions of this final rule. CMS could not estimate the number of denials and revocations that might stem from the final enrollment changes. CMS was also unable to estimate the potential monetary savings to the federal government or the costs to providers and suppliers resulting from the remaining final revisions. CMS does believe that the vast majority of providers and suppliers—both small and large—do not commit fraud, have not been convicted of a felony, and are otherwise compliant with Medicare enrollment requirements and, consequently, will not be affected by most of the provisions in this rule. CMS did estimate the savings to the federal government for the provision concerning the effective date of billing privileges for ambulance suppliers. CMS estimates that this change will result in transfers from ambulance suppliers to the federal government of between $163.7 million and $545.7 million for 2014 to 2023.

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

CMS determined that this final rule will not have a significant impact on a substantial number of small entities. CMS also determined that this 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

CMS determined that this final rule will have no consequential effect 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.

On April 29, 2013, CMS published a proposed rule. 78 Fed. Reg. 25,013. CMS stated that it received a number of comments on the proposed rule to which it responded in the final rule.

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

CMS identified nine regulatory provisions revised or added by this final rule that contain information collection requirements. In four instances CMS does not believe the revisions of this final rule will change the burden of the requirements. In three instances CMS found the revisions or additions will likely increase the burden but could not estimate the potential increase. In two instances CMS found the revisions will likely decrease the burden but could not estimate the potential decrease.

Statutory authorization for the rule

CMS promulgated this final rule under the authority of sections 1102, 1866(j), and 1871 of the Social Security Act. 42 U.S.C. §§ 1302, 1395cc(j), 1395hh.

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

CMS determined that one provision of this final rule will likely result in an annual transfer of more than $100 million from providers and suppliers to the federal government. Therefore, this final rule is economically significant.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule does not impose any costs on state or local governments, so the requirements of the Order are not applicable.