



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

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August 9, 2022

The Honorable Ron Wyden  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce  
House of Representatives

The Honorable Richard Neal  
Chairman  
The Honorable Kevin Brady  
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 2023 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update and Quality Reporting—Request for Information*

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 (CMS) titled “Medicare Program; FY 2023 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update and Quality Reporting—Request for Information” (RIN: 0938-AU80). We received the rule on July 29, 2022. It was published in the *Federal Register* as a final rule on July 29, 2022. 87 Fed. Reg. 46846. The effective date is October 1, 2022.

According to CMS, this final rule updates the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPF), which include psychiatric hospitals and exclude psychiatric units of an acute care hospital or critical access hospital. CMS stated that the final rule establishes a permanent mitigation policy to smooth the impact of year-to-year changes in IPF payments related to decreases in the IPF wage index. CMS also stated that the final rule includes responses to public comments received on the results of the data analysis of the IPF Prospective Payment

System (PPS) adjustments. CMS stated further that these changes will be effective for IPF discharges occurring during fiscal year 2023.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II  
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  
TITLED  
“MEDICARE PROGRAM; FY 2023 INPATIENT PSYCHIATRIC FACILITIES  
PROSPECTIVE PAYMENT SYSTEM—RATE UPDATE AND QUALITY REPORTING—  
REQUEST FOR INFORMATION”  
(RIN: 0938-AU80)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared an accounting statement for this final rule. CMS stated that the statement shows the classification of the expenditures associated with the updates to the Inpatient Psychiatric Facilities (IPF) wage index and payment rates, its best estimate of the increase in Medicare payments under the IPF Prospective Payment System (PPS) as a result of the changes presented in the final rule, and its best estimate of the cost of reviewing and understanding the final rule. CMS estimates the regulatory review cost for fiscal year (FY) 2023 to be \$50,000 in FY 2021 dollars. CMS stated that the final rule will result in transfers from the federal government to IPF Medicare providers. The annualized and monetized transfers are estimated to be \$90 million in FY 2023 dollars for a period covering the same fiscal year.

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

CMS stated that the Secretary of HHS has determined that this final rule will have a positive revenue impact on a substantial number of small entities. Specifically, CMS estimates that the overall revenue impact of the final rule on all IPFs is to increase estimated Medicare payments by approximately 2.5 percent resulting in a net increase in revenue across almost all categories of IPFs. Lastly, the Secretary has certified 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

According to CMS, this final rule does not mandate any requirements for state, local, or tribal governments, or for the private sector. CMS also stated that this final rule will not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$165 million (\$100 million, adjusted for inflation) in any one year.

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

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

On April 4, 2022, CMS published a proposed rule. 87 Fed. Reg. 19415. CMS stated that it received 396 public comments, 27 of which pertained to proposed IPF PPS payment policies,

20 of which pertained to the request for comments on addressing healthcare disparities and advancing healthcare equity in the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program, and the remainder seeking to encourage the addition of a patient experience of care measure into the IPFQR Program. CMS also stated that comments were from health systems, national and state-level provider and patient advocacy organizations, MedPAC, and individuals. CMS stated further that it reviewed each comment and grouped related comments, after which it placed them in categories based on subject matter or section(s) of the regulation affected. Lastly, CMS stated that summaries of the public comments received and its responses to those comments are provided in the appropriate sections in the preamble of this final rule.

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

CMS stated that the final rule does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, according to CMS, there is no need for review by the Office of Management and Budget (OMB) under the PRA.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to sections 1302 and 1395hh of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that OMB's Office of Information and Regulatory Affairs has determined this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

CMS stated that this final rule does not impose substantial direct costs on state or local governments or preempt state law.