



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

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August 21, 2024

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

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2025*

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; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2025” (RIN: 0938-AV30). We received the rule on August 2, 2024. It was published in the *Federal Register* as a final rule on August 6, 2024. 89 Fed. Reg. 64048. The effective date is October 1, 2024.

According to CMS, this final rule finalizes changes and updates to the policies and payment rates used under the Skilled Nursing Facility Prospective Payment System for fiscal year 2025. CMS stated that the rule, among other things, updates the wage index used under that system to reflect data collected during the most recent decennial census.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on

August 6, 2024. 89 Fed. Reg. 64048. The *Congressional Record* shows the House of Representatives received the rule on August 2, 2024. 170 Cong. Rec. H4990 (daily ed. Aug. 13, 2024). The Senate received the rule on July 31, 2024. 170 Cong. Rec. S5768 (daily ed. Aug. 1, 2024). The rule has a stated effective date of October 1, 2024. Therefore, the stated effective date is less than 60 days from the publication date.

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

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
ENTITLED
“MEDICARE PROGRAM; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES;
UPDATES TO THE QUALITY REPORTING PROGRAM AND VALUE-BASED
PURCHASING PROGRAM FOR FEDERAL FISCAL YEAR 2025”
(RIN: 0938-AV30)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) prepared a Regulatory Impact Analysis for this final rule. The analysis included (1) a statement of the need for the rule, (2) an introduction, (3) a discussion of the rule’s overall impacts, (4) a detailed economic analysis, (5) discussion of the impacts for the Skilled Nursing Facility (SNF) Quality Reporting Program (QRP) for fiscal year 2027; (6) the impacts for the Minimum Data Set (MDS) beginning October 1, 2025, (7) the impacts for the SNF Value-Based Purchasing Program, (8) the impacts for the nursing home enforcement revisions, (9) discussion of alternatives considered, (10) an accounting statement, and (11) a conclusion. CMS estimated that the rule’s aggregate impact will be an increase of approximately \$1.4 billion (4.2 percent) in Part A payments to SNFs in fiscal year 2025, reflecting a \$1.4 billion (4.2 percent) increase from the update to the payment rates.

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

The Secretary of Health and Human Services has determined that this final rule will have a significant impact on a substantial number of small entities for fiscal year 2025. CMS estimated that almost all SNFs are small entities as the Act uses that term. CMS further stated the rule’s aggregate impact for fiscal year 2025 will be an increase of \$1.4 billion in payments to SNFs, and that the effect on facilities is projected to be an aggregate positive impact of 4.2 percent for fiscal year 2025. Additionally, the Secretary of Health and Human Services has determined that this final rule will have a significant impact on a substantial number of small rural hospitals for fiscal year 2025.

(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 not impose any mandates on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million or more, adjusted annually for inflation, in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

CMS did not discuss the Act in this final rule. In its submission to us, CMS stated the Act was inapplicable because the rule will become effective in fiscal year 2025 but its Year One (fiscal year 2024) direct spending is zero, triggering the Act's first exemption.

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

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

On April 3, 2024, CMS published a proposed rule. 89 Fed. Reg. 23424. CMS received public comments regarding the proposed rule. For certain proposed revisions relating to civil monetary penalties, for instance, CMS stated that it received more than 100 public comments from various parties interested in addressing long-term care facilities' issues, including advocacy groups, long-term care ombudsmen, providers and provider industry associations, nursing home staff and administrators, and others. CMS responded to comments in this final rule but noted some comments that were beyond the rule's scope.

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

CMS determined that this final rule contains information collection requirements (ICRs) under the Act. CMS identified various information collections that will be affected by the rule. CMS estimated that in total, under OMB Control Number 0938-1140, the SNF QRP will result in an overall increase of 30,565.41 hours annually for 15,477 SNFs, with a total revised cost increase related to this information collection of approximately \$1,996,226.60. CMS further estimated that for ICRs regarding the MDS beginning October 1, 2025, the total cost will be decreased by \$912.88 per SNF annually or \$14,128,696.47 for all SNFs annually. CMS stated that the MDS in its current form has been approved under OMB Control Number 0938-1140, but four items would need to be added and one would be modified. For ICRs regarding the proposal for SNFs to participate in a validation process, CMS estimated on average the total cost will be increased by \$813,067.95 for all 1,500 selected SNFs and \$542.05 per selected SNF annually.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to various sections of title 42 of the United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that OMB determined that this final rule is significant under the Order and has reviewed it.

Executive Order No. 13132 (Federalism)

CMS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.