



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

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November 26, 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; CY 2025 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts*

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; CY 2025 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts” (RIN: 0938-AV36). We received the rule on November 12, 2024. It was published in the *Federal Register* on November 14, 2024. 89 Fed. Reg. 89998. The effective date of the rule is January 1, 2025.

According to CMS, this rule announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2025 under Medicare’s Hospital Insurance Program (Medicare Part A).

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 60-day delay in effective date does not apply, however, if the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding and a brief statement of its reasons in the rule. 5 U.S.C. § 808(2). Here, although CMS

did not specifically mention CRA's delayed effective date requirement, the agency found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. Specifically, CMS explained that it found good cause to waive the delay in effective date, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) 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. 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; CY 2025 INPATIENT HOSPITAL DEDUCTIBLE
AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS”
(RIN: 0938-AV36)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared a regulatory impact analysis for this final rule. CMS estimated that the total increase in costs to beneficiaries is approximately \$170 million due to the increase in the deductible and coinsurance amounts and the change in the number of deductibles and daily coinsurance amounts paid. 89 Fed. Reg. 89998, 90000–90001 (Nov. 14, 2024).

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

According to CMS, the Secretary of HHS has certified that this rule will not have a significant economic impact on a substantial number of small entities. 89 Fed. Reg. at 90001.

(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 rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 89 Fed. Reg. at 90001.

(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.

In its submission to us, CMS indicated the Act is not applicable to this rule.

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

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

In its submission to us, CMS indicated it did not solicit public comments and address them in the rule. According to CMS, it found notice and comment procedures to be unnecessary for this rule, which notifies the public of updates to deductible and coinsurance amounts for calendar year 2025. 89 Fed. Reg. at 90000. CMS further stated that, to the extent notice and comment procedures could be construed as required, it found good cause to waive them under the Administrative Procedure Act and the Social Security Act. *Id.* CMS also noted that even if notice and comment procedures were required for this rule, it would find good cause to waive the delay in its effective date because additional delay would be contrary to the public interest. *Id.*

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

In its submission to us, CMS indicated the Act is not applicable to this rule.

Statutory authorization for the rule

CMS promulgated this rule pursuant to section 1813(b)(2) of the Social Security Act.

Executive Order No. 12866 (Regulatory Planning and Review)

According to CMS, the Office of Information and Regulatory Affairs determined that this rulemaking is not significant per section 3(f)(1) of the Order, as measured by the \$200 million or more impact in any one year. 89 Fed. Reg. at 90001.

Executive Order No. 13132 (Federalism)

CMS determined that this rule does not have federalism implications. 89 Fed. Reg. at 90001.