



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

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August 17, 2018

The Honorable Orrin G. Hatch
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Greg Walden
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Kevin Brady
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 and Medicaid Services: Medicare Program; FY 2019 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements*

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 and Medicaid Services (CMS) entitled "Medicare Program; FY 2019 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements" (RIN: 0938-AT26). We received the rule on August 2, 2018. It was published in the *Federal Register* as a final rule August 6, 2018. 83 Fed. Reg. 38,622. The effective date of the final rule is October 1, 2018.

The final rule updates the hospice wage index, payment rates, and cap amount for fiscal year 2019. The rule also makes conforming changes to recognize physician assistants as designated hospice attending physicians effective January 1, 2019. Finally, the rule contains changes to the Hospice Quality Program.

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). It was published in the *Federal Register* on August 6, 2018. The rule has a stated effective date of October 1, 2018. Therefore, the final rule does not have the required 60-day delay in its effective 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Agnes Thomas
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 AND MEDICAID SERVICES
ENTITLED
“MEDICARE PROGRAM; FY 2019 HOSPICE WAGE INDEX AND
PAYMENT RATE UPDATE AND
HOSPICE QUALITY REPORTING REQUIREMENTS”
(RIN: 0938-AT26)

(i) Cost-benefit analysis

The Centers for Medicare and Medicaid Services (CMS) estimates that aggregate payments to hospices in fiscal year (FY) 2019 will increase by \$340 million, or 1.8 percent, compared to payments in FY 2018. CMS estimates that in FY 2019, hospices in urban and rural areas will experience, on average, 1.8 percent and 1.9 percent increases, respectively, in estimated payments compared to FY 2018. According to CMS, hospices providing services in the urban West South Central and Outlying regions and the rural New England region would experience the largest estimated increases in payments of 2.2 percent and 3.4 percent, respectively. CMS also found that hospices serving patients in rural areas in the Mountain region would experience, on average, the lowest estimated increase of 1.4 percent in FY 2019 payments.

(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 create a significant economic impact on a substantial number of small entities. CMS also determined that this 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 does not anticipate this final rule to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$150 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 8, 2018, CMS published a proposed rule. 83 Fed. Reg. 20,934. CMS received 56 public comments on the proposed rule, including comments from hospice agencies, national provider associations, patient organizations, nurses, and advocacy groups. CMS responded to comments in the final rule.

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

CMS solicited public comment on information collection requirements (ICRs) arising from two sections of this rule: Hospice Item Set (HIS) and CAHPS Hospice Survey. CMS received no

comments on the ICRs regarding HIS. This will not change any current HIS data collection procedures outlined in the FY 2018 Hospice final rule. 82 Fed. Reg. 36,638, 36,663 (Aug. 4, 2017). The ICR is currently pending Office of Management and Budget (OMB) approval for 3 years. According to CMS, national implementation of the Hospice Experience of Care Survey (CAHPs Hospice Survey) data measures will not impose any new or revised reporting, recordkeeping, or third-party disclosure requirements and therefore, does not require additional OMB review under the Act. The information collection requirements and burden have been approved by OMB through December 31, 2020, under OMB control number 0938-1257.

Statutory authorization for the rule

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

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

CMS estimates that this rulemaking is “economically significant” as measured by the \$100 million threshold in the Order. The rule was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CMS determined that this final rule will not impose substantial direct costs on state or local governments.