



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

B-336581

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; FY 2025 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, and Hospice Quality Reporting Program 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 & Medicaid Services (CMS) titled “Medicare Program; FY 2025 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, and Hospice Quality Reporting Program Requirements” (RIN: 0938-AV29). 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. 64202. The stated effective date is October 1, 2024.

According to CMS, this final rule updates the hospice wage index, payment rates, and aggregate cap amount for fiscal year (FY) 2025. CMS stated the rule also adopts the most recent Office of Management and Budget statistical area delineations, which will impact the hospice wage index. CMS also stated that the rule clarifies current policy related to the “election statement” and the “notice of election”, as well as adds clarifying language regarding hospice certification and includes a technical regulation text change to the conditions of participation. CMS stated further that the rule finalizes changes to the Hospice Quality Reporting Program. Finally, CMS noted that the rule summarizes comments received regarding

potential implementation of a separate payment mechanism to account for high intensity palliative care services.

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 Senate received the rule on July 31, 2024. 170 Cong. Rec. S5768 (daily ed. Aug. 1, 2024). The House received the rule on August 2, 2024. 170 Cong. Rec. H4995 (daily ed. Aug. 16, 2024). The final rule was published in the *Federal Register* on August 6, 2024. Therefore, the stated effective date is less than 60 days from the date of publication in the *Federal Register*.

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 cursive script that reads "Shirley A. Jones".

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II  
Regulations Coordinator  
Centers for Medicare & Medicaid 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 2025 HOSPICE WAGE INDEX AND PAYMENT RATE UPDATE,  
HOSPICE CONDITIONS OF PARTICIPATION UPDATES,  
AND HOSPICE QUALITY REPORTING PROGRAM REQUIREMENTS”  
(RIN: 0938-AV29)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared an analysis of the costs and benefits for this final rule. See 89 Fed. Reg. 64202, 64270 (Aug. 6, 2024).

(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 certified that this final rule would have significant economic impact on a substantial number of small entities. 89 Fed. Reg. at 64271. CMS also stated that the Secretary of HHS has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals. *Id.*

(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 result in expenditures of \$100 million or more, adjusted annually for inflation, for state, local, and tribal governments, in the aggregate, or the private sector in any one year. 89 Fed. Reg. 64271. CMS did not describe these effects and actions they may have taken in accordance with the Act. See *id.*

(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 that it discussed the Act in the rule. However, we identified no such discussion in the rule.

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

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

On April 4, 2024, CMS issued a proposed rule. 89 Fed. Reg. 23778. CMS stated that they received comments from various interested parties. 89 Fed. Reg. 64205. CMS responded to comments in the rule. *Id.*

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

CMS determined that this final rule contains information collection requirements under the Act. 89 Fed. Reg. 64260–64262.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to sections 1302 and 1395hh of title 42, United States Code. 89 Fed. Reg. 64272.

Executive Order No. 12866 (Regulatory Planning and Review)

The Office of Information and Regulatory Affairs, OMB, has determined that this final rule is economically significant under the Order. CMS stated that OMB has reviewed the rule. 89 Fed. Reg. 64263

Executive Order No. 13132 (Federalism)

CMS determined that this final rule does not have federalism implications. 89 Fed. Reg. 64271.