



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

B-336579

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2025 and Updates to the IRF Quality Reporting Program*

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; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2025 and Updates to the IRF Quality Reporting Program" (RIN: 0938-AV31). We received the rule on August 2, 2024. It was published in the *Federal Register* as a final action on August 6, 2024. 89 Fed. Reg. 64276. The effective date is October 1, 2024.

According to CMS, this final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for federal fiscal year 2025. CMS stated that this final action includes the classification and weighting factors for the IRF prospective payment system's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for fiscal year 2025. Additionally, CMS stated that it is updating the Office of Management and Budget market area delineations for the IRF prospective payment system wage index and applying a 3-year phase-out of the rural adjustment.

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 received by the Senate on July 31, 2024. 170 Cong. Rec. S5768 (daily ed. Aug. 1, 2024). The rule was received by the House of Representatives on August 2, 2024. 170 Cong. Rec. H4978 (daily ed. Aug. 6, 2024). The rule was published in the *Federal Register* on August 6, 2024. 89 Fed. Reg. 64276. The rule has a stated effective date of October 1, 2024. 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 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  
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  
ENTITLED  
“MEDICARE PROGRAM; INPATIENT REHABILITATION FACILITY  
PROSPECTIVE PAYMENT SYSTEM FOR FEDERAL FISCAL YEAR 2025  
AND UPDATES TO THE IRF QUALITY REPORTING PROGRAM”  
(RIN: 0938-AV31)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) included an accounting statement, classifying the estimated expenditure of this final rule. Specifically, CMS stated that the change in estimated transfers from the federal government to inpatient rehabilitation facility (IRF) Medicare providers from the fiscal year 2024 IRF Prospective Payment System (PPS) to the fiscal year 2025 IRF PPS is \$280 million. Further, CMS stated that the estimated costs associated with the fiscal year 2028 IRF Quality Reporting Program (QRP) due to proposed data collection requirements is \$392,113.40. Lastly, CMS noted that the estimated costs associated with regulatory review for the fiscal year 2025 IRF PPS is \$17,064.96.

(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 have a significant impact on a substantial number of small entities.

(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 does not mandate any requirements for state, local, or tribal governments, or for the private sector.

(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 does not apply to the rule because it meets one of the Act's exemptions—namely, that direct spending for year one is zero.

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

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

On March 29, 2024, CMS published a proposed rule. 89 Fed. Reg. 22246. CMS stated that it received 44 timely responses from the public, many of which contained multiple comments. CMS received comments from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, health care industry organizations, and health care consulting firms. CMS summarized and responded to comments in this final rule.

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

CMS determined that this final rule contains information collection requirements associated with OMB Control Number 0938-0842 for the IRF QRP. CMS stated the changes to the IRF QRP will result in an estimated increase in programmatic burden for 1,160 IRFs, and the total burden increase is approximately \$392,113.40 for all IRFs and \$338.03 per IRF.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to section 1886 of the Social Security Act, Pub. L. No. 74-271, 49 Stat. 620 (Aug. 14, 1935).

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that OMB's Office of Information and Regulatory Affairs determined that this final rule was significant under the Order. Accordingly, CMS stated that it prepared a Regulatory Impact Analysis.

Executive Order No. 13132 (Federalism)

CMS stated that this final rule will not have a substantial effect on state and local governments, preempt state law, or otherwise have a federalism implication.