



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

B-336586

August 22, 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 Inpatient Psychiatric Facilities Prospective Payment System – Rate Update*

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; FY 2025 Inpatient Psychiatric Facilities Prospective Payment System – Rate Update” (RIN: 0938-AV32). We received the rule on August 2, 2024. It was published in the *Federal Register* as a final action on August 7, 2024. 89 Fed. Reg. 64582. The effective date is October 1, 2024.

According to CMS, this final rule updates the prospective payment rates, outlier threshold, and wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPFs), which include psychiatric hospitals and excluded psychiatric units of an acute care hospital or critical access hospital. CMS stated that this final action also revises the patient-level adjustment factors, the Emergency Department adjustment, and the payment amount for electroconvulsive therapy. CMS stated these changes will be effective for IPF discharges occurring during the fiscal year beginning October 1, 2024, through September 30, 2025.

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. H4995 (daily ed. Aug. 16, 2024). The rule was published in the *Federal Register* on August 7, 2024. 89 Fed. Reg. 64582. 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; FY 2025 INPATIENT PSYCHIATRIC FACILITIES  
PROSPECTIVE PAYMENT SYSTEM – RATE UPDATE”  
(RIN: 0938-AV32)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) conducted an economic analysis of this final rule. The analysis included a discussion of the rule’s impact on the federal Medicare budget, Inpatient Psychiatric Facilities (IPFs), and providers, as well as the rule’s effects on beneficiaries, the effects of updates to the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program, and the costs of regulatory review.

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

CMS certified 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. CMS further determined that the rule will not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100 million in 1995 dollars, updated 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 indicated that it had prepared a statement regarding compliance with the requirements of the Act.

(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. 23146. CMS received 69 public comments pertaining to proposed IPF Prospective Payment System payment policies, requests for information, and updates to the IPFQR Program. Comments were from IPFs, health systems, national and state level provider and patient advocacy organizations, the Medicare Payment Advisory Commission, and individuals. CMS responded to comments in the preamble of 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 0938-1171 (CMS-10432). CMS stated that it will submit changes to OMB for review. CMS also stated that it did not propose changes that would change any of the data collection instruments that are currently approved under that control number.

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 has determined that this final rule is not significant per section 3(f)(1) of the Order, as amended. CMS indicated that it nevertheless prepared a Regulatory Impact Analysis, and that OMB reviewed the rule.

Executive Order No. 13132 (Federalism)

CMS did not discuss the Order in this final rule or in its submission to us.