



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

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November 15, 2022

The Honorable Ron Wyden  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce  
House of Representatives

The Honorable Richard Neal  
Chairman  
The Honorable Kevin Brady  
Republican Leader  
Committee on Ways and Means  
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Calendar Year (CY) 2023 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Program Requirements; Home Health Value-Based Purchasing Expanded Model Requirements; and Home Infusion Therapy Services 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) entitled "Medicare Program; Calendar Year (CY) 2023 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Program Requirements; Home Health Value-Based Purchasing Expanded Model Requirements; and Home Infusion Therapy Services Requirements" (RIN: 0938-AU77). We received the rule on November 1, 2022. It was published in the *Federal Register* as a final rule on November 4, 2022. 87 Fed. Reg. 66790. The effective date is January 1, 2023.

The final rule, according to CMS, sets forth routine updates to the Medicare home health payment rates for calendar year (CY) 2023 in accordance with existing statutory and regulatory requirements. Also, according to CMS, the rule finalizes a methodology for determining the impact of the difference between assumed versus actual behavior change on estimated aggregate expenditures for home health payments as a result of the change in the unit of payment to 30 days and the implementation of the Patient Driven Groupings Model (PDGM)

case-mix adjustment methodology. The rule also finalizes a corresponding permanent prospective adjustment to the CY 2023 home health payment rate, according to CMS. Further, CMS stated the rule finalizes the reassignment of certain diagnosis codes under the PDGM case-mix groups, and establishes a permanent mitigation policy to smooth the impact of year-to-year changes in home health payments related to changes in the home health wage index. This rule also finalizes, according to CMS, recalibration of the PDGM case-mix weights and updates the low utilization payment adjustment thresholds, functional impairment levels, comorbidity adjustment subgroups for CY 2023, and the fixed-dollar loss ratio used for outlier payments. Additionally, CMS stated the rule discusses comments received on the future collection of data regarding the use of telecommunications technology during a 30-day home health period of care on home health claims. Also, according to CMS, this rule finalizes changes to the Home Health Quality Reporting Program requirements, changes to the expanded Home Health Value-Based Purchasing Model, and updates to the home infusion therapy services payment rates for CY 2023.

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). Here, the rule was published in the *Federal Register* on November 4, 2022. 87 Fed. Reg. 66790. The rule has a stated effective date of January 1, 2023. Therefore, the 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

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; CALENDAR YEAR (CY) 2023  
HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE;  
HOME HEALTH QUALITY REPORTING PROGRAM REQUIREMENTS;  
HOME HEALTH VALUE-BASED PURCHASING EXPANDED MODEL REQUIREMENTS;  
AND HOME INFUSION THERAPY SERVICES REQUIREMENTS”  
(RIN: 0938-AU77)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) summarized the costs, transfers, and benefits of this final rule. CMS stated that the overall economic impact related to the changes in payments under the Home Health Prospective Payment System for calendar year (CY) 2023 is estimated to be \$125 million (0.7 percent). According to CMS, the \$125 million increase in estimated payments for CY 2023 reflects the effects of the CY 2023 home health payment update percentage of 4.0 percent (\$725 million increase), an estimated 3.5 percent decrease that reflects the effects of the permanent behavioral adjustment (-\$635 million), and an estimated 0.2 percent increase that reflects the effects of an updated fixed-dollar loss (\$35 million increase). CMS stated the benefits are to ensure that home health payments are consistent with statutory payment authority for CY 2023. Next, CMS stated the total costs of the Home Health Quality Reporting Program beginning in CY 2025 is an estimated \$267,157,680 based on the collection of Outcome and Assessment Information Set data on all patients, regardless of payer.

Additionally, CMS stated the overall economic impact of the expanded Home Health Value Based Purchasing Model for CY 2023 through 2027 is an estimated \$3.376 billion in total savings to fee-for-service Medicare from a reduction in unnecessary hospitalizations and skilled nursing facility usage as a result of greater quality improvements in the home health industry. As for payments to home health agencies (HHAs), according to CMS, there are no aggregate increases or decreases expected to be applied to the HHAs competing in the expanded Model. CMS stated that the overall economic impact of the statutorily-required home infusion therapy (HIT) payment rate updates is an estimated increase in payments to HIT suppliers of 8.7 percent (\$600,000) for CY 2023 based on the consumer price index for the 12-month period ending in June of 2022 of 9.1 percent and the corresponding productivity adjustment is 0.4 percent. Finally, CMS stated the benefits are to ensure that payments for home infusion therapy services are consistent with statutory authority for CY 2023.

(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 would have a significant economic impact on a substantial number of small entities. According to CMS, although the RFA requires consideration of alternatives to avoid economic impacts on small entities, the intent of the rule, itself, is to encourage quality improvement by home health agencies through the use of economic

incentives. As a result, according to CMS, alternatives to mitigate the payment reductions would be contrary to the intent of the rule, which is to test the effect on quality and costs of care of applying payment adjustments based on home health agencies' performance on quality measures. CMS additionally certified that the rule would not have a significant economic impact on the operations 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 determined that this final rule would 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 \$165 million in any one year.

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

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

On June 23, 2022, CMS published a proposed rule. 87 Fed. Reg. 37600. CMS received comments from interested parties 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 (ICRs) under the PRA. CMS stated that it submitted the ICRs to the Office of Management and Budget for review. CMS estimated burdens for the ICRs in the final rule.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

CMS determined that this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

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