



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

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November 1, 2023

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; CY 2024 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts*

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; CY 2024 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts” (RIN: 0938-AV11). We received the rule on October 18, 2023. It was published in the *Federal Register* as a notice on October 17, 2023. 88 Fed. Reg. 71551. The effective date is January 1, 2024.

According to CMS, the final rule announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2024 under Medicare’s Hospital Insurance Program. CMS stated the Medicare statute specifies the formulas used to determine these amounts.

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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its

reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although CMS did not specifically mention CRA's 60-day delay in effective date requirement, the agency found good cause to waive notice and comment procedures. Specifically, CMS stated that federal law requires that the agency determine and publish the inpatient hospital deductible and hospital and extended care services coinsurance amounts for each calendar year in accordance with the statutory formula, and CMS is simply notifying the public of the changes to the deductible and coinsurance amounts for 2024. CMS further stated it calculated the inpatient hospital deductible and hospital and extended care services coinsurance amounts as directed by the statute; the statute establishes both when the deductible and coinsurance amounts must be published and the information that the Secretary of Health and Human Services must factor into the deductible and coinsurance amounts, so CMS does not have any discretion in that regard. CMS also noted that any delay in the effective date, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

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.



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; CY 2024 INPATIENT HOSPITAL DEDUCTIBLE
AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS”
(RIN: 0938-AV11)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) estimated the final rule would create annual transfers from beneficiaries to providers in the amount of \$240,000,000. CMS explained that the decrease in costs to beneficiaries is due to the increase in the deductible and coinsurance amounts and the decrease in the number of deductibles and daily coinsurance amounts paid.

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

CMS stated the Secretary of Health and Human Services certified the final rule would not have a significant economic impact on a substantial number of small entities. CMS also stated the Secretary certified the final rule would not have a significant economic impact on 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 determined the 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 \$177 million 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.

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

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

CMS waived notice and comment procedures for good cause. CMS determined it had good cause because federal law requires that the agency determine and publish the inpatient hospital deductible and hospital and extended care services coinsurance amounts for each calendar year in accordance with the statutory formula, and CMS is simply notifying the public of the changes to the deductible and coinsurance amounts for 2024. CMS further stated it calculated the inpatient hospital deductible and hospital and extended care services coinsurance amounts as directed by the statute; the statute establishes both when the deductible and coinsurance amounts must be published and the information that the Secretary of Health and Human Services must factor into the deductible and coinsurance amounts, so CMS does not have any discretion in that regard. CMS also noted that any delay in the effective date, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

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

CMS determined the final rule did not contain information collection requirements subject to PRA.

Statutory authorization for the rule

CMS promulgated this final rule pursuant to section 1395e of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated OMB determined that this final rule is a significant regulatory action.

Executive Order No. 13132 (Federalism)

CMS determined the final rule will not have a substantial direct effect on state or local governments, preempt state law, or otherwise have federalism implications.