



441 G St. N.W.
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B-337015

January 30, 2025

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

The Honorable Brett Guthrie
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2026; and Basic Health 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 (HHS), Centers for Medicare & Medicaid Services (CMS) entitled “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2026; and Basic Health Program” (RIN: 0938-AV41). We received the rule on January 14, 2025. It was published in the *Federal Register* on January 15, 2025. 90 Fed. Reg. 4424. The stated effective date of the rule is January 15, 2025.

According to CMS, this rule includes payment parameters and provisions related to the HHS-operated risk adjustment and risk adjustment data validation (HHS-RADV) programs, as well as 2026 benefit year user fee rates for issuers that participate in the HHS-operated risk adjustment program and the 2026 benefit year user fee rates for issuers offering qualified health plans through federally-facilitated exchanges and state-based exchanges on the federal platform. CMS stated that this rule also includes requirements related to modifications to the calculation of the Basic Health Program payment; and changes to the Initial Validation Audit sampling approach and Second Validation Audit pairwise means test for HHS-RADV.

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 January 14, 2025. 171 Cong. Rec. S279 (daily ed. Jan. 21, 2025). The House of Representatives received the rule on January 14, 2025. 171 Cong. Rec. H217 (daily ed. Jan. 16, 2025). The rule was published in the *Federal Register* on January 15, 2025. 90 Fed. Reg 4424. The rule has a

stated effective date of January 15, 2025. Therefore, the stated effective date is less than 60 days from the date of publication in the *Federal Register*.¹

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.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
Regulations Coordinator
Department of Health and Human Services

¹ CMS stated in the rule that there was good cause for the rule to be effective upon publication in accordance with 5 U.S.C § 808(2). 90 Fed. Reg. 4516. CRA includes two exceptions to its 60-day delayed effective date requirement for major rules. 5 U.S.C. § 808. The rule clearly does not meet the first exception, which applies to rules related to “hunting, fishing, or camping.” *Id.* at § 808(1). The second exception, which CMS cites in its rule, only applies when the agency has found good cause to waive notice and public procedure requirements when promulgating the rule and incorporates the finding and a brief statement therefor in the rule. 5 U.S.C. § 808(2). Because CMS did not make a finding that notice and public procedure were impracticable, unnecessary, or contrary to the public interest, this exception also does not apply.

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
“PATIENT PROTECTION AND AFFORDABLE CARE ACT; HHS NOTICE OF BENEFIT
AND PAYMENT PARAMETERS FOR 2026; AND BASIC HEALTH PROGRAM”
(RIN: 0938-AV41)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) provided an accounting statement that classifies the impacts associated with this rule. For a period covering program years 2025–2029, CMS estimates the annualized monetized benefits of the rule to be \$39 million at a 2 percent discount rate. For the same period, CMS estimates the annualized monetized costs to be \$3 million at a 2 percent discount rate. 90 Fed. Reg. 4523–4524 (Jan. 15, 2025).

(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 rule will not have a significant economic impact on a substantial number of small entities. 90 Fed. Reg. 4538.

(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 rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 90 Fed. Reg. 4539.

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

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

On October 10, 2024, CMS published a proposed rule. See 89 Fed. Reg. 82308. CMS summarized and responded to comments in the final rule. See 90 Fed. Reg. 4435–4516.

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

CMS determined that this rule contains information collection requirements under the Act. 90 Fed. Reg. 4517–4522.

Statutory authorization for the rule

CMS promulgated this rule pursuant to 5 U.S.C. § 301; 42 U.S.C. §§ 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082; and 26 U.S.C. § 36B.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that this rule is significant under the Order. See 90 Fed. Reg. 4522.

Executive Order No. 13132 (Federalism)

CMS determined that this rule has federalism implications. See 90 Fed. Reg. 4539.