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December 10, 2001

The Honorable Max Baucus
Chairman
The Honorable Chuck Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable W. J. "Billy" Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Bill Thomas
Chairman
The Honorable Charles Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2002

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 and Medicaid Services (CMS), entitled "Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2002" (CMS-8010-N). We received the rule on November 28, 2001. It was published in the Federal Register as a notice on October 26, 2001. 66 Fed. Reg. 54255.

The notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2002. It also announces the monthly SMI premium rate to be paid by all enrollees during 2002. The monthly actuarial rates for 2002 are \$109.30 for

aged enrollees and \$123.10 for disabled enrollees. The monthly SMI premium rate is \$54.00.

Enclosed is our assessment of the CMS' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the CMS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is William Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

cc: Ann Stallion
Regulations Coordinator
Department of Health and Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; MONTHLY ACTUARIAL RATES AND
MONTHLY SUPPLEMENTARY MEDICAL INSURANCE
PREMIUM RATE BEGINNING JANUARY 1, 2002"
(CMS-8010-N)

(i) Cost-benefit analysis

While a cost-benefit analysis was not conducted because the increases were statutorily directed, the cost to the beneficiaries is discussed in the notice. It is estimated that the cost of the increase in the premium to the approximately 38 million SMI enrollees will be about \$1.831 billion for 2002.

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

CMS has reviewed the notice and has found that no analyses under the Act are required. Since states and individuals are not considered small entities, there will be no 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

The notice will not impose either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 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.

In accordance with CMS' past practice regarding publication of the monthly actuarial rates and the Part B premium amount under Medicare where such amounts are determined according to statute, general notice rather than notice and comment rulemaking procedures contained in section 553 of the Administrative Procedure Act are used. CMS states that it found good cause to waive publication of a prior notice and solicitation of public comments because, as noted, the amounts are statutorily directed.

Likewise, since there was no notice and public comment, the exception contained at 5 U.S.C. 808(2) regarding the need for a 60-day delay in the effective date of a major rule is properly invoked and the rule may become effective when CMS determines.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The notice does not contain any information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The notice was issued pursuant to the authority contained in section 1839 of the Social Security Act (42 U.S.C. 1395r).

Executive Order No. 12866

The notice was reviewed by OMB and found to be an “economically significant” regulatory action.