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United States Government Accountability Office  
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B-324149

December 6, 2012

The Honorable Max Baucus  
Chairman  
The Honorable Orrin G. Hatch  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Fred Upton  
Chairman  
The Honorable Henry A. Waxman  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Dave Camp  
Chairman  
The Honorable Sander M. Levin  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2013*

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; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2013" (RIN: 0938-AR16). We received the rule on November 19, 2012. It was published in the *Federal Register* as a notice on November 21, 2012. 77 Fed. Reg. 69,850.

The notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance program beginning January 1, 2013. The notice also announces the monthly premium for aged and disabled beneficiaries as well as

the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. Finally, the notice also announces the Part B deductible for 2013 for all beneficiaries.

The notice has an effective date of January 1, 2013. 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). However, an agency can waive the delay in effective date if it finds, for good cause, that the delay is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 808(2). CMS incorporated a statement of finding such good cause and provided the reasons in the notice.

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. Our review of the procedural steps taken indicates that CMS complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Ann Stallion  
Program Manager  
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 & MEDICIAD SERVICES  
ENTITLED  
"MEDICARE PROGRAM; MEDICARE PART B MONTHLY  
ACTUARIAL RATES, PREMIUM RATE, AND  
ANNUAL DEDUCTIBLE BEGINNING JANUARY 1, 2013"  
(RIN: 0938-AR16)

(i) Cost-benefit analysis

CMS stated in the notice that the standard Part B premium rate will be \$104.90 for calendar year 2013, which is 5 percent higher than the \$99.90 rate for 2012. CMS estimated that the total increase in costs for the 48.1 million Part B enrollees will be about \$2.4 billion. CMS also stated that the Part B annual deductible for 2013 is \$147.00.

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

CMS determined that the notice will not have a significant economic impact on a substantial number of small entities. In addition, section 1102(b) of the Social Security Act requires CMS to prepare an analysis if a rule may have a significant impact on a substantial number of small rural hospitals. CMS determined that the notice will not have a significant impact on a substantial number of small rural hospitals. Therefore, CMS did not prepare analyses under the Regulatory Flexibility Act or section 1102(b) of the Social Security Act.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

CMS stated that the notice has no consequential effect on state, local, or tribal governments, and that CMS believes the private sector costs of the notice also fall below the \$139 million threshold in the Unfunded Mandates Reform Act.

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

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

CMS stated that CMS considers the notice to be an interpretive rule because the amounts are determined according to statute, and, under the Administrative

Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. CMS further stated that CMS considered publishing a proposed notice to provide a period for public comment. However, CMS waived that procedure because CMS found good cause that prior notice and comment was impracticable, unnecessary, or contrary to the public interest. CMS found that the procedure for notice and comment would be contrary to the public interest, because the statute establishes the time period for which the premium rates will apply and delaying publication would be contrary to the public interest. CMS also found it was unnecessary because the formulas used to calculate the Part B premiums are statutorily directed, and CMS can exercise no discretion in following the formulae.

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

The notice does not discuss any information collection requirements subject to the Paperwork Reduction Act.

Statutory authorization for the rule

The notice is authorized by sections 1833(b) and 1839 of the Social Security Act, as amended.

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS determined that the notice was economically significant under the Executive Order, and the notice was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that the notice does not significantly affect the rights, roles, and responsibilities of states.