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United States Government Accountability Office
Washington, DC 20548

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November 10, 2011

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, 2012*

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, 2012" (RIN: 0938-AQ16). We received the rule on November 2, 2011. It was published in the *Federal Register* as a notice on November 1, 2011, with an effective date of January 1, 2012. 76 Fed. Reg. 67,572.

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 (SMI) program beginning January 1, 2012. In addition, this notice 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. The monthly actuarial rates for 2012 are \$199.80 for aged enrollees and \$192.50 for disabled enrollees. The standard monthly Part B premium rate for 2012 is \$99.90, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2011 standard premium rate was \$115.40.) The Part B deductible for 2012 is \$140.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage.

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 & MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; MEDICARE PART B MONTHLY
ACTUARIAL RATES, PREMIUM RATE, AND
ANNUAL DEDUCTIBLE BEGINNING JANUARY 1, 2012"
(RIN: 0938-AQ16)

(i) Cost-benefit analysis

According to CMS, approximately 2 million Part B enrollees paid the 2011 standard premium rate of \$115.40 which is \$15.50 higher than the 2012 standard premium rate of \$99.90. CMS states that these enrollees will have about \$0.4 billion in reduced costs in 2012. CMS notes that for the approximately 30 million Part B enrollees who paid a 2011 premium of \$96.40 under the hold-harmless provision, the standard Part B premium rate of \$99.90 is \$3.50 higher than the 2011 premium that they paid, so there will be about \$1.3 billion of additional costs in 2012 to the these Part B enrollees.

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

According to CMS this notice will not have a significant impact on a substantial number of small businesses or other small entities. Additionally, CMS has determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, CMS is not preparing analyses for either the RFA or section 1102(b) of the Act.

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

CMS states that section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately \$136 million. According to CMS, this notice has no consequential effect on state, local, or tribal governments. CMS believes the private sector costs of this notice fall below this threshold as well.

(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's past practices regarding publication of deductible and coinsurance amounts under Medicare where such amounts are determined according to statute, a general notice is used rather than notice and comment rulemaking procedures contained in section 553 of the Administrative Procedure Act.

In addition, CMS noted good cause to waive the publication of a proposed notice and solicitation of public comments because the statute establishes the time period for which the premium rates will apply and delaying publication of rates would be contrary to the public interest. Moreover, CMS found that notice and comment are unnecessary because the formulas used to calculate the Part B premiums are statutorily directed.

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

In its submission to the Comptroller General, CMS did not address the Paperwork Reduction Act. However, in past annual notices announcing these rates, CMS has stated that the notice does not contain any information collection requirements subject to the Act.

Statutory authorization for the rule

CMS states that the notice is issued pursuant to the authority contained in section 1839 of the Social Security Act (42 U.S.C. § 1395r).

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

CMS has determined that the notice is economically significant and, in accordance with the Order, the notice was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS has determined that this notice does not significantly affect the rights, roles, and responsibilities of states and, therefore, does not have federalism implications.