



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

B-330476

November 1, 2018

The Honorable Orrin G. Hatch
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Kevin Brady
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 and Medicaid Services: Medicare Program; CY 2019 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement*

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; CY 2019 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement" (RIN: 0938-AT34). We received the rule on October 22, 2018. It was published in the *Federal Register* as a notice on October 17, 2018. 83 Fed. Reg. 52,455. The effective date of the notice is January 1, 2019.

The notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year 2019. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2019, for these individuals will be \$437. The premium for certain other individuals as described in the notice will be \$240.

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

signed

Julia C. Matta
Managing Associate General Counsel

Enclosure

cc: Agnes Thomas
Regulations Coordinator
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 AND MEDICAID SERVICES
ENTITLED
“MEDICARE PROGRAM; CY 2019 PART A PREMIUMS FOR
THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS
WHO HAVE EXHAUSTED OTHER ENTITLEMENT”
(RIN: 0938-AT34)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), stated the calendar year 2019 premium of \$437 is approximately 3.6 percent higher than the 2018 premium of \$422. CMS estimated that approximately 679,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. CMS further estimated that over 90 percent of these individuals will have their Part A premium paid for by states, since they are enrolled in the Qualified Medicare Beneficiaries program. CMS also stated the reduced premium of \$240 is approximately 3.4 percent higher than the 2018 premium of \$232. CMS estimated an additional 75,000 enrollees will pay the reduced premium. Based on these numbers, CMS estimated the aggregate cost to enrollees paying the premiums in 2019, compared to the amount that they paid in 2018, will be about \$129 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 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. CMS also determined the notice will not have a significant 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 stated the notice does not impose mandates that will have a consequential effect of \$150 million or more on state, local, or tribal governments or on the private sector.

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

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

CMS stated it did not believe the notice constituted agency rulemaking because the agency followed the statutory formula to calculate the premiums and was merely notifying the public of the changes to the Medicare Part A premiums for CY 2019. For these reasons, the agency stated it was not following notice and comment procedures. To the extent any of the policies articulated in the notice constitute interpretation of the statute's requirements or procedures that will be used to implement the statute's directive, CMS stated the notice is an interpretive rule, general statement of policy, and rules of agency organization, procedure, or practice, which are not subject to notice and comment rulemaking under APA. To the extent that notice and

comment rulemaking would apply, CMS stated it found good cause to waive notice and comment proceedings because of the lack of agency discretion in the statutory formula and the sole ministerial function the notice serves.

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

CMS stated the notice does not impose information collection requirements under PRA.

Statutory authorization for the rule

CMS stated it promulgated the notice under sections 1818 and 1818A of the Social Security Act.

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

CMS stated the notice was economically significant and had been reviewed by the Office of Management and Budget. A Final Regulatory Impact Analysis was included in the notice.

Executive Order No. 13,132 (Federalism)

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