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November 26, 2024

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

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Jason Smith
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 & Medicaid Services: Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible Beginning January 1, 2025*

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 Rates, and Annual Deductible Beginning January 1, 2025" (RIN: 0938-AV38). We received the rule on November 12, 2024. It was published in the *Federal Register* on November 14, 2024. 89 Fed. Reg. 90002. The effective date of the rule is January 1, 2025.

According to CMS, this rule 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, 2025. In addition, the rule announces the monthly premium for aged and disabled beneficiaries, the deductible for 2025, and the income related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts.

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 60-day delay in effective date does not apply,

however, if the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding and a brief statement of its reasons in the rule. 5 U.S.C. § 808(2). Here, although CMS did not specifically mention CRA's delayed effective date requirement, CMS found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. Specifically, CMS stated that the rule simply notifies the public of updates to monthly actuarial rates for aged and disabled beneficiaries and any potential delay in effective date would be contrary to the public interest and could cause unnecessary confusion for both the agency and Medicare beneficiaries.

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.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
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 & MEDICAID SERVICES
ENTITLED
“MEDICARE PROGRAM; MEDICARE PART B MONTHLY ACTUARIAL RATES,
PREMIUM RATES, AND ANNUAL DEDUCTIBLE BEGINNING JANUARY 1, 2025”
(RIN: 0938-AV38)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared a detailed economic analysis for this rule. CMS estimated the aggregate Part B premium increase for all enrollees for 2025 to be \$7.9 billion. In the rule, CMS included tables summarizing monthly premium rates for various beneficiaries. See 89 Fed. Reg. 90012–90013 (Nov. 14, 2024).

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

According to CMS, the Secretary of HHS has determined that this rule will not have a significant economic impact on a substantial number of small entities. CMS also stated that the Secretary of HHS has determined that the rule will not have a significant effect on a substantial number of small rural hospitals. 89 Fed. Reg. 90014.

(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. See 89 Fed. Reg. at 90014.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that

directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

CMS did not discuss the Act in this rule or in its submission to us.

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

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

CMS stated that the annual updated amounts for the Part B monthly actuarial rates for aged and disabled beneficiaries, the Part B premium, and the Part B deductible set forth in this rule do not establish or change a substantive legal standard regarding the matters enumerated by the statute or constitute a substantive rule that would be subject to the notice requirements in section 553(b) of the Administrative Procedure Act. CMS further stated that to the extent that an opportunity for public notice and comment could be construed as required for the rule, it found good cause to waive this requirement. See 89 Fed. Reg. 90014–90015.

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

CMS determined that this rule contains no information collection requirements under the Act.

Statutory authorization for the rule

CMS promulgated this rule pursuant to section 1839 of the Social Security Act.

Executive Order No. 12866 (Regulatory Planning and Review)

The Office of Information and Regulatory Affairs determined that this rule is significant under the Order. CMS stated that OMB has reviewed the rule. 89 Fed. Reg. 90012.

Executive Order No. 13132 (Federalism)

CMS determined that this rule does not have federalism implications. See 89 Fed. Reg. 90014.