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United States Government Accountability Office
Washington, DC 20548

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October 8, 2004

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable William M. Thomas
Chairman
The Honorable Charles B. 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; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity*

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; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity” (RIN: 0938-AK94). We received the rule on September 24, 2004. It was published in the Federal Register as a final rule on September 24, 2004. 69 Fed. Reg. 57224.

The final rule conforms the existing Medicare eligibility regulations to reflect a change made by the Ticket to Work and Work Incentives Improvement Act of 1999. The statutory change provides working disabled individuals with continued Medicare entitlement for an additional 54 months beyond the previous limit of 24 months, for a total of 78 months of Medicare coverage following the 15th month of the reentitlement period.

Enclosed is our assessment of the 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 indicates that 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 Marjorie Kanof, Managing Director, Health Care. Ms. Kanof can be reached at (202) 512-7101.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

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; CONTINUATION OF MEDICARE ENTITLEMENT
WHEN DISABILITY BENEFIT ENTITLEMENT ENDS
BECAUSE OF SUBSTANTIAL GAINFUL ACTIVITY"
(RIN: 0938-AK94)

(i) Cost-benefit analysis

CMS estimates a cost of \$112 million to the Medicare trust fund in calendar year 2005.

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

CMS has certified that the final rule will not have a significant economic 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 final rule does not contain 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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On July 25, 2003, CMS published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 43998. CMS received no comments in response to the proposed rule and the final rule incorporates the proposed rule without any changes.

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

The final rule 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 final rule is promulgated pursuant to section 202 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. 106-170).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

The final rule does not have sufficient federalism implications to warrant the preparation of a federalism impact statement.