



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

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December 1, 2021

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

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; CY 2022 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 (HHS), Centers for Medicare & Medicaid Services (CMS) entitled "Medicare Program; CY 2022 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement" (RIN: 0938-AU47). We received the rule on November 16, 2021. It was published in the *Federal Register* as a notice on November 17, 2021. 86 Fed. Reg. 64214. The effective date is January 1, 2022.

According to CMS, this rule announces Medicare's Hospital Insurance Program (Medicare Part A) premium for uninsured enrollees in calendar year 2022. CMS stated that this premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A and by certain individuals with disabilities who have exhausted other entitlement. CMS also stated that the monthly Medicare Part A premium for the 12 months beginning January 1, 2022 for these individuals will be \$499. CMS stated further that the premium for certain other individuals as described in the rule will be \$274.

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 can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although CMS did not specifically mention CRA's 60-day delay in effective date requirement, CMS asserts that notice and comment procedures are unnecessary for this rule and the agency finds good cause to waive such procedures under section 553(b)(3)(B). CMS stated that the Social Security Act, Pub. L. No. 74-271, 49 Stat. 620 (Aug. 14, 1935), establishes both when premium amounts must be published and the information that the Secretary of HHS must factor into the premium amounts. Thus, CMS notes that it does not have discretion in that regard. Therefore, according to CMS, it found that notice and comment procedures are unnecessary for the rule and that good cause exists to waive such procedures under section 553(b)(3)(B).

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa Jones
Regulations Coordinator

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; CY 2022 PART A PREMIUMS FOR THE
UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS
WHO HAVE EXHAUSTED OTHER ENTITLEMENT”
(RIN: 0938-AU47)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared an accounting statement showing the total aggregate cost to Medicare Program enrollees paying premiums in calendar year (CY) 2022, compared to the amount that they paid in CY 2021. According to CMS, this amount will be about \$258 million in transfers from enrollees to the federal government. CMS stated that the CY 2022 premium of \$499 is approximately 5.9 percent higher than the CY 2021 premium of \$471. CMS estimates that approximately 721,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. CMS also estimates that over 90 percent of these individuals will have their Medicare Part A premium paid for by states, since they are enrolled in the Qualified Medicare Beneficiaries Program. Lastly, CMS stated that the CY 2022 reduced premium of \$274 for certain other individuals is approximately 5.8 percent higher than the CY 2021 premium of \$259.

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

CMS stated that the Secretary of HHS has certified that this rule will not have a significant economic impact on a substantial number of small entities. CMS also stated that the Secretary has certified that this rule will not have a significant impact on the operations of 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 determined that this rule does not impose mandates that will have a consequential effect of \$158 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, 5 U.S.C. §§ 551 *et seq.*

CMS asserts that notice and comment procedures are unnecessary for this rule and the agency finds good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act (APA). CMS stated that the Social Security Act, Pub. L. No. 74-271, establishes both when premium amounts must be published and the information that the Secretary of HHS must factor into the premium amounts. Thus, CMS notes that it does not have discretion in that regard. Therefore, according to CMS, it found that notice and comment procedures are

unnecessary for this rule and that good cause exists to waive such procedures under section 553(b)(3)(B) of the APA.

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

CMS stated that this rule does not impose information collection requirements.

Statutory authorization for the rule

CMS stated that the rule is being published pursuant to sections 1818 and 1818A of the Social Security Act, Public Law 74-271.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this rule is economically significant.

Executive Order No. 13132 (Federalism)

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