



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

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November 25, 2015

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 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, 2016*

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, 2016" (RIN: 0938-AS38). We received the rule on November 13, 2015. It was published in the *Federal Register* as a notice on November 16, 2015. 80 Fed. Reg. 70,811.

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, 2016. In addition, the notice announces the monthly premium for aged and disabled beneficiaries, the deductible for 2016, the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts, and the transfer amount equal to the reduction in premiums payable as a result of amendments made by the Bipartisan Budget Act of 2015.

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 notice has a stated effective date of January 1, 2016. We received the rule on November 13, 2015. It was published in the *Federal Register* as a notice on November 16, 2015. 80 Fed. Reg. 70,811. Therefore, this rule does not have a 60-day delay in effective date.

The 60-day delay in effective date can be waived, however, if the agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies

incorporate a statement of the findings and their reasons in the rule issued. 5 U.S.C. § 553(d)(3), 808(2). CMS found good cause to waive notice of proposal and comment as unnecessary because the formulas used to calculate the Part B premiums are statutorily directed and contrary to the public interest to delay publication of the Part B premium rate.

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
Deputy Director, ODRM
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, 2016"
(RIN: 0938-AS38)

(i) Cost-benefit analysis

The Centers for Medicare & Medicaid Services (CMS) described the costs and rates for beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program. The monthly actuarial rates for 2016 are \$237.60 for aged enrollees and \$282.60 for disabled enrollees. The standard monthly Part B premium rate for all enrollees for 2016 is \$121.80, 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) plus \$3.00. (The 2015 standard premium rate was \$104.90.) The Part B deductible for 2016 is \$166.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they will have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage plus \$4.20, \$6.00, \$7.80, or \$9.60. CMS also stated that there will be a transfer of \$7,440,648,000 from the general fund to the Part B account of the SMI Trust Fund, which consists of \$5,237,880,000 in reduced premium revenue for enrollees age 65 and older, and \$2,202,768,000 in reduced premium revenue for enrollees under age 65.

(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. Section 1102(b) of the Social Security Act requires CMS to prepare a regulatory analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. CMS determined that the notice will not have a significant effect 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

Section 202 of the Unfunded Mandate Reform Act of 1995 (UMRA), requires agencies to prepare a written analysis for any proposed rulemaking that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation, which is approximately \$144 million in 2015). CMS found good cause to waive proposed rulemaking for the notice, and as a result, was not required to prepare an analysis under UMRA. In the notice, CMS estimated that the 2016 premium increase included in the notice would be a cost to the state Medicaid programs of less than \$144 million per state. CMS then stated that the notice will not impose mandates that will have a consequential effect of \$144 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 found good cause to waive the notice of proposed rulemaking for the notice and incorporated a statement of the finding and its reasons. An agency may waive the notice and comment rulemaking procedures if an agency finds, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. CMS determined that delaying publication of the Part B premium rate such that it would not be published before the time period established in the statute for which the premium rates will apply would be contrary to the public interest. CMS found that notice and comment are unnecessary because the formulas used to calculate the Part B premiums are statutorily directed. Therefore, CMS found good cause to waive publication of a proposed notice and solicitation of public comments.

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

The notice does not impose any information collection requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The notice is authorized by sections 1833(b), 1839, and 1933(c) of the Social Security Act, as amended.

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

CMS determined that the notice is economically significant under the Order as it is anticipated to have an annual effect on the economy of \$100 million or more.

Executive Order No. 13,132 (Federalism)

CMS determined that the notice does not significantly affect the rights, roles, and responsibilities of the states.