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Washington, DC 20548

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November 22, 2013

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Dave Camp
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; Part A Premiums for CY 2014 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 & Medicaid Services (CMS) entitled "Medicare Program; Part A Premiums for CY 2014 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement" (RIN: 0938-AR57). We received the rule on October 29, 2013. It was published in the *Federal Register* as a notice on October 30, 2013. 78 Fed. Reg. 64,951.

The notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2014. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the uninsured aged) and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2014, for these individuals will be \$426. The premium for certain other individuals as described in the CMS notice will be \$234.

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
Program Manager
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; PART A PREMIUMS FOR CY 2014
FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED
INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT"
(RIN: 0938-AR57)

(i) Cost-benefit analysis

CMS outlined the monthly premium calculation and the cost to beneficiaries. CMS estimates that in CY 2014, 43,923,567 people aged 65 years and over will be entitled to benefits (without premium payment), and that they will incur about \$224.753 billion in benefits and related administrative costs. Thus, CMS notes that the estimated monthly average per capita amount is \$426.41 and the monthly premium is \$426. Subsequently, CMS explains that the full monthly premium reduced by 45 percent is \$234.

According to CMS, the CY 2014 premium of \$426 is approximately 3.40 percent lower than the CY 2013 premium of \$441. CMS estimates that approximately 626,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. Furthermore, CMS notes that the CY 2014 reduced premium of \$234 is approximately 3.70 percent lower than the CY 2013 premium of \$243. CMS estimates that an additional 55,000 enrollees will pay the reduced premium. Therefore, CMS estimates that the total aggregate savings to enrollees paying these premiums in CY 2014, compared to the amount that they paid in CY 2013, will be about \$119 million.

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

For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. CMS states that most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$35.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. CMS notes that the annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year 2014. As a result, CMS is not preparing an analysis for the RFA because the Secretary of Health and Human Services has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires the preparation of a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. CMS explains that it is not preparing an analysis for section 1102(b) of the Act, because the Secretary has determined that the notice 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 states that the notice does not impose mandates that will have a consequential effect of \$141 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 uses general notices, rather than notice and comment rulemaking procedures, to make announcements such as this premium notice. In doing so, CMS acknowledges that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. CMS considered publishing a proposed notice to provide a period for public comment. However, under APA, CMS may waive that procedure if it finds good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. CMS is not using notice and comment rulemaking in this notification of Medicare Part A premiums for CY 2014 as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves.

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

CMS states that the notice does not impose information collection and recordkeeping requirements and, consequently, it need not be reviewed by the Office of Management and Budget (OMB) under the authority of PRA.

Statutory authorization for the rule

CMS states that final rule is authorized by section 1818 of the Social Security Act. 42 U.S.C. § 1395i-2.

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

CMS estimates that the overall effect of the changes in the Part A premium will be a savings to voluntary enrollees (section 1818 and section 1818A of the Act) of about \$119 million. As a result, this notice is economically significant under the Order. Accordingly, CMS states that OMB has reviewed the notice.

Executive Order No. 13,132 (Federalism)

CMS states that since the notice does not impose any costs on state or local governments, the requirements of the Order are not applicable.