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November 6, 2009

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

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Charles B. Rangel
Chairman
The Honorable Dave Camp
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; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2010*

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; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2010” (RIN: 0938-AP48). We received the rule on October 19, 2009. It was published in the *Federal Register* as a notice on October 22, 2009. 74 Fed. Reg. 54,571.

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, 2010. The notice announces the monthly premium for aged and disabled beneficiaries as well

as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2010 are \$221.00 for aged enrollees and \$270.40 for disabled enrollees. The standard monthly Part B premium rate for 2010 is \$110.50, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or roughly 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2009 standard premium rate was \$96.40.) The Part B deductible for 2010 is \$155.00 for all Part B beneficiaries. A beneficiary who has to pay an income-related monthly adjustment may have to pay a total monthly premium of roughly 35, 50, 65, or 80 percent of the total cost of Part B coverage.

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 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: Vivian Stallion
Office 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 AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; MEDICARE PART B MONTHLY
ACTUARIAL RATES, PREMIUM RATE, AND
ANNUAL DEDUCTIBLE BEGINNING JANUARY 1, 2010"
(RIN: 0938-AP48)

(i) Cost-benefit analysis

CMS estimated that the standard Part B premium rate of \$110.50, which is \$14.10 higher than the premium for 2009, will result in about \$2 billion of additional costs in 2010 for the approximately 12 million Part B enrollees who pay the increase in the Part B premium.

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

CMS has determined that the notice will not have a significant economic impact on a substantial number of small entities or 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 the notice will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector in any one year of \$133 million or more.

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

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

In accordance with CMS's past practice regarding publication of deductible and coinsurance amounts under Medicare where such amounts are determined according to a statute, a general notice is used rather than notice and comment rulemaking procedures contained in section 553 of the Administrative Procedure Act.

In addition, CMS noted good cause to waive the publication of a proposed notice and solicitation of public comments because delaying publication of the rates would be contrary to the public interest.

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

The notice does not address the Paperwork Reduction Act. However, in past annual notices announcing these rates, CMS has stated that the notice does not contain any information collection requirements subject to the Act.

Statutory authorization for the rule

The notice is issued pursuant to the authority contained in section 1839 of the Social Security Act (42 U.S.C. 1395r).

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

The notice was deemed economically significant under Executive Order No. 12,866 and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that the notice does not have federalism implications.