



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

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November 1, 2023

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

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
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 Rates, and Annual Deductible Beginning January 1, 2024*

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 Rates, and Annual Deductible Beginning January 1, 2024” (RIN: 0938-AV13). We received the rule on October 18, 2023. It was published in the *Federal Register* as a notice on October 17, 2023. 88 Fed. Reg. 71555. The effective date is January 1, 2024.

According to CMS, this 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 program beginning January 1, 2024. In addition, CMS announced the monthly premium for aged and disabled beneficiaries, the deductible for 2024, and the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. CMS stated that the monthly actuarial rates for 2024 are \$343.40 for aged enrollees and \$427.20 for disabled enrollees. CMS stated that the standard monthly Part B premium rate for all enrollees for 2024 is \$174.70, 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 the \$3.00 repayment

amount required under current law. CMS clarified that the 2024 premium is 5.9 percent or \$9.80 higher than the 2023 standard premium rate of \$164.90, which included the \$3.00 repayment amount. According to CMS, the Part B deductible for 2024 is \$240.00 for all Part B beneficiaries. CMS explained that if a beneficiary has to pay an income-related monthly adjustment amount, that individual will have to pay a total monthly premium of about 35, 50, 65, 80, or 85 percent of the total cost of Part B coverage plus a repayment amount of \$4.20, \$6.00, \$7.80, \$9.60, or \$10.20, respectively. CMS stated that beginning in 2023, certain Medicare enrollees who are 36 months post kidney transplant, and therefore are no longer eligible for full Medicare coverage, can elect to continue Part B coverage of immunosuppressive drugs by paying a premium. CMS stated that for 2024, the immunosuppressive drug premium is \$103.00.

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). CMS stated it found good cause to waive notice and comment procedures for the notice because it simply notifies the public of the updates to the monthly actuarial rates for aged and disabled beneficiaries and the Medicare Supplementary Medical Insurance Part B deductible, as well as the monthly Part B premium amounts and the income-related monthly adjustment amounts to be paid by certain beneficiaries for calendar year 2024. CMS also noted that even if notice and comment procedures were required for the notice, the agency would find good cause, for the previously stated reason, to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under the Social Security Act. Pub. L. No. 74-271, 49 Stat. 620 (Aug. 14, 1935). CMS then reiterated its belief that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion for both the agency and Medicare beneficiaries.

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.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
Regulations Coordinator
Centers for Medicare & Medicaid 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 RATES, AND ANNUAL DEDUCTIBLE BEGINNING JANUARY 1, 2024”
(RIN: 0938-AV13)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) prepared a regulatory impact analysis presenting the costs and benefits of the notice. According to CMS, the 2024 standard Medicare Supplementary Medical Insurance Part B premium of \$174.70 is \$9.80 higher than the 2023 premium of \$164.90. CMS estimated that the total premium increase, for the approximately 62 million Part B enrollees in 2024, will be \$7.3 billion. CMS also provided a detailed economic analysis in the notice, with tables showing the monthly premium amounts under different Part B coverages for various categories of beneficiaries.

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

In the notice, CMS stated that the Secretary of Health and Human Services determined that the notice will not have a significant economic impact on a substantial number of small entities. CMS stated that the Secretary also determined that this 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

CMS determined that this notice does not impose mandates that will have a consequential effect of the threshold amount or more under the Act on state, local, or tribal governments or on the private sector.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to

GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

CMS did not discuss the Administrative Pay-As-You-Go-Act of 2023 in the notice.

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

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

CMS stated that it found good cause to waive notice and comment procedures under the Act. According to CMS, the notice simply notifies the public of updates to the monthly actuarial rates for aged and disabled beneficiaries and the Medicare Supplementary Medical Insurance Part B deductible, as well as the monthly Part B premium amounts and the income-related monthly adjustment amounts to be paid by certain beneficiaries for calendar year 2024. CMS noted that even if notice and comment procedures were required for the notice, it would find good cause to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Social Security Act. Pub. L. No. 74-271, 49 Stat. 620 (Aug. 14, 1935). CMS explained that publication of the notice is consistent with section 1839 of the Social Security Act, and that it believes that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion for both the agency and Medicare beneficiaries.

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

CMS determined that this notice contains no information collection requirements under the Act.

Statutory authorization for the rule

CMS promulgated this notice pursuant to sections 1395e(b) and 1395r of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that OMB reviewed the notice and determined it is a “significant regulatory action” under the Order, as amended.

Executive Order No. 13132 (Federalism)

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