



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

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January 10, 2014

The Honorable Bernie Sanders
Chairman
The Honorable Richard Burr
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Jeff Miller
Chairman
The Honorable Mike Michaud
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Copayments for Medications in 2014*

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 Veterans Affairs (VA) entitled "Copayments for Medications in 2014" (RIN: 2900-AO91). We received the rule on December 24, 2013. It was published in the *Federal Register* as an interim final rule on December 30, 2013. 78 Fed. Reg. 79,315.

The interim final rule amends the medical regulations concerning the copayment required for certain medications. But for this rulemaking, beginning on January 1, 2014, the copayment amount would increase based on a formula set forth in regulation. The maximum annual copayment amount payable by veterans would also increase. This rulemaking freezes copayments at the current rate for 2014 for veterans in priority categories 2 through 8, and thereafter resumes increasing copayments in accordance with the regulatory formula.

The interim final rule is effective on December 30, 2013. 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). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. §§ 553(b)(B) and (d)(3) to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date.

Enclosed is our assessment of VA'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 indicates that VA 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.

Sincerely yours,

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: William F. Russo
Deputy Director, Regulation Policy
and Management
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
"COPAYMENTS FOR MEDICATIONS IN 2014"
(RIN: 2900-AO91)

(i) Cost-benefit analysis

Though VA states that it examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, it did not include a detailed analysis in the final rule.

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

The Secretary of VA certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined by the Act. The interim final rule will temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. VA states that the interim final rule directly affects individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. § 605(b), VA notes that the rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. §§ 603 and 604.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. § 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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) in any one year. VA states that the interim final rule will have no such effect on state, local, and 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.

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. §§ 553(b)(B) and (d)(3) to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. VA states that the interim final rule freezes at current rates the prescription drug copayment that VA charges certain veterans. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. According to VA, increasing the copayment amount on January 1, 2014, might cause a significant financial hardship for some veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects. For the above reasons, the Secretary issued this rule as an interim final rule. VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the *Federal Register*.

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

VA states that the interim final rule contains no provisions constituting a collection of information under the Act.

Statutory authorization for the rule

VA states that the interim final rule is authorized by 38 U.S.C. § 1722A.

Executive Order No. 12,866

VA states that the economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it may be an economically significant regulatory action under Executive Order 12,866.

Executive Order No. 13132 (Federalism)

In its submission to the Comptroller General, VA did not include an analysis of the Order.