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B-321377

January 3, 2011

The Honorable Daniel K. Akaka  
Chairman  
The Honorable Richard M. Burr  
Ranking Member  
Committee on Veterans' Affairs  
United States Senate

The Honorable Bob Filner  
Chairman  
The Honorable Steve Buyer  
Ranking Member  
Committee on Veterans' Affairs  
House of Representatives

Subject: *Department of Veterans Affairs: Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated With Non-VA Outpatient Care*

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 "Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated With Non-VA Outpatient Care" (RIN: 2900-AN37). We received the rule on December 20, 2010. It was published in the *Federal Register* as a final rule on December 17, 2010. 75 Fed. Reg. 78,901.

The final rule updates the VA medical regulations to apply Medicare payment methodologies to all inpatient and outpatient healthcare professional services and other medical charges associated with non-VA outpatient care.

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 of the procedural steps taken 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.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Robert C. McFetridge  
Director, Regulations Policy and  
Management  
Office of the General Counsel  
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  
"PAYMENT FOR INPATIENT AND OUTPATIENT HEALTH CARE  
PROFESSIONAL SERVICES AT NON-DEPARTMENTAL FACILITIES  
AND OTHER MEDICAL CHARGES ASSOCIATED WITH  
NON-VA OUTPATIENT CARE"  
(RIN: 2900-AN37)

(i) Cost-benefit analysis

VA performed a cost-benefit analysis in conjunction with the final rule. VA analyzed the expected savings from using the Medicare outpatient payment methodologies rather than the current VA method in four different categories. VA determined the cost reduction for clinical lab claims, as a percentage of payments made under current VA methodology, would be 74.6 percent. The cost reduction for outpatient dialysis facility claims would be 38.8 percent. The cost reduction for non-VA ambulatory surgery center claims would be 11.2 percent. And finally, the cost reduction for non-VA hospital outpatient department and emergency room facility claims would be 33.2 percent. VA estimates that the annual savings resulting from adoption of Medicare pricing standards for payment of outpatient services to be \$274.6 million in fiscal year 2011, and approximately \$1.8 billion total over the next five fiscal years.

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

VA determined that the final rule would have a significant economic impact on a substantial number of small entities. VA combined its regulatory flexibility analysis with its cost-benefit analysis under Executive Order 12,866, and it is discussed above.

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

VA states that the final rule would not result in the expenditure of \$100 million or more annually by state, local, and tribal governments, in the aggregate, or by the private sectors.

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

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

On February 18, 2010, VA published a notice of proposed rulemaking in the *Federal Register*. 75 Fed. Reg. 7,218. VA received 18 comments on the proposed rule and responded to the comments in the final rule. 75 Fed. Reg. 78,901.

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

The final rule does not contain any new information collection requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by 38 U.S.C. § 1703(a).

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

VA concluded that the final rule is a significant regulatory action under Executive Order 12,866 because it is likely to have an annual effect on the economy of \$100 million or more.

Executive Order No. 13,132 (Federalism)

The final rule does not discuss Executive Order No. 13,132.