



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

B-327358

September 30, 2015

The Honorable Johnny Isakson
Chairman
The Honorable Richard Blumenthal
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Jeff Miller
Chairman
The Honorable Corrine Brown
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Copayments for Medications in 2015*

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 2015" (RIN: 2900-AP15). We received the rule on September 10, 2015. It was published in the *Federal Register* as a final rule on September 16, 2015. 80 Fed. Reg. 55,544.

This rule adopts as final, with changes, an interim final rule amending VA medical regulations to freeze the copayments required for certain medications provided by VA until December 31, 2015.¹ Under the interim final rule, copayment amounts were maintained at the same rates as they were in 2014 (which were \$8 for veterans in priority groups 2–6 and \$9 for veterans in priority groups 7 and 8), and would have increased based on the prescription drug component of the Medical Consumer Price Index on January 1, 2016. This final rule extends the current freeze for copayments through December 31, 2016.

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 final rule has a stated effective date of September 16, 2015. The rule was received on September 16, 2015, and was published in the *Federal Register* on September 16, 2015. Therefore, the final rule does not have the required 60-day delay in its effective date. 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(d)(3), 808(2). VA determined that increasing the copayment

¹ The interim final rule was also a major rule that we reported on pursuant to the Congressional Review Act. See, GAO-15-206R (Washington, D.C.: Nov. 7, 2014).

amount on January 1, 2015, might have caused a significant financial hardship for some veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects. For this reason, VA found that for this rule additional advance notice and public procedure thereon were impracticable, unnecessary, and contrary to the public interest.

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: Michael P. Shores
Chief Impact Analyst, Regulation 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
"COPAYMENTS FOR MEDICATIONS IN 2015"
(RIN: 2900-AP15)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) analyzed the costs and benefits associated with this final rule. VA determined that there would be a pharmacy copayment revenue loss to VA associated with this rulemaking but that, from a society-wide perspective, the revenue loss to VA is offset by gains in value to veterans. VA determined that the total pharmacy copayment revenue loss associated with this rulemaking is estimated to be \$127,593,678 over a 12-month period of April 1, 2015, to March 31, 2016. These estimates are based on calendar years and the fact that there is a 90-day holding period for copayments that occurs from October to December 2015. Alternatively, from a fiscal year analysis, VA estimated that the total pharmacy copayment revenue loss associated with this rule will be \$65,130,580 for the last two quarters in fiscal year 2015 and \$62,463,098 for the first two quarters only in fiscal year 2016.

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

VA determined that this final rule will not have a significant economic impact on a substantial number of small entities.

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

VA determined that this final rule will not result in the expenditure by state, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year.

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

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

VA found that there is good cause 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 found 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. VA determined that increasing the copayment amount on January 1, 2015, might have caused a significant financial hardship for some veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects.

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

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

Statutory authorization for the rule

VA promulgated this final rule under the authority of section 501 of title 38, United States Code.

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

VA determined that this final rule is economically significant under the Order because it is likely to have an annual effect on the economy of \$100 million or more.