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United States Government Accountability Office
Washington, DC 20548

B-318209

June 1, 2009

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

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

Subject: *Department of Veterans Affairs: Expansion of Enrollment in the VA Health Care System*

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 "Expansion of Enrollment in the VA Health Care System" (RIN: 2900-AN23). Congress received the rule on May 13, 2009, and we received the rule on May 18, 2009. It was published in the *Federal Register* as a final rule on May 15, 2009. 74 Fed. Reg. 22,832.

The final rule amends the Department of Veterans Affairs medical regulations regarding enrollment in the VA health care system. Specifically, the final rule establishes additional subpriorities within enrollment priority category 8 and provides that beginning on June 15, 2009, VA will begin enrolling priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less.

Enclosed is our assessment of the 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: William F. Russo
Director of Regulations 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
"EXPANSION OF ENROLLMENT IN THE VA HEALTH CARE SYSTEM"
(RIN: 2900-AN23)

(i) Cost-benefit analysis

VA projected that this final rule would result in an additional 258,705 priority category 8 enrollees in FY 2009. VA projects that this will result in a \$364 million growth in net health services expenditures for FY 2009, based on total health care service expenditures associated with the new enrollment being projected at \$484 million in FY 2009 and revenues generated by first- and third-party collections projected to be \$121 million in FY 2009. Over the next 5 years, VA's expenditures related to this regulatory change are projected to be approximately \$2.931 billion.

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

The Secretary certified that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined by the Regulatory Flexibility Act. The rule will not directly affect any small entities; only individuals will be directly affected.

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

This final rule will not result in the expenditure of \$100 million or more in any given year by state, local, or tribal governments. The Unfunded Mandates Reform analysis does not directly address the impact on the private sector; however, as part of the Regulatory Flexibility Act analysis, VA states that the final rule will only directly affect individuals.

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

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

On January 21, 2009, VA published a proposed rule entitled Expansion of Enrollment in VA Health Care System, 74 Fed. Reg. 3535. VA did not receive any comments that were within the scope of the rulemaking, and therefore, on May 15, 2009, VA published the final rule without making any changes based on comments, 74 Fed. Reg. 22,832.

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

The final rule does not contain any provisions constituting a new collection of information, but would change, through adding an option of a new method of submission, a collection of information that has been approved by the Office of Management and Budget (OMB). The information collection provisions affected by the final rule have been approved under control number 2900-0091.

Statutory authorization for the rule

The final rule is authorized by the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Pub. L. 110-329, September 30, 2008.

Executive Order No. 12866 (Regulatory Planning and Review)

VA determined that the final rule is an economically significant action under the Order because it may have an annual effect on the economy of \$100 million or more and may raise novel legal or policy issues. VA performed the regulatory analysis required by the Order as described in OMB Circular A-4.

Executive Order No. 13132 (Federalism)

VA did not note a separate federalism analysis. However, as part of the Regulatory Flexibility Act analysis, VA states that the final rule will only directly affect individuals, and a federalism analysis is required only when the rule will “have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”