



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

B-330134

June 19, 2018

The Honorable Johnny Isakson
Chairman
The Honorable Jon Tester
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Phil Roe, M.D.
Chairman
The Honorable Tim Walz
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Reimbursement for Emergency Treatment*

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 "Reimbursement for Emergency Treatment" (RIN: 2900-AQ08). We received the rule on June 5, 2018. It was published in the *Federal Register* as an interim final rule on January 9, 2018. 83 Fed. Reg. 974. The effective date for the interim final rule was January 9, 2018.

The interim final rule revises VA regulations concerning payment or reimbursement for emergency treatment for non-service-connected conditions at non-VA facilities to implement the requirements of a recent court decision. Specifically, this rulemaking expands eligibility for payment or reimbursement to include veterans who receive partial payment from a health-plan contract for non-VA emergency treatment and establishes a corresponding reimbursement methodology. This rulemaking also expands the eligibility criteria for veterans to receive payment or reimbursement for emergency transportation associated with the emergency treatment, in order to ensure that veterans are adequately covered when emergency transportation is a necessary part of their non-VA emergency treatment.

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). This interim final rule was received on June 5, 2018. It was published in the *Federal Register* on January 9, 2018, and has a stated effective date of January 9, 2018. 83 Fed. Reg. 974. Therefore, the interim 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 agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies incorporate a statement of the findings and their reasons in the rule issued. 5 U.S.C. §§ 553(d)(3), 808(2). VA found good cause to issue this regulation effective upon publication in the *Federal Register*. VA stated delay of the rule would create unavoidable delay in the processing of affected claims which would cause hardship to veterans, so it is 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 agency's submissions to us 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
Director, Office of 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
“REIMBURSEMENT FOR EMERGENCY TREATMENT”
(RIN: 2900-AQ08)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) summarized the costs and benefits of the interim final rule in the Regulatory Impact Analysis. VA determined that there are costs and transfers associated with this rulemaking. Total transfers are estimated to be from a low estimate of \$41 million to a high estimate of \$93 million in FY 2018 and a low estimate of \$150 million to a high estimate of \$282 million over a 5-year period. Total costs are estimated to be \$7 million in FY 2018 and \$15.8 million over a 5-year period.

VA stated the benefits of the rulemaking includes expanding benefits under 38 U.S.C. § 1725. VA further stated that the change would make VA the secondary payer to other health insurance or third party liability for emergency treatment to the lesser of the amount for which the veteran is personally liable or 70 percent of the amount of the applicable Medicare fee schedule.

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

VA certified that the adoption of this interim 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 stated the interim final rule will not have an effect triggering the Act 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.*

VA published the interim final rule on January 9, 2018. 83 Fed. Reg. 974. The agency found good cause to publish the rule without notice and comment due to the potential hardship faced by veterans if the rule was delayed. The comment period on the interim final rule was open for 60 days after publication.

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

VA stated the interim final rule contains no provisions constituting a collection of information under PRA.

Statutory authorization for the rule

VA promulgated the rule under 38 U.S.C. §§ 501, 1725.

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

VA states the Office of Management and Budget determined the rule was a major rule under the Order, and VA performed a Regulatory Impact Analysis.

Executive Order No. 13,132 (Federalism)

The interim final rule does not address the Order.