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November 19, 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 Michael H. Michaud
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Expanded Access to Non-VA Care Through the Veterans Choice Program*

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 "Expanded Access to Non-VA Care Through the Veterans Choice Program" (RIN: 2900-AP24). We received the rule on November 3, 2014. It was published in the *Federal Register* as an interim final rule on November 5, 2014. 79 Fed. Reg. 65,571.

The interim final rule establishes the Veterans Choice Program to furnish hospital care and medical services through non-VA health care providers to veterans who either cannot be seen within the wait-time goals of the Veterans Health Administration or who qualify based on their place of residence. This interim final rule defines the parameters of the Veterans Choice Program and clarifies aspects affecting veterans and the non-VA providers who will furnish hospital care and medical services through the Veterans Choice Program.

The final rule has an effective date of November 5, 2014. 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). We received the rule on November 3, 2014, and the rule was published in the *Federal Register* on November 5, 2014. 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. § 808(2). The Secretary of VA found that good cause exists under 5 U.S.C. § 808(2) to make this regulatory action effective on the date of publication, because Congress directed VA to publish an interim final rule within 90 days of the date of enactment of the law, and further delay in expanding access to non-VA care for eligible veterans could result in the deterioration of their

health. Accordingly, the Secretary found that additional advance notice and public procedure thereon are impractical, 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: William F. Russo
Acting Director, 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
"EXPANDED ACCESS TO NON-VA CARE
THROUGH THE VETERANS CHOICE PROGRAM"
(RIN: 2900-AP24)

(i) Cost-benefit analysis

In the interim final rule, VA does not include the text of the cost-benefit analysis associated with the rule and instead directs readers to the regulatory impact analysis at <http://www.regulations.gov>, or at <http://www.va.gov/orpm/>. VA states that the benefits associated with the interim final rule are the health benefits that will potentially be experienced by veterans; however, VA did not quantify these benefits. VA estimates that the costs in fiscal year 2015 will be approximately \$3.54 billion and that over a 3-year period the costs will be \$10.55 billion. The costs estimated by VA combine both transfers and costs to society. To the extent that the Veterans Choice Program increases provision of medical care, the impacts represent costs. To the extent that the Veterans Choice Program shifts payment liability for medical care (rather than actually increasing the provision of care), then the interim final rule's impacts represent transfers from VA to the entities who would have paid for the care in the absence of the rule—potentially private insurers, Medicare and other government insurers, and veterans themselves. There will also be transfers within VA as care is shifted to the Veterans Choice Program from VA's other health care programs.

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

VA certified that the interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

(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 the interim final rule will not 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 1 year.

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

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

In general, the Administrative Procedure Act, 5 U.S.C. 553, requires that a notice of proposed rulemaking be published in the *Federal Register* and interested parties be given an opportunity to comment, and that a rule shall not be effective less than 30 days after it is published. However, the Secretary of VA found 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 the interim final rule with an immediate effective date. Section 101(n) of the

Veterans Access, Choice, and Accountability Act of 2014, Pub. L. No. 113-146, requires publication of an interim final rule no later than 90 days after the date of the enactment of the law, which would be November 5, 2014. VA interprets this mandate to mean that, as a matter of law, it is impracticable and contrary to law and the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. VA made the rule effective for certain veterans prior to the usual 30-day delay for an interim final rule to allow VA to begin furnishing hospital care and medical services immediately to certain eligible veterans. Delaying implementation could result in delayed health care for these veterans, which VA determined could have unpredictable negative health effects.

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

This interim final rule includes a collection of information under the Paperwork Reduction Act of 1995 that requires approval by the Office of Management and Budget (OMB). VA has submitted a copy of this rulemaking to OMB for review. There are two information collection requirements that apply to eligible veterans seeking authorization to receive non-VA care through the Veterans Choice program, an estimated 440,794 eligible persons, which VA estimates will result in an estimated total annual reporting and recordkeeping burden of 273,880 hours. There are also two information collection requirements which apply to eligible entities and health care providers furnishing hospital care or medical services to eligible veterans through the Veterans Choice program, an estimated 187,000 eligible persons, which VA estimates will result in an estimated total annual reporting and recordkeeping burden of 480,011 hours.

Statutory authorization for the rule

The interim final rule is authorized by section 101 of the Veterans Access, Choice, and Accountability Act of 2014, Pub. L. No. 113-146, 128 Stat. 1754, as amended by the Department of Veterans Affairs Expiring Authorities Act of 2014, Pub. L. No. 113-175, 128 Stat. 1901, 1906.

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

VA examined the economic, interagency, budgetary, legal, and policy implications of the interim final rule, and it determined that it is an economically significant regulatory action under Executive Order 12,866. The interim final rule was submitted to OMB for review under the Order.