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May 11, 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: Driving Distance Eligibility for 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 entitled "Driving Distance Eligibility for the Veterans Choice Program" (RIN: 2900-AP24). We received the rule on April 20, 2015. It was published in the *Federal Register* as an interim final rule on April 24, 2015. 80 Fed. Reg. 22,906.

The interim final rule amends the regulations implementing section 101 of the Veterans Access, Choice, and Accountability Act of 2014, which directed VA to establish a program to furnish hospital care and medical services through eligible non-VA health care providers to eligible 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 (hereafter referred to as the Veterans Choice Program, or the Program). The interim final rule modifies how VA measures the distance from a veteran's residence to the nearest VA medical facility. This modified standard will consider the distance the veteran must drive to the nearest VA medical facility, rather than the straight-line or geodesic distance to such a facility.

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 April 24, 2015. The rule was received on April 20, 2015, and was published in the *Federal Register* on April 24, 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 there was good cause to publish this rule with an

immediate effective date in order for veterans who need access to health care under the Veterans Choice Program have that access as soon as possible.

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 Shores
Chief Impact Analyst, Regulation Policy 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
“DRIVING DISTANCE ELIGIBILITY FOR THE
VETERANS CHOICE PROGRAM”
(RIN: 2900-AP24)

(i) Cost-benefit analysis

VA prepared a cost-benefit analysis in conjunction with the interim final rule. The interim final rule states that the cost-benefit analysis is available at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.” VA determined that the potential cost range for the Veterans Choice Program is estimated to be between \$2.97 billion and \$17.7 billion, with a maximum of \$21.2 billion. The benefits of the interim final rule will be to provide the benefits of the Veterans Choice Program to veterans that qualify based on their place of residence if they live more than 40 miles from the closest VA medical facility; if they reside in a state without a VA medical facility that provides hospital care, emergency medical services, and surgical care rated by the Secretary of VA as having a surgical complexity of standard, and they reside more than 20 miles from a medical facility that offers these services in another state; or, with certain exceptions, if they reside 40 miles or less from a VA medical facility and must travel by air, boat, or ferry, or face an unusual or excessive burden in traveling to a VA medical facility because of geographical challenges.

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

The Secretary of VA certified that the interim final rule will not have a significant economic impact on a substantial number of small entities under 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 states 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 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.

The VA found good cause under 5 U.S.C. 553(b)(B) that advance notice and opportunity for public comment would be impracticable, unnecessary, or contrary to the public interest and under 5 U.S.C. 553(d)(3) to publish this rule with an immediate effective date. Section 101(n) of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. No. 113-146, as amended) authorized VA to implement the Program through an interim final rule and provided a deadline of no later than November 5, 2014, the date that is 90 days after the date of the enactment of the law. VA states that it does not interpret the expiration of the 90 day time period as diminishing or divesting VA of its authority to continue to implement the Veterans

Choice Program through an interim final rule, and that section 101(n) of the Veterans Access, Choice, and Accountability Act of 2014 demonstrates that Congress intended that VA act quickly in expanding access to non-VA care options.

This interim final rule changes the manner in which VA will calculate the distance requirement and will likely increase the number of veterans who are eligible for the program. Veterans who did not qualify under the straight-line methodology previously articulated may qualify under the standard being established in the interim final rule. In order for these veterans to have access to needed health care under the Veterans Choice Program, VA determined that it is essential that the revised driving distance requirement be made effective as soon as possible.

VA stated that it will consider and address comments that are received within 30 days of April 24, 2015, the date the interim final rule was published in the *Federal Register*. The public had 120 days to comment on the methodology for calculating distance following the publication of the November rulemaking, and VA believes the additional 30 days will be sufficient to ensure the public has an opportunity to be heard on this issue.

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

The interim final rule does not contain any collections of information under the Paperwork Reduction Act.

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, as amended).

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

The interim final rule was determined to be an economically significant regulatory action under the Executive Order. The interim final rule indicates that the supporting regulatory impact analysis is available at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”