



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

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November 17, 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: 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 2, 2015. It was published in the *Federal Register* as a final rule on October 29, 2015. 80 Fed. Reg. 66,419.

The final rule amends the VA medical 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). VA published an interim final rule implementing the Veterans Choice Program on November 5, 2014, and published a subsequent interim final rule making further amendments on April 24, 2015. The final rule responds to public comments received from both interim final rules and amends the regulations to modify payment rates under the Program.

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 October 29, 2015. The rule was received on November 2, 2015, and was published in the *Federal Register* on October 29, 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 without prior opportunity for public comment and to publish this rule with an immediate effective date. The Secretary of VA issued two interim final rules published at 79 Fed. Reg. 65,571 (November 5, 2014) and 80 Fed. Reg. 22,906 (April 24, 2015). The rule amends the VA medical regulations implementing section 101 of the Veterans Access, Choice, and Accountability Act of 2014, to establish two alternative rates of payments. These provisions were mandated by Congress and enacted subsequent to the November interim final rule. According to VA, the regulatory changes reflect these new provisions, and notice and public comment could not, therefore, result in any change to these provisions. Further, according to VA, the public laws became effective on their respective dates of enactment. For this reason, VA states that it was 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.

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, Office of Regulatory Policy
Office of the General Counsel (02REG)
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 final rule, VA does not include the text of the cost-benefit analysis associated with the rule but instead directs readers to the regulatory impact analysis at <http://www.regulations.gov>, or at <http://www.va.gov/orpm/> by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date. In that analysis, VA states that the issuing of the final rule will not have any additional impact on the medical care costs for the residence-based eligibility that were originally reflected in the Regulatory Impact Analysis (RIA) that were published with the interim final rule in April 2015. VA states that the RIA affirms the assumptions and underlying analyses that were identified in the RIA published with the interim final rule in April 2015.

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

VA determined that the final rule will not have a significant economic impact on a substantial number of small entities. VA stated that the final rule will not have a significant economic impact on participating eligible entities and providers who enter into agreements with VA but, to the extent there is any such impact, it will result in increased business and revenue for them. VA also stated that it does not believe there will be a significant economic impact on insurance companies, as claims will only be submitted for care that will otherwise have been received whether such care was authorized under this Program or not. Therefore, VA stated that the rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

(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 concluded that there was good cause to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date. VA found that it was 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, and therefore issued two interim final rules published at 79 Fed. Reg. 65,571 (November 5, 2014) and 80 Fed. Reg. 22,906 (April 24, 2015). The rule amends the VA medical regulations implementing section 101

of the Veterans Access, Choice, and Accountability Act of 2014, to establish two alternative rates of payments. These provisions were mandated by Congress and enacted subsequent to the November interim final rule. The regulatory changes reflect these new provisions, and notice and public comment could not therefore result in any change to these provisions. Further, according to VA, the public laws became effective on their respective dates of enactment. For this reason, VA states that it found that for this rule, additional advance notice and public procedure thereon were 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. In response to the November interim final rule, VA received 39 comments, and in response to the April interim final rule, VA received 12 comments. VA responded to comments in the final rule.

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

VA states that the final rule will impose the following new information collection requirements. Section 17.1515 requires eligible veterans to notify VA whether the veteran elects to receive authorized non-VA care through the Veterans Choice Program, be placed on an electronic waiting list, or be scheduled for an appointment with a VA health care provider. Section 17.1515(b)(1) also allows eligible veterans to specify a particular non-VA entity or health care provider, if that entity or provider meets certain requirements. Section 17.1510(d) requires eligible veterans to submit to VA information about their health-care plan to participate in the Veterans Choice Program. Participating eligible entities and providers are required to submit a copy of any medical record related to hospital care or medical services furnished under this Program to an eligible veteran. Section 17.1530 requires eligible entities and providers to submit verification that the entity or provider maintains at least the same or similar credentials and licenses as those required of VA's health care providers, as determined by the Secretary of VA. As required by PRA, VA has submitted these information collections to the Office of Management and Budget (OMB) for its review. OMB approved these new information collection requirements associated with the final rule and assigned OMB control number 2900-0823. VA states that it has added the approved OMB control number to the relevant parentheticals.

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, the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. No. 113-235, 128 Stat. 2130, 2568), the Construction Authorization and Choice Improvement Act (Pub. L. No. 114-19, 129 Stat. 215), and the Surface Transportation and Veterans Health Care Choice Improvement Act (Pub. L. 114-41, 129 Stat. 443).

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

VA examined the economic, interagency, budgetary, legal, and policy implications of the final rule, and it determined that it is an economically significant regulatory action under Executive Order 12,866.