



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-326375

November 7, 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: Copayments for Medications in 2015*

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 "Copayments for Medications in 2015" (RIN: 2900-AP15). We received the rule on October 22, 2014. It was published in the *Federal Register* as an interim final rule on October 27, 2014. 79 Fed. Reg. 63,819.

The interim final rule amends VA's medical regulations concerning the copayment required for certain medications. Absent this rule, beginning on January 1, 2015, the copayment amount would increase based on a formula set in regulation. The maximum annual copayment amount payable by veterans would also increase. This rule freezes copayments for 2015 at the current rate for veterans in priority categories 2 through 8, and thereafter resumes increasing copayments in accordance with the regulatory formula.

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 27, 2014. The rule was received on October 22, 2014, and was published in the *Federal Register* on October 27, 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. §§ 553(d)(3), 808(2). VA determined that increasing the copayment amount on January 1, 2015, might cause a significant financial hardship for some veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects. For this reason, VA found that for this rule additional advance notice and public procedure thereon were impracticable, 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

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
"COPAYMENTS FOR MEDICATIONS IN 2015"
(RIN: 2900-AP15)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) analyzed the costs and benefits associated with this interim final rule. VA determined that there would be a pharmacy copayment revenue loss to VA associated with this rulemaking but that, from a society-wide perspective, the revenue loss to VA is offset by gains in value to veterans. VA determined that the total pharmacy copayment revenue loss associated with this rulemaking is estimated to be \$127,593,678 over a 12-month period of April 1, 2015, to March 31, 2016. These estimates are based on calendar years and the fact that there is a 90-day holding period for copayments that occurs from October to December 2015. Alternatively, from a fiscal year analysis, VA estimated that the total pharmacy copayment revenue loss associated with this rule will be \$65,130,580 for the last two quarters in fiscal year 2015 and \$62,463,098 for the first two quarters only in fiscal year 2016.

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

VA determined that 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 determined that this interim 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 found that there is good cause to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. VA found that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. Increasing the copayment amount on January 1, 2015, might cause a significant financial hardship for some veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects. For these reasons, VA published this rule as an interim final rule. VA stated that it will consider and address comments that are received within 60 days of publication.

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

VA determined that this interim final rule contains no provisions constituting a collection of information under the Act.

Statutory authorization for the rule

VA promulgated this interim final rule under the authority of sections 501(a) and 1722A of title 38, United States Code.

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

VA determined that this interim final rule is economically significant under the Order because it is likely have an annual effect on the economy of \$100 million or more.