



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

B-331122

June 19, 2019

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

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

Subject: *Department of Veterans Affairs: Veterans Community Care 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 "Veterans Community Care Program" (RIN: 2900-AQ46). We received the rule on June 6, 2019. It was published in the *Federal Register* as a final rule on June 5, 2019. 84 Fed. Reg. 26278. The effective date of the rule is June 6, 2019.

The final rule governs how covered veterans receive necessary hospital care, medical services, and extended care services from non-VA entities or providers in the community. The rule is intended to implement a provision of the VA MISSION Act of 2018, Public Law 115-182, as amended. 38 U.S.C. § 1703. Specifically, this rule implements the Veterans Community Care Program to furnish required care and services to covered veterans through eligible entities and providers.

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 was published in the *Federal Register* on June 5, 2019, and received on June 6, 2019. The rule has a stated effective date of June 6, 2019. Therefore the final rule does not have the required 60-day delay in its effective date. However, the 60-day delay in effective date can be waived if an agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the findings and a brief statement thereof in the rule issued. 5 U.S.C. § 808(2). VA found that there is good cause to make the rule effective on June 6, 2019. Specifically, VA found that it would be contrary to the public interest to delay the effective date of this rule because any delay in implementing the rule would have a severe detrimental impact on veterans' health care.

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. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Luvenia Potts
Regulations Development Coordinator
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
“VETERANS COMMUNITY CARE PROGRAM”
(RIN: 2900-AQ46)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) projected the total estimated budget impact (both transfers and costs) of this final rule to be \$346.3 million in fiscal year 2019 and \$17.9 billion over a 5-year period. VA estimated transfers to be \$15.6 billion over a 5-year period and costs to be \$2.2 billion over a 5-year period. These transfer impacts are from the federal government to eligible veterans. The cost impacts are administrative fees, claim fees, and other non-provider payment costs.

According to VA, this rule will have the benefit of strengthening the access to VA health care overall by increasing the choices veterans have for their health care and complementing the increasingly timely, high-quality care provided by VA medical facilities. VA stated that veterans will continue to have the option to choose whether to receive care at a VA medical facility or a community provider. Furthermore, according to VA, the access expansion will allow veterans to receive care in the community through a network of providers when VA does not provide the required care or services, wait times do not conform with VA access standards, service line does not meet VA quality standards, or the referring clinician determines it is in the best medical interest of the veteran to receive care or services in the community. Additionally, as described by VA, veterans will be able to access community care when the veteran was eligible to receive care under certain grandfathering provisions or VA does not operate a full-service medical facility in the state in which the veteran resides.

VA determined that the net costs of this final rule will be \$2.2 million over a 5-year period (fiscal years 2019 to 2023) and \$429 million per year on an ongoing basis discounted at 7 percent relative to year 2016, over a perpetual time horizon.

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

VA certified that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the 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 this 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 one year.

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

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

On February 22, 2019, VA published a proposed rule. 84 Fed. Reg. 5629. VA received 1,297 unique comments and responded to comments in the final rule. In addition, VA found good cause under the Act to publish this rule with an effective date that is less than 30 days from the date of publication. Specifically, VA found that it would be contrary to the public interest to delay the effective date of this rule because any delay in implementing the rule would have a severe detrimental impact on veterans' health care.

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

VA determined that this final rule will amend information collection requirements currently approved under Office of Management and Budget (OMB) Control Number 2900-0823 and will impose new collections of information requirements and burden. VA stated that notice of OMB's approval for this information collection will be published in the *Federal Register*.

Statutory authorization for the rule

VA promulgated this final rule under the authorities of sections 101(28), 501, 513, 1701, 1703, 1703B, 1703C, 1710, 1710B, 1712, 1720D, 1722A, 1725A, 1728, 1730A, and 3104 of title 38, United States Code.

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

VA examined the economic, interagency, budgetary, legal, and policy implications of this final rule and determined that it is economically significant under the Order.