

Dated: May 10, 2011.

J.R. Castillo,

*Rear Admiral, U.S. Coast Guard, Commander,
Eleventh Coast Guard District.*

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AN86

Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) "Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities" regulations to conform with changes made by certain sections of the Expansion of Veteran Eligibility for Reimbursement Act. Some of the revisions in this proposed rule are purely technical, matching the language of our regulations to the language of the revised statute, while others set out VA's policies regarding the implementation of statutory requirements. The proposed rule would expand the qualifications for payment or reimbursement to veterans who receive emergency services in non-VA facilities, and would establish accompanying standards for the method and amount of payment or reimbursement.

DATES: Comments on the proposed rule must be received by VA on or before July 25, 2011.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN86—Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment.

This is not a toll-free number. In addition, during the comment period, comments may be viewed online at <http://www.Regulations.gov> through the Federal Docket Management Systems (FDMS).

FOR FURTHER INFORMATION CONTACT:

Holley Niethammer, Fee Policy Chief, National Fee Program Office, Veterans Health Administration, Department of Veterans Affairs, 3773 Cherry Creek Dr. N., East Tower, Ste 495, Denver, CO 80209, (303) 370-5062. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2010, Congress enacted the Expansion of Veteran Eligibility for Reimbursement Act (2010 Act), amending 38 U.S.C. 1725. Current VA regulations implement section 1725 in 38 CFR 17.1000 through 17.1008 under the undesignated heading "Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities." This proposed rule would revise §§ 17.1001, 17.1002, 17.1004, and 17.1005. These revisions would eliminate certain exclusions from emergency care payment or reimbursement, and define the payment limitations for those qualifying for payment or reimbursement under the law as amended by the 2010 Act.

The 2010 Act amended 38 U.S.C. 1725 by removing a provision that included automobile insurance carriers in the definition of "health-plan contract." Under 38 U.S.C. 1725, veterans who are covered by a health-plan contract are ineligible for VA payment or reimbursement. Thus, we propose to remove current 38 CFR 17.1001(a)(5), which includes automobile insurance in the definition of "health-plan contract." These proposed amendments would implement VA's authority to pay or reimburse claimants for providing emergency services to a veteran if the veteran received, or is legally eligible to receive, partial payment towards emergency services from an automobile insurer.

The 2010 Act also amended 38 U.S.C. 1725 by removing a provision that precluded certain claimants from payment or reimbursement by VA for emergency care at non-VA facilities. Parties who qualified as claimants under former section 1725 (as implemented by VA in current 38 CFR 17.1004(a)) included veterans, the provider of the emergency treatment, or the person or organization that paid for such treatment on behalf of the veteran.

Under the 2010 Act, claimants who are entitled to partial payment from a third party for providing non-VA emergency services to a veteran are no longer barred from also receiving VA payment or reimbursement for such care. Prior to the 2010 Act, section 1725 required that VA deny any claim in which a veteran has "other contractual or legal recourse against a third party that would, in whole or in part, extinguish such liability to the provider." The 2010 Act removed "or in part" from this exclusion. In order to remove this partial payment exclusion from VA regulations, we propose to remove the clause, "or in part", from § 17.1002(h), to parallel the language in 38 U.S.C. 1725.

In addition, the 2010 Act authorized, but did not require, VA to provide repayment under section 1725 "for emergency treatment furnished to a veteran before the date of the enactment of th[e 2010] Act, if the Secretary determines that, under the circumstances applicable with respect to the veteran, it is appropriate to do so." We interpret this provision to allow VA, through regulation, to provide retroactive reimbursement, and we propose to implement this authority in § 17.1004(f).

Under current § 17.1004(d), claims for reimbursement must be filed within 90 days after the latest of four dates: (1) July 19, 2001 (the effective date of § 17.1004(d) when VA first promulgated the regulation); (2) the date that the veteran was discharged from the facility that provided the emergency treatment; (3) the date of the veteran's death (under specified circumstances); or (4) the date that the veteran finally exhausted, without success, action to obtain reimbursement from a third party. A retroactive claim under proposed § 17.1004(f) would be an exception to this rule. Moreover, the first requirement in current § 17.1004(d)(1)—that claims must be filed within the 90-day period after July 19, 2001—is an outdated provision because all claims now received by VHA for reimbursement must, as a practical matter, be filed many years after July 19, 2001. Therefore, we propose to remove § 17.1004(d)(1).

Because proposed § 17.1004(f) would authorize reimbursement for a claim that does not meet the generally applicable criteria in § 17.1004(d), we would make the provision apply "[n]otwithstanding paragraph (d)". We would also require that the emergency treatment was received on or after July 19, 2001. We use this date from current § 17.1004(d)(1) because there is no indication in the language or history of the 2010 Act that Congress intended a

greater benefit for claimants applying under the retroactive authorization in the 2010 Act than what VA prescribed for claimants under current § 17.1004(d). In addition, the retroactivity authorized by paragraph (f) would apply only to treatment received more than 90 days before the effective date of the final rule in this rulemaking. This limitation is necessary because treatment received after that date would be covered by § 17.1004(d), i.e., a claim for such care is not a retroactive claim.

We also propose to limit the applicability of this retroactive authority to claims filed within 1 year after the effective date of the final rule. Because retroactive claims may be for care provided nearly 10 years ago, we believe that a 1-year time limit allows claimants adequate time to learn about the new rule and complete their claims, while providing VA a reasonable timeframe within which it must be prepared to handle these more complex retroactive claims.

Section 1725, as amended by the 2010 Act, sets forth specific payment limitations for those claimants who now qualify for payment or reimbursement based on the removal of the partial payment restriction discussed above. We would establish these limitations in paragraphs (c) and (d) of § 17.1005.

First, in proposed § 17.1005(c)(1), VA would be a secondary payer in cases where a third party is financially responsible for part of the veteran's emergency treatment expenses. This reflects 38 U.S.C. 1725(c)(4)(B), which directs VA to be the secondary payer in such cases. Under proposed § 17.1005(c)(2), in cases where a veteran receives, or is legally entitled to receive, only partial reimbursement from a third party, VA would "pay the difference between the amount VA would have paid under this section for the cost of the emergency treatment and the amount paid (or payable) by the third party." This payment limitation would be based on 38 U.S.C. 1725(c)(4)(A), which specifically requires VA to pay this amount.

VA would pay the provider the difference between the amount paid on behalf of the veteran by the third party and the amount VA would have paid in the absence of legal liability for the payment of the veteran's health care cost by a third party. The total of these combined payments would also be considered payment in full and extinguish any liability that the veteran may have to the provider. This payment limitation is required by 38 U.S.C. 1725(c)(4)(C), which directs VA to pay in full and extinguish the veteran's liability. The veteran would no longer

be liable because the amount of the third party's payment or legal liability, plus VA's payment, would equal the total payment VA would have made in the absence of third party liability for the veteran's emergency care costs. Therefore, in proposed § 17.1005(c)(3), VA would state that "[t]he provider will consider the combined payment under paragraph (c)(2) of this section as payment in full and extinguish the veteran's liability to the provider."

Under proposed § 17.1005(d), VA would not reimburse claimants for any "deductible, copayment or similar payment" that veterans owe to third parties. This is based on 38 U.S.C. 1725(c)(4)(D).

Finally, we note that it is not necessary to propose changes based on the statutory language precluding reimbursement for amounts "for which the veteran is responsible under a health-plan contract," because current 38 CFR 17.1002(g) already prevents any reimbursement or payment where the veteran is under a health-plan contract.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or Tribal governments, or on the private sector.

Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Current § 17.1004 contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). OMB previously approved the collection of information and assigned Control Number 2900–0620. Because this proposed rule does not alter the information collection approved by OMB under the existing control number, we do not propose to seek new approval.

We propose to insert a citation to the OMB control number immediately after the authority citation for § 17.1004 to

clarify that that section contains an approved collection of information.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Further, under this proposed rule, affected small entities would be reimbursed for the expenses they incur for the emergency treatment of certain veterans. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this proposed rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 19, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Veterans.

Dated: May 20, 2011.

William F. Russo,

Deputy Director, Office of Regulations Policy & Management, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to revise 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.1001 [Amended]

2. Amend § 17.1001 by removing paragraph (a)(5).

§ 17.1002 [Amended]

3. Amend § 17.1002 by removing the words “or in part” in paragraph (h).

§ 17.1004 [Amended]

4. Amend § 17.1004 as follows:

- a. Remove paragraph (d)(1).
- b. Redesignate paragraphs (d)(2), (d)(3) and (d)(4) as new paragraphs (d)(1), (d)(2) and (d)(3), respectively.
- c. Add paragraph (f) immediately following paragraph (e).
- d. Add an information collection approval parenthetical at the end of the section.

The additions read as follows:

§ 17.1004. Filing claims.

* * * * *

(f) Notwithstanding paragraph (d) of this section, VA will provide retroactive payment or reimbursement for emergency treatment received by the veteran on or after July 19, 2001, but more than 90 days before [the effective date of the final rule], if the claimant files a claim for reimbursement no later than 1 year after [the effective date of the final rule].

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0620.)

5. Amend § 17.1005 by adding paragraphs (c) and (d), to read as follows:

§ 17.1005. Payment limitations.

* * * * *

(c) If an eligible veteran under § 17.1002 has contractual or legal recourse against a third party that would only partially extinguish the veteran's liability to the provider of emergency treatment then:

- (1) VA will be the secondary payer;
- (2) Subject to the limitations of this section, VA will pay the difference between the amount VA would have paid under this section for the cost of the emergency treatment and the amount paid (or payable) by the third party; and
- (3) The provider will consider the combined payment under paragraph (c)(2) of this section as payment in full and extinguish the veteran's liability to the provider.

(d) VA will not reimburse a claimant under this section for any deductible, copayment or similar payment that the veteran owes the third party.

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[FR Doc. 2011–13015 Filed 5–25–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R03–OAR–2011–0195; FRL–9311–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Clean Air Interstate Rule Emissions Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision, which amends the Virginia Clean Air Interstate Rule (CAIR) trading program, is comprised of technical corrections and revisions to the definition of a cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with Federal CAIR requirements. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0195 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2011–0195, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0195. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The