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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO28

Copayments for Medications in 2012

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms as final, without change, an interim final rule amending the Department of Veterans Affairs (VA) medical regulations concerning the copayment required for certain medications. The interim final rule froze until December 31, 2012, the copayment amount for veterans in the VA health care system in enrollment priority categories 2 through 6 at the 2011 level, which was \$8. The interim final rule also froze until December 31, 2012, the maximum annual copayment amount for enrollment priority categories 2 through 6, which was \$960. On January 1, 2013, the copayment amounts may increase based on the prescription drug component of the Medical Consumer Price Index (CPI-P). If the copayment increases, the maximum annual copayment amount will automatically increase in turn.

DATES: Effective Date: This rule is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 461-1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: An interim final rule amending VA's medical regulations concerning the copayment required for certain medications was published in the Federal Register on December 20, 2011 (76 FR 78824). Interested persons were invited to submit comments to the interim final rule on or before February 21, 2012, and we received no comments. Therefore, based on the rationale set forth in the interim final rule, VA is adopting the interim final rule as a final rule with no changes.

Administrative Procedure Act

This document affirms as final, without change, the interim final rule that is already in effect. In accordance with 5 U.S.C. 553(b)(3)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was 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. The Secretary found that it was impracticable, unnecessary, and contrary to the public interest to delay this regulation for the purpose of soliciting advance public comment or to have a delayed effective date. Increasing the copayment amount on January 1, 2012, might have caused a significant financial hardship for some veterans. Nevertheless, the Secretary invited public comment on the interim final rule but did not receive any comments.

Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will 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 final rule will temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. This final rule affects individuals and has no impact on small entities. Therefore, under 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any 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 this Executive Order.”

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

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, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program number and title for this 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; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital 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 7, 2012 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; Grant programs—veterans; Health care; Health facilities; Health professions; Health records; Homeless; Medical and dental schools; Medical devices; Medical research; Mental health programs; Nursing homes; Philippines; Reporting and recordkeeping requirements; Scholarships and fellowships; Travel and transportation expenses; Veterans.

Dated: May 8, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of General Counsel,
Department of Veterans Affairs.

PART 17 – MEDICAL

Accordingly, the interim final rule amending 38 CFR part 17 that was published in the Federal Register at 76 FR 78824 on December 20, 2011, is adopted as a final rule without change.

[FR Doc. 2012-11486 Filed 05/11/2012 at 8:45 am; Publication Date: 05/14/2012]