



This document is scheduled to be published in the Federal Register on 09/17/2013 and available online at <http://federalregister.gov/a/2013-22607>, and on FDsys.gov

DEPARTMENT OF DEFENSE

8320-01

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AN92

Vet Center Services

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is establishing in regulation the readjustment counseling currently provided in VA's Vet Centers to certain veterans of the Armed Forces and members of their families, and implementing provisions of the Caregivers and Veterans Omnibus Health Services Act of 2010 regarding readjustment counseling.

DATES: Effective Date: This final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gregory Harms, Readjustment Counseling Service (10P8), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-6525. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This final rule articulates in regulation our authority to establish Vet Centers to furnish counseling to certain veterans upon request, as set forth in 38 U.S.C. 1712A. It also meets a rulemaking requirement prescribed by Congress in section 401 of the Caregivers and Veterans Omnibus Health Services Act of 2010, Pub. L. 111-163 (the 2010 Act), and implements sections 304 and 401 of the 2010 Act, by authorizing Vet Centers to provide readjustment counseling to certain veterans described in section 304, their families, and certain members of the Armed Forces set forth in section 401. Finally, this rulemaking implements section 402 of the 2010 Act by authorizing Vet Centers to provide certain referral services. Although VA has provided readjustment counseling under 38 U.S.C. 1712A without a regulation in the past, in the interests of clarity and completeness, this final rule covers the provision of benefits to veterans under section 1712A as well as benefits provided under the 2010 Act.

In a document published in the Federal Register on March 13, 2012 (77 FR 14707), VA proposed to amend part 17 of 38 CFR by adding a new § 17.2000, which would contain the provisions described above. We provided a 60-day comment period, which ended on May 14, 2012. We received 15 comments from members of the general public.

Several commenters agreed with all or part of the proposed rulemaking and expressed support for the regulation. We did not make any changes based on these comments.

Another commenter supported the provision of readjustment counseling but was concerned because “it has been argued by many veterans that they were denied these services for many reasons.” We cannot respond to the commenter’s concerns about denials of treatment because the comment did not recommend any changes to the proposed rule, nor did it include any specific circumstances under which a veteran was denied readjustment counseling. Moreover, addressing any such circumstance is beyond the scope of this rulemaking. Also, we are not aware of an ongoing problem of Vet Centers denying readjustment counseling to eligible veterans. In the proposed rulemaking, we stated that VA has implemented the statutory authority under 38 U.S.C. 1712A to “establish Vet Centers that must furnish counseling to certain veterans upon request” without regulations. We would expect to eliminate or significantly reduce the problem described by the commenter, if any such problem exists, through this rulemaking.

The commenter also stated that “the majority of the population does not know a lot about” the services provided at Vet Centers. VA is not aware of this problem, i.e., that a significant proportion of the eligible veteran population does not know about VA’s Vet Center program. We provide face-to-face outreach, education, and referral to veterans and their families. However, if such a problem exists, this regulation will facilitate the implementation of the readjustment counseling program in the Vet Centers and clearly and publicly indicate the various services that are included in the definition of readjustment counseling. VA hopes that this rulemaking, in addition to other

outreach programs, will alert veterans to the readjustment services provided in the Vet Centers. We did not make any changes based on this comment.

A commenter stated that VA should require screening for problems related to readjustment issues to better assist those veterans who are in need of treatment but who may believe they will “not have trouble readjusting or are too stubborn to seek such counseling” or whose “problems manifest themselves when they are already thrown in the jungle of everyday life and their lives become too busy to seek such counseling.” The commenter also indicated support for the proposed rule because it provided readjustment counseling for the whole family, which assists the transition into the community.

The commenter makes a valid point in that part of successful readjustment counseling is knowing when a veteran is in need of assistance. VA has addressed this issue by providing outreach programs that are available to veterans and servicemembers in Vet Centers and other VA facilities. Some of the outreach programs include the Vet Center Combat Call Center (877-WAR-VETS), which is an around-the-clock confidential call center where combat veterans and their families can call to talk about their military experience or any other issue they are facing in their readjustment to civilian life, as well as the Veterans Crisis Line, which connects veterans in crisis and their family and friends with 24-hour online chat or text messaging. There are mobile applications, such as the Post-Traumatic Stress Disorder (PTSD) Coach, that assist veterans in managing their PTSD. Outreach is also part of the veteran’s primary VA

care. But no matter how extensive our outreach and how convenient our services may be, VA cannot require a veteran to come to a Vet Center, nor can we intervene in the “every day” lives of veterans who do not seek assistance. Therefore, although we agree with the commenter’s sentiments, we did not make any changes based on this comment.

Another commenter indicated strong disagreement with the 2010 Act, stating that all veterans “deserve counseling when they return home.” The commenter further stated that if veterans are not able to “turn to the VA for counseling, then I believe they have no one to turn [to].” We assure this commenter that neither the 2010 Act nor this rulemaking restrict veteran eligibility for readjustment counseling. On the contrary, this rulemaking expands the services provided by Vet Centers and makes the services available to a broader pool of qualified individuals. VA may now provide readjustment counseling to servicemembers as well as veterans who served on active duty in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF), and to the families of these servicemembers and veterans. We can also provide certain referral services to those individuals who are not otherwise eligible for Vet Center services. By broadening the pool of qualified candidates who can receive readjustment counseling, VA is maintaining its commitment to improve the mental health of veterans and help these veterans, their families, and servicemembers to successfully integrate back to civilian life. We did not make any changes based on this comment.

Commenters questioned the 3-year time limit set forth in section 304 of the 2010 Act, and appeared to be confused as to whether VA would enforce that time limit. In the proposed rulemaking we stated that section 304 of the 2010 Act authorizes readjustment counseling for the immediate family of Operation Enduring Freedom and Operation Iraqi Freedom veterans for a period of 3 years after such veterans return from deployment. 77 FR 14709. However, we further explained that we have authority to provide readjustment counseling under 38 U.S.C. 1712A, 1782, and 1783, and that authority is actually broader because it does not have the 3-year limitation found in section 304 of the 2010 Act and is not limited to OEF/OIF veterans. For this reason, we proposed in § 17.2000(a)(5) that VA would provide readjustment counseling to family members of the veteran or servicemember, without setting a time limit to the provision of such readjustment counseling. We hope that this explanation further clarifies this issue for the commenters, and we did not make any changes based on this comment.

Some commenters asked for a clear definition of “immediate family member.” One commenter stated that this rulemaking would restrict “some family members from accessing appropriate counseling” because “[t]here is no statutory or regulatory definition of ‘immediate family’ for purposes of readjustment counseling.” The commenter further stated that in most states “same-sex parents cannot both create legal relationships with their children.” According to the commenter, such lack of legal recognition would prevent same-sex couples and their families from obtaining readjustment counseling. The commenter suggested that VA define the term “immediate family” to include “all spouses, domestic partners, children (including those

for whom the veteran stood in loco parentis), and parents (including those who stood in loco parentis to the veteran), regardless of their legally recognized relationship to the veteran.” The commenter added that this definition would apply for determinations of eligibility for all counseling services provided by Vet Centers, to include readjustment counseling and bereavement counseling under 38 U.S.C. 1782 and 1783.

We are making several changes to the final rule based on this comment. First, the commenter correctly points out that there is a need to define “immediate family;” however, in so doing, the commenter underscores a weakness in the proposed rule. In the proposed rulemaking, we explained that our authority to provide Vet Center services to veterans’ family members originates in 38 U.S.C. 1712A, 1782, and 1783, not in section 304(a)(2) of the 2010 Act. 77 FR 14709. Section 304 of the 2010 Act reaffirmed VA’s Vet Center practices in this regard, but it is not the legal foundation for them.

Section 304 of the 2010 Act used the term “immediate family;” however, in light of our interpretation of sections 1712A, 1782, and 1783 as providing the foundation for this rule, we now believe that the final rule should use the term “family member” and not “immediate family member.” As raised by the commenter, the word “immediate” does not accurately describe the broad cohort of persons to whom Vet Centers extend readjustment counseling in order to support a veteran’s readjustment to civilian life and is not required based on the expansive authority for Vet Centers. First, 38 U.S.C. 1712A authorizes VA to provide counseling to assist veterans in adjusting to civilian life,

which we interpreted broadly to include family and marriage counseling that would support the veteran during the adjustment period. 77 FR 14709. Second, 38 U.S.C. 1782 specifically authorizes VA to provide counseling, training, and mental health services for members of a veteran's "immediate family," but also to the legal guardian of a veteran, a family caregiver, and the individual in whose household the veteran intends to live. Third, 38 U.S.C. 1783 authorizes VA to provide bereavement counseling to a broad cohort including individuals who were treated under 38 U.S.C. 1782, immediate family members, and the veteran's parents. Moreover, Congress has not established clear limitations on the authority for VA to provide Vet Center services to family members in any of these authorities. It is not clear why Congress used the phrase "immediate family member" in section 304(a)(2); however, section 304 is also somewhat internally inconsistent as it also requires VA to provide assistance in "the readjustment of the family" in subparagraph (C) of subsection (a)(2). In order to assist in the readjustment of "the family," Vet Center services must in some situations be provided to individuals who might not be in the veteran's "immediate" family if we were to interpret that term narrowly.

Striking the word "immediate" from proposed § 17.2000(a)(5) does not resolve all of the commenters' concerns. There is still a need to define which members of a veteran's family can be serviced by Vet Centers, and whether such members may include same-sex partners and/or members of a same-sex couple's family. There is little statutory guidance on this matter. First, we turn to the 2010 Act itself, which, in title I (which established VA's Program of Comprehensive Assistance for Family Caregivers

(Caregivers Program)), broadly defined a veteran's family to include a parent, spouse, child, step-family member, extended family member, and anyone who lives with the veteran. The purposes of these programs are also similar. The purpose of the Caregivers Program is to assist certain disabled active duty servicemembers and veterans by supporting family members who help these disabled individuals live in the community, including during the time that such individuals are transitioning to civilian life. The purpose of Vet Centers includes assisting veterans by helping their families with readjustment issues common among veterans.

Moreover, section 103 of the 2010 Act specifically amended 38 U.S.C. 1782, one of the foundational authorities for Vet Centers, to require VA to provide section 1782 counseling to family caregivers. Therefore, at least to the extent that Vet Center services are authorized by 38 U.S.C. 1782, we must provide them to the same family members of the veteran who are included as family members under the Caregivers Program.

Based on the connections between the Caregivers Program and the services provided in Vet Centers, as well as the various authorities described above that authorize Vet Centers to provide service to family members, we believe that it is appropriate to use a definition of "family member" for purposes of the Vet Center program that is similar to the definition set forth in the statute and regulations relating to the Caregivers Program. As noted above, a "family member" is defined by 38 U.S.C. 1720G(d)(3) as a member of the family of the veteran, including the veteran's parent,

spouse, child, step-family member, and extended family member, or someone who lives with the veteran but is not a member of the family of the veteran. Under 38 CFR 71.25(b), we similarly established in regulation that these are the family members who may participate as Primary or Secondary Family Caregivers. Therefore, we include these same individuals as family members for purposes of Vet Center benefits in paragraph (a)(5) of § 17.2000.

Adopting this definition will resolve the commenters' concerns. Although we do not adopt the commenters' specific wording, our definition would encompass domestic partners, spouses, children, and parents. It would also include individuals whose relationship to the veteran is "in loco parentis," which the commenter defines as persons who have day-to-day care duties over the veteran or over whom the veteran has day-to-day care duties, so long as these individuals live with the veteran. It would also include transgendered individuals, again, so long as they meet one of the criteria of the regulation, which includes individuals who live with the veteran. It is important to remember that, as discussed extensively in the proposed rule, the purpose of Vet Center counseling is to assist the veteran or servicemember in readjusting to civilian life. The broad definition suggested by the commenter and adopted in this final rule serves that broad purpose.

The above analysis and justification for the use of the Caregivers Program's definition of family member clearly applies to those whose eligibility is predicated on a veteran's (or veteran's family member's) eligibility for services under 38 U.S.C. 1712A,

1782, and 1783. However, these authorities do not authorize VA to provide readjustment counseling to servicemembers. Our authority to provide readjustment counseling to servicemembers comes from section 401 of the 2010 Act. Nevertheless, in the proposed rule, we stated that we did not believe Congress intended to authorize Vet Centers to provide lesser readjustment counseling services to servicemembers than those that we provide to veterans. Moreover, section 401 specifically authorizes the provision of services under 38 U.S.C. 1712A, which, again, we believe authorizes the provision of readjustment counseling to family members when to do so would benefit the veteran. Therefore, we believe that the same definition of family members should apply whether we are providing readjustment services to veterans or servicemembers.

A commenter stated that the proposed rule did not include veterans who had non-combat injuries or illnesses. The commenter stated that non-combat veterans should “qualify because an injury or illness that is service-connected, regardless if it occurred in a combat or non-combat situation, will still have a devastating impact to the service member and veteran along with their family members.” The commenter recommended that eligibility for readjustment counseling should be linked to the veteran’s service-connected condition, regardless of whether such condition was incurred in combat.

Under 38 U.S.C. 1712A(a)(1)(B) readjustment counseling may be provided by VA to servicemembers or veterans who served on active duty in a theater of combat operations during a period of war or to servicemembers or veterans who served on

active duty in an area where hostilities occurred or in combat against a hostile force during a period of hostilities. Although VA is able to provide mental health care to non-combat servicemembers and veterans as part of the medical benefits package, section 1712A does not support providing readjustment counseling to non-combat servicemembers or veterans. VA cannot amend this statutory authority through regulation. We did not make any changes based on this comment.

The commenter was also concerned that the term “Armed Forces” does not include the Commissioned Corps of the Public Health Service (PHS) or the National Oceanic and Atmospheric Administration (NOAA). The commenter recommended the use of the term “Uniformed Services” instead of “Armed Forces.” Section 17.2000(a)(4) states that VA will provide readjustment counseling to any member of the Armed Forces, including a member of the National Guard or reserve, who served on active duty in the Armed Forces in Operation Enduring Freedom or Operation Iraqi Freedom. Although the term “Armed Forces” is not defined in the regulation, under 38 U.S.C. 101(10), the term “Armed Forces” means “the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.” In establishing our authority to provide Vet Center services to active duty servicemembers, we believe that Congress clearly meant that we limit eligibility to members of the Armed Forces who served on active duty. Members of the Armed Forces do not include individuals in PHS or NOAA, even if those individuals served on active duty. Our interpretation is supported by the fact that Congress specifically included members of the National Guard under section 401(a) of the 2010 Act but did not extend eligibility to PHS or

NOAA. We note that we are constrained from making a broader interpretation in this case because, unlike the definition of “family member” discussed above, the eligibility for active duty servicemembers is clearly established by section 401 of the 2010 Act and is not part of the foundational authority for Vet Centers set forth in 38 U.S.C. 1712A, 1782, and 1783. We believe that extending our authority in such a manner would contravene the statute and, therefore, we did not make the change requested by the commenter.

The commenter further indicated that the rulemaking should define the types of readjustment counseling services that the family members of the servicemember and veteran are eligible to receive. The commenter questioned whether the family members qualify for the readjustment counseling benefits as defined in proposed paragraph (d) or if the family members are only eligible to receive certain benefits.

The commenter presents a valid point. Readjustment counseling services provided to servicemembers and veterans are not the same as the readjustment counseling services provided to the family members of servicemembers and veterans. Under 38 U.S.C. 1712A, we provide Vet Center services only if to do so would assist the veteran in adjusting to civilian life. Under 38 U.S.C. 1782, we are authorized to provide certain consultations, marriage, and family counseling to family members of veterans “as necessary in connection with” VA’s treatment of the veteran, and some of these types of counseling are provided through our Vet Centers. Under section 304 of the 2010 Act, we are authorized to provide education, support, counseling, and mental

health services to family members of servicemembers and veterans of Operation Enduring Freedom and Operation Iraqi Freedom to assist in the readjustment of the servicemember or veteran, the recovery of the individual from an injury or illness, or the readjustment of the family following the return of the individual to family life. In short, all services provided through Vet Centers to family members are premised on whether the provision of the services will aid in the readjustment of the servicemember or veteran. In response to the comment, we have clarified § 17.2000(d) to specify this limitation.

We do not believe that it is necessary to further specify when the services included in the definition of readjustment counseling can be provided to family members because any of the listed services could be provided under appropriate circumstances. For example, it might be necessary to involve family members when providing individual counseling, group counseling, and marital and family counseling for military-related readjustment issues. An assessment of whether the family member needs substance abuse treatment might be appropriate as well, particularly for those veterans who themselves need to live in a “drug free” environment. When employment issues present a challenge to the veteran’s readjustment, a family-based approach might be necessary. Readjustment of a veteran who experienced military sexual trauma may, in some cases, involve support or counseling for a family member. Even a psychosocial assessment is defined as a “holistic” assessment under § 17.2000(d) and therefore, in some cases, might involve a family member.

We note that Vet Center services are provided by mental health professionals (e.g., social workers, counselors, psychologists) and are not provided by a medical professional. Therefore, to the extent that family members require medical intervention, it would not be provided at a Vet Center—just as medical intervention would not be provided for a veteran at a Vet Center. For the scope of medical benefits provided to family members under 38 U.S.C. 1782, please see 38 CFR 71.50.

The commenter also stated that the rule does not specify the circumstances under which a family member would qualify for individual counseling. The commenter queried whether the eligibility was tied to the veteran's health or if the family member was "eligible for individual counseling as long as the veteran/service member meets one of the four eligibility criteria." The commenter recommended that VA clearly define eligibility for individual counseling by family members, and how such family members can request readjustment counseling.

If the veteran or servicemember meets one of the criteria listed in paragraphs (a)(1) through (a)(4) of § 17.2000, the family member qualifies for readjustment counseling. This is stated in paragraph (a)(5). The introductory sentence to paragraph (a) states that VA will provide readjustment counseling "upon request" of any of the individuals listed in paragraphs (a)(1) through (a)(5). Therefore, a family member of the servicemember or veteran may request readjustment counseling simply by calling the Vet Center and requesting an appointment. A formal application is not needed. We do

not believe that further clarification is needed and did not make any changes based on this comment.

A commenter stated that the proposed rule intended to include Operation New Dawn (OND), however, OND was not listed under the section governing eligibility for readjustment counseling. In the Supplementary Information section of the proposed rulemaking we stated that “after consultation with the Department of Defense, VA considers Operation New Dawn to be part of the same contingency operation that was formerly called Operation Iraqi Freedom. Therefore, VA will consider participants in Operation New Dawn to be eligible for benefits under the legal authorities pertaining to Operation Iraqi Freedom.” As noted by the commenter, we did not list Operation New Dawn in proposed § 17.2000(a)(4). To avoid any confusion that may arise in the future, we have added Operation New Dawn to paragraph (a)(4) as a qualifying theatre of combat operations for servicemembers and veterans to be eligible to receive readjustment counseling.

We received six comments expressing concern that the Vet Centers would no longer offer bereavement counseling to the veteran’s families because the definition of readjustment counseling in proposed § 17.2000(d) had not referenced bereavement counseling. We agree with these six commenters regarding the value of bereavement counseling and wish to clarify that bereavement counseling continues to be one of the services provided by the Vet Centers. We note that the Supplementary Information section of the proposed rule discussed the availability of bereavement counseling and

cited the authority for it (38 U.S.C. 1783), but we inadvertently failed to list it as part of the readjustment counseling services provided under the rule. We have amended paragraph (d) accordingly, and have amended the listed statutory authority to also include section 1783. Also, in keeping with the discussions above, we have added 38 U.S.C. 1782 to the statutory authority, as well as sections 304 and 402 of the 2010 Act.

A commenter requested that VA expedite the implementation of sections 401 and 402 of the 2010 Act because it has been two years since the authorizing statute was passed. VA's section 402 authority to provide referrals is established in statute and is already being implemented by our Vet Centers. However, our authority to provide readjustment counseling to members of the Armed Forces is predicated explicitly on the promulgation of regulations under subsection (c) of section 401 of the 2010 Act. VA may not implement this final rulemaking until after it is published in the Federal Register. This rulemaking will be effective 30 days after its publication. We did not make any changes based on this comment.

This commenter also requested that VA provide a strong outreach effort to servicemembers and veterans in order to make them aware of the benefits of readjustment counseling. The commenter urged that outreach efforts to servicemembers should emphasize that treatment in the Vet Centers is "confidential and un-reportable to their military line commanders or armories, or even to VA medical and mental health authorities (unless severe psychiatric emergencies were apparent to

Vet Center personnel, in which case they should be referred for immediate medical and psychiatric assistance, either within [Department of Defense (D[o]D)] or VA facilities).”

A commenter was concerned with the confidentiality of Vet Center records. Specifically, proposed paragraph (b)(4) had permitted VA to independently coordinate with DoD in order to verify a servicemember’s or veteran’s service in a theatre of combat operations or in an area during a period of hostilities in that area. The commenter stated that “if VA were to attempt to verify that individual through D[o]D systems, a line commander and/or D[o]D medical authorities could obtain that individualized information related to the query. Given the well-recognized mental health stigma associated with the military, we believe this planned approach by VA would be unwise and might well serve as a dampener on these individuals’ interest in participating in readjustment counseling through VA.” The commenter did not believe it was Congress’ intent that DoD officials learn the identity of individuals who may seek readjustment counseling.

We agree with the commenter, which is why in paragraph (e), we state that records of the benefits furnished by the Vet Centers will be maintained with confidentiality and independent of other VA or DoD medical records. VA will not disclose the readjustment counseling records without the servicemember’s or veteran’s voluntary signed authorization. However, the commenter was correct in that we did not recognize the potential inadvertent disclosure of a veteran or servicemember’s identity

through the independent verification authorized by proposed paragraph (b)(4).
Therefore, we have removed that paragraph from the final rule.

In the Supplementary Information section of the proposed rulemaking we explained that proposed paragraph (b)(4) was intended to authorize VA to support a veteran in obtaining the proof required to establish eligibility. Rather than do so through explicit independent coordination with DoD, we amended paragraph (b) to include a provision that would allow for VA assistance in obtaining proof of eligibility at the individual's request. This will allow persons who believe that their anonymity may be jeopardized by involving VA in obtaining a copy of their Report of Separation or DD Form 214 to attempt to establish their eligibility through other means.

A commenter urged VA to maintain adequate staffing in the Vet Centers and that Congress approve funding for the Vet Centers through appropriations. The commenter also urged VA to negotiate with DoD "a cost-sharing agreement, as envisioned in Public Law 97-174, to cover the VA's costs of service members' care based on data verifying the number of service members who access such counseling under this new authority, or that Congress authorize VA additional appropriations specifically for this care of the active force, as well as the cost of the additional staff needed to provide the new services."

VA agrees with the commenter in that we anticipate an increase in the number of servicemembers, veterans, and family members requesting readjustment counseling.

To accommodate this increase, VA anticipates hiring 62 new full time equivalent employees over the next 3 years. VA has allotted this increase in expenditure in the Vet Center's budget. Although this rulemaking is in conjunction with DoD, the allocation of funds does not fall within DoD's budget, as recommended by the commenter. VA has the sole responsibility for the funding of the Vet Centers. None of these matters relate to the text of the regulation, and we did not make any changes based on this comment.

In the proposed rule, under paragraph (b)(1), we had stated that the title of DD Form 214 was Certificate of Release or Discharge from Active Service. We are amending paragraph (b)(1) to correct the title of DD Form 214 to Certificate of Release or Discharge from Active Duty.

Although not directly related to any of the commenter's concerns, we are clarifying the language of proposed paragraph (c). The intent of proposed paragraph (c) was to provide referral services to individuals who were on active duty in theaters of combat, in areas of hostilities, or as otherwise stated in proposed paragraph (a), but whose discharge from service was under dishonorable conditions, and to their family members. Such referral services include obtaining mental health care and services outside of VA. We believe that the intent of this paragraph was not clearly stated as proposed and we have revised the introductory paragraph to now state: "Upon request, VA will provide an individual who does not meet the eligibility requirements of paragraph (a) of this section, solely because the individual was discharged under dishonorable

conditions from active military, naval, or air service, the following.” We have also revised the wording of proposed paragraph (c)(2) for clarity.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with the changes mentioned above.

Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final 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

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 5 CFR 1320.8(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following new information collection requirements. Section 17.2000(b) allows a veteran to submit a copy of a DD Form 214 or other appropriate documentation as evidence that the veteran served in a theater of combat operations or in an area during a period of hostilities in that area that would serve as the basis for establishing his or her eligibility to receive readjustment counseling. For example, receipt of one of the listed medals will be accepted as evidence to establish eligibility for readjustment counseling. As required by the Paperwork Reduction Act of 1995, VA submitted the information collection requirement to OMB for its review. OMB approved this new information collection requirement associated with the final rule and assigned OMB control number 2900-0787.

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 directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking 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 OMB unless OMB waives such review, 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 has been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in 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 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 given year. This final 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 numbers and titles for this final 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.

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 homes, Veterans.

Approved: January 8, 2013

John R. Gingrich, Chief of Staff
Department of Veterans Affairs.

Approved: June 5, 2013

Jessica L. Wright
Acting Under Secretary of Defense
for Personnel & Readiness
Department of Defense

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 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.

2. Add an undesignated center heading and § 17.2000 to read as follows:

VET CENTERS

§ 17.2000 Vet Center services.

(a) Eligibility for readjustment counseling. Upon request, VA will provide readjustment counseling to the following individuals:

(1) A veteran who served on active duty in a theater of combat operations during a period of war.

(2) A veteran who served on active duty in an area in which hostilities occurred, or in combat against a hostile force during a period of hostilities.

(3) A veteran who served on active duty during the Vietnam era who sought or was provided counseling under 38 U.S.C. 1712A before January 1, 2004.

(4) Any member of the Armed Forces, including a member of the National Guard or reserve, who served on active duty in the Armed Forces in Operation Enduring Freedom, Operation Iraqi Freedom or Operation New Dawn.

(5) A family member of a veteran or servicemember who is eligible for readjustment counseling under paragraphs (a)(1) through (a)(4) of this section. For purposes of this section, family member includes, but is not limited to, the spouse, parent, child, step-family member, extended family member, and any individual who lives with the veteran or servicemember but is not a member of the family of the veteran or servicemember.

(b) Proof of eligibility. With the veteran's or servicemember's consent, VA will assist in obtaining proof of eligibility. For the purposes of this section, proof of service in a theater of combat operations or in an area during a period of hostilities in that area will be established by:

(1) A DD Form 214 (Certificate of Release or Discharge from Active Duty) containing notations of service in a designated theater of combat operations; or

(2) Receipt of one of the following medals: The Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal (e.g., Navy Expeditionary Medal), Combat Era Specific Expeditionary Medal (e.g., the Global War on Terrorism Expeditionary Medal), Campaign Specific Medal (e.g., Vietnam Service Medal or Iraq Campaign Medal), or other combat theater awards established by public law or executive order; or

(3) Proof of receipt of Hostile Fire or Imminent Danger Pay (commonly referred to as "combat pay") or combat tax exemption after November 11, 1998.

(c) Referral and advice. Upon request, VA will provide an individual who does not meet the eligibility requirements of paragraph (a) of this section, solely because the individual was discharged under dishonorable conditions from active military, naval, or air service, the following:

(1) Referral services to assist such individual, to the maximum extent practicable, in obtaining mental health care and services from sources outside VA; and

(2) If pertinent, advice to such individual concerning such individual's rights to apply to:

(i) The appropriate military, naval or air service for review of such individual's discharge or release from such service; and

(ii) VA for a VA benefits eligibility determination under 38 CFR 3.12.

(d) Readjustment counseling defined. For the purposes of this section, readjustment counseling includes, but is not limited to: psychosocial assessment, individual counseling, group counseling, marital and family counseling for military-related readjustment issues, substance abuse assessments, medical referrals, referral for additional VA benefits, employment assessment and referral, military sexual trauma counseling and referral, bereavement counseling, and outreach. A "psychosocial assessment" under this paragraph means the holistic assessing of an individual's psychological, social, and functional capacities as it relates to their readjustment from combat theaters. Readjustment counseling is provided to individuals listed in paragraphs (a)(1) through (a)(4) of this section, and to family members under paragraph

(a)(5) of this section, when it would aid in the readjustment of a veteran or servicemember.

(e) Confidentiality. Benefits under this section are furnished solely by VA Vet Centers, which maintain confidential records independent from any other VA or Department of Defense medical records and which will not disclose such records without either the veteran or servicemember's voluntary, signed authorization, or a specific exception permitting their release. For more information, see 5 U.S.C. 552a, 38 U.S.C. 5701 and 7332, 45 CFR parts 160 and 164, and VA's System of Records 64VA15, "Readjustment Counseling Service Vet Center Program."

(Authority: 38 U.S.C. 501, 1712A, 1782, and 1783; Pub. L. 111-163, sec. 304, 401, and 402)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900-0787.)

[FR Doc. 2013-22607 Filed 09/16/2013 at 8:45 am; Publication Date: 09/17/2013]