



This document is scheduled to be published in the Federal Register on 01/08/2014 and available online at <http://federalregister.gov/a/2014-00098>, and on FDsys.gov

DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO51

Removal of Penalty for Breaking Appointments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations to remove an outdated regulation that stated that a veteran who misses two medical appointments without providing 24 hours' notice and a reasonable excuse is deemed to have refused VA medical care. VA removes this penalty because we believe it is incompatible with regulatory changes implemented after the regulation was promulgated, is not in line with current practice, and is inconsistent with VA's patient-centered approach to medical care.

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

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Director, Office of Regulatory Affairs (10B4), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 461-5657. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 15, 2013, VA published in the Federal Register (78 FR 22219) a proposed rule to amend VA regulations by removing § 17.100. This regulation stated that a veteran who misses two medical appointments without providing 24 hours' notice and a reasonable excuse is deemed to have refused VA medical care and no further treatment will be provided to that veteran, except in emergency situations, unless the veteran agrees to cooperate by keeping future appointments. We stated that this penalty is inconsistent with VA's goal of providing patient-centered care, may interfere with continuity and coordination of care, and could have a negative impact on the therapeutic relationship. In addition, refusing to provide further medical services to certain veterans, including homeless veterans and other veterans who lack reliable telephone access or dependable transportation to and from scheduled appointments is counterproductive and may discourage them from attempting to access care in the future. Lastly, providing treatment only in emergent circumstances does not provide an adequate safety net for our patients, especially those with chronic or poorly controlled medical conditions.

Interested persons were invited to submit comments to the proposed rule on or before June 14, 2013, and we received six comments. All of the comments were supportive of removing § 17.100, and did not suggest changes to the proposed removal of the rule. However, two commenters raised issues that we believe should be addressed.

One commenter expressed support for removing this regulation, but suggested a different approach to addressing the issue of broken appointments. The commenter suggested that, after two consecutive missed appointments, VA should follow a series

of steps to contact the veteran and to place a limit (“moratorium”) on the care available to the veteran on the particular health issue.

VA appreciates the commenter’s input. However, VA has determined that the appropriate course of action is to remove the penalty for breaking appointments. In practice, the problem of missed appointments has been adequately addressed through internal VA processes, as well as by using non-punitive measures and maintaining an open channel of communication between VA clinical/administrative staff and veterans. The penalty contemplated by § 17.100 is incompatible with regulatory changes implemented after that regulation was published, is not in line with current practice, and is inconsistent with VA’s patient-centered approach to medical care. Even a short break in a course of treatment can interfere with continuity and coordination of care, and the punitive nature of the regulation could have a negative impact on the therapeutic relationship.

Another commenter supported removing the penalty for breaking medical appointments, but stated that the regulation should be removed because it violates due process protections. VA disagrees. The regulation we remove by this final rule did not terminate a benefit; it merely attempted to facilitate efficient delivery of limited health care resources. The veteran remained enrolled to receive health care, and could receive treatment for any emergent condition that may arise. To schedule a non-emergency medical appointment, the veteran merely had to agree to attend the appointment. In any event, this issue is moot because we are removing the penalty.

This commenter also suggested that VA should employ social workers to be responsible for tracking and contacting veterans who habitually miss medical

appointments. VA does use various methods to follow up with those veterans in an effort to ensure they receive necessary medical care. Veterans are contacted via mail, phone, or electronic means after a missed appointment, and are encouraged to contact VA to reschedule.

We do not make any changes based on these comments.

Based on the rationale set forth in the proposed rule and in this final rule, VA is adopting the provisions of the proposed rule as final, and removes § 17.100.

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

This final rule contains no provisions constituting a collection 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 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 5 U.S.C. 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” requiring review by the Office of Management and Budget (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 final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

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 one 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

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 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; and 64.022, Veterans Home Based Primary Care.

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. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on December 20, 2013, 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 homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: January 3, 2014

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

For the reasons stated 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.

§ 17.100 [Removed]

2. Remove § 17.100 and the undesignated center heading that precedes it.

[FR Doc. 2014-00098 Filed 01/07/2014 at 8:45 am; Publication Date: 01/08/2014]