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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 63

RIN 2900-AO71

Health Care for Homeless Veterans Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its medical regulations concerning eligibility for the Health Care for Homeless Veterans (HCHV) program. The HCHV program provides per diem payments to non-VA community-based facilities that provide housing, outreach services, case management services, and rehabilitative services, and may provide care and/or treatment to homeless veterans who are enrolled in or eligible for VA health care. The proposed rule would modify VA's HCHV regulations to conform to changes enacted in the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012. Specifically, the proposed rule would remove the requirement that homeless veterans be diagnosed with a serious mental illness or substance use disorder to qualify for the HCHV program. This change would make the program available to all homeless veterans who are enrolled in or eligible for VA health care. The proposed rule would also update the definition of homeless to match in part the one used by the Department of Housing and Urban Development (HUD). The proposed rule would further clarify that the services provided by the HCHV program through non-VA community-based providers must

include case management services, including non-clinical case management, as appropriate.

DATES: Comment Date: Comments must be received by VA on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted by e-mail through <http://www.regulations.gov>; by mail or hand-delivery to Director, Regulation Policy and 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-AO71, Health Care for Homeless Veterans Program.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 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 through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Robert Hallett, Health Care for Homeless Veterans Manager, c/o Bedford VA Medical Center, 200 Springs Road, Bldg. 17, Bedford, MA 01730; (781) 687-3187. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The HCHV program is authorized by section 2031 of title 38, United States Code (U.S.C.), under which VA may provide to eligible

veterans outreach; care, treatment, and rehabilitative services (directly or by contract in community-based treatment facilities, including halfway houses); and therapeutic transitional housing assistance, under 38 U.S.C. 2032, in conjunction with work therapy under 38 U.S.C. 1718(a)-(b). Under current regulations, only veterans who are homeless, enrolled in the VA health care system or eligible for VA health care under title 38, Code of Federal Regulations (CFR), §17.36 or 17.37, and have a serious mental illness and/or substance use disorder are eligible for the program. 38 CFR 63.3(a). This rule proposes to eliminate the requirement that homeless veterans have a serious mental illness or substance use disorder to participate in the program. The rule would also clarify that the care and services authorized by section 2031 include case management services for participating veterans.

I. Eligibility for HCHV Program

Public Law (Pub. L.) 112-154, § 302, 126 Stat. 1165, 1184 (Aug. 6, 2012), modified VA's authority under 38 U.S.C. 2031 to clarify that VA may provide the services identified in 38 U.S.C. 2031(a) (including outreach services; care, treatment, and rehabilitative services; and therapeutic transitional housing assistance) to veterans with serious mental illness and to veterans who are homeless. The statute previously stated that VA may provide outreach, care, treatment, rehabilitative services, and therapeutic transitional housing assistance to veterans with serious mental illness, including veterans who are homeless. VA interpreted this language to mean that homeless veterans had to have a serious mental illness to be eligible for these services. As amended, the law authorizes VA to make services under the HCHV program

available to all homeless veterans VA provides care and services to, regardless of whether they have a serious mental illness.

Under existing regulations, VA must conduct a clinical assessment to verify a veteran has a serious mental illness before it can provide care and services through the HCHV program to homeless veterans. This requirement was put in place to ensure that VA only provided services to veterans who both had a serious mental illness and who were homeless, as required by law. However, as a practical matter, this requirement sometimes resulted in veterans refusing treatment or assessment, and consequently not receiving care or services to address their homelessness. Following the change in law, VA will no longer require this assessment take place, as a serious mental illness will cease to be a qualifying criterion for admission into the program.

VA notes that the law, as modified, also permits it to provide care and services under this program to veterans who have a serious mental illness but who are not homeless. However, the HCHV program is designed specifically to address the needs of homeless veterans, and Congress in 38 U.S.C. 2001 stated clearly that the purpose of the provisions in chapter 20 of title 38 is to provide for the special needs of homeless veterans. Data show that over the past several years, more than 85 percent of homeless veterans identified by HCHV staff have a serious mental illness. The changes proposed in this rulemaking are intended to ensure VA can provide services to the remaining 15 percent of veterans identified by HCHV staff who are homeless without a serious mental illness.

VA recognizes, though, that it is possible, albeit unlikely, that a veteran with a serious mental illness who is not homeless could contact the HCHV program to request

services. Veterans who have a serious mental illness but who are not homeless would be more appropriately served through other programs, and as a result, HCHV staff members currently refer such persons to a number of other active programs and initiatives focused on improving care and outreach to these veterans. For example, for more than 20 years, VA has operated the Serious Mental Illness Treatment Resource and Evaluation Center (SMITREC) to conduct critical evaluations that enhance the mental and physical health care of veterans with serious mental illnesses by providing clinicians state-of-the-art information on effective treatment options. The SMITREC also provides VA leadership with relevant and timely guidance on key issues important to optimizing the system-wide delivery of health care to veterans with serious mental illness. Additionally, VA's implementation of the Patient Aligned Care Team (PACT) model has supported improvement in the primary and preventive health care of veterans with serious mental illness and improved the coordination of care between mental health and primary care. Research has shown that embedding specially trained mental health providers in primary care clinics improves early identification and treatment of mental health disorders in the primary care population. Veterans whose mental health needs exceed what can be provided by these experts working in the PACT are referred to specialty mental health care programs, including general mental health, Mental Health Intensive Case Management (MHICM), Psychosocial Rehabilitation and Recovery Centers, Posttraumatic Stress Disorder services, Substance Use Disorder services, and others that focus on recovery and rehabilitation.

VA proposes to amend its regulations to reflect these changes. The specific revisions are discussed below.

### 63.1: Purpose and Scope

We would remove the references to serious mental illness and substance use disorder under the purpose and scope section (§ 63.1) to reflect that the HCHV program may now serve all veterans who are enrolled in or eligible for VA health care and who are homeless, including those with a serious mental illness. Under current regulations, VA defined a substance use disorder as alcoholism or addiction to a drug that actually or potentially contributes to a veteran's homelessness. This qualification is no longer needed because a homeless veteran, regardless of the actual or potential contributing factors to his or her homelessness, would be eligible for benefits under this program. We would also include outreach services, as provided for in 38 U.S.C. 2031(a)(1).

### 63.2: Definitions

We would eliminate the definitions of "serious mental illness" and "substance use disorder" in § 63.2 because they would no longer be necessary, as discussed above.

The proposed rule would also amend the definition of "homeless" in § 63.2. By law, the definition of homeless VA must use for its homeless programs, unless otherwise provided by statute, is the definition contained in section 11302(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)). 38 U.S.C. 2002(1). HUD has defined this term further through its regulations at 24 CFR 576.2. VA proposes to adopt in part HUD's definition to establish a common usage of the term between the two Departments and to support ease of understanding by government and community providers.

VA notes that this change would not result in perfect alignment with HUD's definition, or with other VA programs. In a separate rulemaking published May 9, 2014, Supportive Services for Veteran Families (SSVF) Program, VA proposed modifying the definition of homeless in 38 CFR Part 62 to match the definition used by HUD in 24 CFR 576.2. 79 FR 26669. For the SSVF program, in 38 U.S.C. 2044(f)(3), the definition of homeless is the same as the entire homeless definition contained in 42 U.S.C. 11302, as opposed to the definition contained only in paragraph (a) of 38 U.S.C. 11302 that VA is required to use when defining "homeless" for its homeless programs under 38 U.S.C. 2002(1). As explained above, for purposes of the HCHV program, 38 U.S.C. 2002 applies and limits the definition of homeless to that found in 42 U.S.C. 11302(a). Paragraphs (1) through (3) of HUD's definition of homeless at 24 CFR 576.2 correspond to paragraph (a) of 42 U.S.C. 11302 and paragraph 4 corresponds to paragraph (b) of 42 U.S.C. 11302. VA cannot exceed its statutory authority and modify the definition of homeless for purposes of the HCHV program to mirror the SSVF definition or HUD regulations in full but is proposing to bring them as close as possible by adopting paragraphs (1) through (3) of the definition of homeless in 24 CFR 576.2.

### 63.3: Eligible Veterans

The proposed rule would amend the eligibility criteria for veterans in § 63.3 by modifying paragraph (a) to rearrange the order and classification of eligibility criteria. Under the proposed paragraph (a)(1), a veteran must be enrolled in the VA health care system or eligible for VA health care under 38 CFR 17.36 or 17.37. This is identical to the existing paragraph (a)(2). VA proposes to consolidate the current paragraphs (a)(1)

and (a)(3) into a new paragraph (a)(2) by saying that a veteran, in addition to being enrolled or eligible for care under paragraph (a)(1), must also be homeless. VA would remove the three stipulations regarding a serious mental illness currently in regulations, as they would not be necessary to establish eligibility for the program.

#### 63.10: Selection of Non-VA Community-Based Providers

Finally, the proposed rule would eliminate as a prerequisite to selection the requirement in § 63.10(a) that non-VA community-based providers give temporary residential assistance to homeless persons with substance use disorders. As discussed previously, VA included substance use disorders in its earlier regulations as a basis to identify homeless veterans, but under the revised law, this is no longer necessary.

#### II. Case Management Services Offered by Non-VA Community-Based Providers in the HCHV Program

Additionally, the proposed rule would clarify that VA can provide case management services to veterans through the HCHV program under its authority, in 38 U.S.C. 2031(a), to provide care through this program. All providers participating in the HCHV program already provide case management services, so this change merely reflects current practice. Case management involves working toward the rapid placement of the veteran in a safe, appropriate setting; arranging, coordinating, or providing direct clinical services and support; referring and providing linkage to VA medical facilities, VA regional offices, and other Federal, state, local, or community-based partners; providing crisis management services and monitoring psychiatric status

and stability; and assisting and counseling veterans with transportation, credit, legal, or other needs.

The provision of case management services is consistent with the purpose of the HCHV program, to provide care to homeless veterans. Poor health and homelessness are closely associated. Travis P. Baggett, et al., "The unmet health care needs of homeless adults: a national study," *Am. J. Pub. Health*, 100(7): 1326-33 (2010); Jennifer Adams, et al., "Hospitalized younger: a comparison of a national sample of homeless and housed inpatient veterans," *J. Health Care Poor & Underserved*, 18(1): 173-84 (2007); Thomas P. O'Toole, et al., "Applying the chronic care model to homeless veterans: effect of a population approach to primary care on utilization and clinical outcomes," *Am. J. Pub. Health*, 100 (12): 2493-9 (2010). The HCHV programs typically serve as the entry point for veterans to participate in various VA programs that address these interrelated problems.

Case management provides a necessary link between an initial outreach encounter and the placement of a veteran in transitional or permanent housing and other VA homeless programs. Case management is a critical service that assists veterans by coordinating the full range of benefits and services that can help veterans escape homelessness and improve their health.

VA proposes to modify § 63.1 to clarify that non-VA community-based facilities must provide case management services as a component of care, treatment, and rehabilitative services. VA proposes adding a definition to § 63.2 to define case management and to revise the definition of non-VA community-based provider to include case management services. VA also proposes to clarify that the basic mental

health services included in the definition of non-VA community-based provider should only be provided as needed. While many homeless veterans receiving services through HCHV require basic mental health services, some do not, and we do not intend to require providers to deliver services unless they are needed. However, all homeless veterans need case management services, rehabilitative services, and community outreach.

VA proposes to modify the duties of non-VA community-based providers identified in § 63.15(b) by including case management services among those services providers must include. VA also proposes to make minor changes in § 63.15(b) to clarify the types of services that should be included in treatment plans and therapeutic/rehabilitative services. Specifically, we propose to clarify that VA may complement the non-VA community-based provider's program with added treatment or other services. This is intended to clarify that a range of other services may be available to veterans to the extent otherwise authorized under Title 38. VA further proposes to clarify that counseling may be provided to complement the non-VA community-based provider's program. For example, services through the Readjustment Counseling Service, operated under authority in 38 U.S.C. 1712A, or services and counseling for sexual trauma, operated under authority in 38 U.S.C. 1720D, may be helpful in the recovery and care of the veteran.

#### Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform

with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

#### Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### 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 remove the requirement that veterans have a serious mental illness to participate in the HCHV program and clarify that the HCHV program includes case management services. This proposed rule would only impact those entities that choose to participate in the HCHV Program. As of November 2013, approximately 220 non-profit entities participate in the HCHV Program. We do not expect this rule to result in any additional costs or economic impacts on these entities, as the rule modestly expands the population of veterans eligible to receive care and requires case management services consistent with current practice. Small entity applicants would not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and this clarification simply reinforces the services these entities are already providing. The expanded population of eligible veterans would not result in any additional costs because the principal driver of cost is bed availability, which would not change as a result of this rule. To the extent this rule would have any impact on small entities, it

would not have an impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed 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,” which requires 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.”

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined 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 an 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 proposed rule would 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 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. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on January 2, 2014, for publication.

List of Subjects in 38 CFR Part 63

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Health care, Homeless, Housing, Individuals with disabilities, Low and moderate income housing, Public assistance programs, Public housing, Relocation assistance, Reporting and recordkeeping requirements, Veterans.

Dated: May 9, 2014

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

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 63 as follows:

## PART 63 – HEALTH CARE FOR HOMELESS VETERANS (HCHV) PROGRAM

1. The authority citation for part 63 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 2031, and as noted in specific sections.

2. Revise § 63.1 to read as follows:

### § 63.1 Purpose and scope.

This part implements the Health Care for Homeless Veterans (HCHV) program. This program provides per diem payments to non-VA community-based facilities that provide housing, outreach services, case management services, and rehabilitative services, and may provide care and/or treatment to all eligible homeless veterans.

(Authority: 38 U.S.C. 501, 2031(a)(2))

3. Amend § 63.2 by:

a. Removing the definitions of “Serious mental illness” and “Substance use disorder”.

b. Adding the definition “Case management” in alphabetical order.

c. Revising the definitions of “Homeless” and “Non-VA community-based provider”.

d. Revising the Authority citation at the end of the section.

The addition and revisions read as follows:

### § 63.2 Definitions.

\* \* \* \* \*

Case management means arranging, coordinating, or providing direct clinical services and support; referring and providing linkage to VA and non-VA resources, providing crisis management services and monitoring; and intervening and advocating on behalf of veterans to support transportation, credit, legal, and other needs.

\* \* \* \* \*

Homeless has the meaning given that term in paragraphs (1) through (3) of the definition of homeless in 24 CFR 576.2.

Non-VA community-based provider means a facility in a community that provides temporary, short-term housing (generally up to 6 months) for the homeless, as well as community outreach, case management, and rehabilitative services, and, as needed, basic mental health services.

\* \* \* \* \*

(Authority: 38 U.S.C. 501, 2002, 2031)

4. Amend § 63.3 paragraph (a) to read as follows:

§ 63.3 Eligible Veterans.

(a) Eligibility. In order to serve as the basis for a per diem payment through the HCHV program, a veteran served by the non-VA community-based provider must be:

(1) Enrolled in the VA health care system, or eligible for VA health care under 38 CFR 17.36 or 17.37; and

(2) Homeless.

\* \* \* \* \*

5. Revise § 63.10 paragraph (a) to read as follows:

(a) Who can apply. VA may award per diem contracts to non-VA community-based providers who provide temporary residential assistance homeless persons, including but not limited to persons with serious mental illness, and who can provide the specific services and meet the standards identified in § 63.15 and elsewhere in this part.

6. Revise § 63.15 paragraph (b) to read as follows:

§ 63.15 Duties of, and standards applicable to, non-VA community-based providers.

\* \* \* \* \*

(b) Treatment plans, therapeutic/rehabilitative services, and case management.

Individualized treatment plans are to be developed through a joint effort of the veteran, non-VA community-based provider staff, and VA clinical staff. Therapeutic and rehabilitative services, as well as case management and outreach services, must be provided by the non-VA community-based provider as described in the treatment plan. In some cases, VA may complement the non-VA community-based provider's program with added treatment or other services, such as participation in VA outpatient programs or counseling. In addition to case management services, for example, to coordinate or address relevant issues related to a veteran's homelessness and health as identified in the individual treatment plan, services provided by the non-VA community-based provider should generally include, as appropriate:

(1) Structured group activities such as group therapy, social skills training, self-help group meetings, or peer counseling.

(2) Professional counseling, including counseling on self-care skills, adaptive coping skills, and, as appropriate, vocational rehabilitation counseling, in collaboration with VA programs and community resources.

\* \* \* \* \*

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