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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP11

Exempting Mental Health Peer Support Services from Copayments

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule.

SUMMARY: The Department of Veterans Affairs (VA) is taking final action to amend its regulation that sets forth the VA services that are not subject to copayment requirements for inpatient hospital care or outpatient medical care. Specifically, the regulation is amended to exempt mental health peer support services from having any required copayment. This removes a barrier that may have previously discouraged veterans from choosing to use mental health peer support services as a viable care option. VA believes that mental health peer support services are a valuable resource for veterans with mental health conditions and wants to ensure that veterans take full advantage of all resources available to them.

DATES: This final rule is effective [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further notice, unless VA receives an adverse comment by [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., 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-AP11— Exempting Mental Health Peer Support Services from Copayments.” 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 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 [www.Regulations.gov](http://www.Regulations.gov).

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director Business Policy, Chief Business Office (10NB6), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 382-2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Peer support services are provided as part of the medical care available to veterans under 38 U.S.C. 1710, specifically as part of mental health care services. Under 38 U.S.C. 7401 and 7402, VA has the authority to appoint peer specialists. A peer specialist is a veteran “who has recovered or is recovering from a mental health condition” and is certified to provide peer support services. 38 U.S.C. 7402(b)(13). This certification may be obtained from a VA approved not-for-profit entity

or a State approved process. These specialists are appointed by VA to provide veteran support services by relating to the veterans through their own personal experiences in recovering from mental illness. VA uses peer support services to help veterans with mental illness to successfully engage in their treatment through sharing experiences, encouragement, and instilling a sense of hope and skill building to promote recovery. Section 4 of Executive Order 13625, dated August 31, 2012, ordered VA to expand mental health staffing by hiring and training 800 peer-to-peer counselors to “empower veterans to support other veterans and help meet mental health care needs.” 77 FR 54784, Sept. 5, 2012.

VA is now exempting mental health peer support services from the copayment requirement set forth in 38 CFR 17.108. Prior to this rulemaking, veterans, unless otherwise exempt, had been required to pay a copayment of fifteen dollars for mental health peer support services. Under 38 U.S.C. 1710(g)(1), VA may not furnish medical services to certain veterans unless the veteran agrees to pay “the applicable amount or amounts established by the Secretary by regulation.” VA has interpreted section 1710(g)(1) to mean that VA has the discretion to establish the applicable copayment amount in regulation, even if such amount is zero. Generally, VA calculates the amount of a copayment based on the type of medical care provided and the resources needed to provide such care. In addition, VA may exempt certain care from copayment requirements in an effort to make health care more accessible to veterans, or to encourage veterans to become more actively involved in their medical care, and thereby improve health care outcomes (which, in turn, lowers overall health care costs). VA is

making mental health peer support services exempt from copayments in order to make such services more accessible to veterans and encourage veterans' use of such services. Veterans value the dynamic of peer support services because they can relate to other veterans through shared experiences, but because, prior to this rulemaking, such services were subject to copayments, they might have been less attractive to veterans who could benefit from them. VA is making peer support services exempt from copayments by amending 38 CFR 17.108 to add a new paragraph (e)(17) to include mental health peer support services as services that are exempt from copayment requirements. The removal of the copayment will eliminate a potential barrier that could discourage veterans from using mental health peer support services as part of their mental health care. We are also making minor technical corrections to § 17.108(e).

#### Administrative Procedure Act

VA believes this regulatory amendment is non-controversial and anticipates that this rule will not result in any significant adverse comment, and therefore is issuing it as a direct final rule. Previous actions of this nature, which remove restrictions on VA medical benefits to improve health outcomes, have not been controversial and have not resulted in significant adverse comments. However, in this Federal Register publication, we are publishing a separate, substantially identical proposed rule document that will serve as a proposal for the provisions in this direct final rule if significant adverse comments are filed. See RIN 2900-AP10.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant comment unless the comment states why the rule would be ineffective or unacceptable without the additional change.

Under direct final rule procedures, if no significant adverse comment is received within the comment period, the rule will become effective on the date specified above. After the close of the comment period, VA will publish a document in the Federal Register indicating that no significant adverse comment was received and confirming the date on which the final rule will become effective. VA will also publish a document in the Federal Register withdrawing the proposed rule.

However, if any significant adverse comment is received, VA will publish in the Federal Register a document acknowledging receipt of a significant adverse comment and withdrawing this direct final rule. In the event this direct final rule is withdrawn

because of receipt of any significant adverse comment, VA can proceed with the proposed rulemaking by addressing the comments received and publishing a final rule. Any comments received in response to this direct final rule will be treated as comments regarding the proposed rule. Likewise, any significant adverse comment received in response to the proposed rule will be considered as a comment regarding this direct final rule. VA will consider such comments in developing a subsequent final rule.

#### 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 directly affects 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://www.va.gov/orpm>, by following the link for VA Regulations Published From FY 2004 Through Fiscal Year to Date.

### 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 1 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 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 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 October 31, 2014, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, 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: November 13, 2014.

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William F. Russo,  
Acting Director,  
Office of Regulation Policy & Management,  
Office of the General Counsel,  
U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA 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. Amend § 17.108 by:

- a. In paragraph (e)(4), removing “.” and adding in its place “;”.
- b. In paragraph (e)(14), removing “and” immediately after “;”.
- c. In paragraph (e)(15), removing “.” and adding in its place “;”.
- d. In paragraph (e)(16), removing “.” and adding in its place “; and”.
- e. Adding a new paragraph (e)(17) to read as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

\* \* \* \* \*

(e) \* \* \*

(17) Mental health peer support services.

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[FR Doc. 2014-27231 Filed 11/26/2014 at 8:45 am; Publication Date: 11/28/2014]