



This document is scheduled to be published in the Federal Register on 04/27/2015 and available online at <http://federalregister.gov/a/2015-09633>, and on FDsys.gov

DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 1 and 17

RIN 2900-AP17

Updating Certain Delegations of Authority in VA Medical Regulations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is making technical amendments to its medical regulations by updating certain delegations of authority to be consistent with the statutory authority that established the Consolidated Patient Account Centers (CPACs). VA is, through this final rule, specifying delegations of authority for the collection of debts owed VA to the Chief Financial Officers of the CPACs.

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

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director Business Policy, Chief Business Office (10NB6), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 382-2508.

(This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rulemaking amends VA's regulations in title 38 Code of Federal Regulations (CFR) that delegate authority for the collection of debts owed to VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability to the Fiscal Officer or the Chief of the Fiscal Activity at the VA medical facility responsible for the collection of the debt or the station where the debt occurred. Consistent with the requirements of 38 U.S.C. 1729B, VA established seven Consolidated Patient Account Centers (CPACs), whose function is to centralize the billing and collection activities of VA medical facilities related to medical care (commonly referred to as "revenue activity"). Creation of the CPACs has allowed VA to uniformly address revenue activities and improve service to veterans.

This rulemaking amends our regulations to be consistent with 38 U.S.C. 1729B, which required VA to establish the CPACs, and current practice to specify that, for medical care revenue activities, the responsibility for collection of a medical debt belongs to the CPAC, rather than the Fiscal Officer or Chief of the Fiscal Activity at the medical facility or station. We also are clarifying that the Chief of the Fiscal Activity of a VA facility or the Chief of the Fiscal Activity of the station where the debt occurred is no longer the responsible individual for the fiscal activities of such facility or station because these fiscal activities fall under the purview of the Chief Financial Officer of the corresponding CPAC. This rulemaking amends §§ 1.956(a)(2)(iv), 17.103(a), 17.104(a), and 17.105(c).

Current § 1.956(a)(2)(iv) states that fiscal officers at VA medical facilities are authorized to waive veterans' debts arising from medical care copayments (§ 17.105(c)). Consistent with 38 U.S.C. 1729B and under current practice, the CPACs

are responsible for waiving debts related to medical care copayments, not the individual VA medical facilities. We are amending § 1.956(a)(2)(iv) to clarify that the Chief Financial Officer of the Consolidated Patient Account Center is authorized to waive veterans' debts arising from medical care copayments (§ 17.105(c)).

Current § 17.103(a) states that compromise offers for debts of charges made under § 17.101(a) shall be referred to the Chief of the Fiscal activity of the facility for application of the collection standards in § 1.900 *et seq.* The reference to § 17.101(a) is incorrect. A veteran is not responsible for charges billed to an insurance company under the methodology in § 17.101. Only the General Counsel and those authorized to act for the General Counsel have the authority to compromise or waive a claim arising under 38 U.S.C. 1729 and 38 CFR 17.101. The application of the collection standards in § 1.900 *et seq.* are primarily focused on benefit debt, including copayment debt and employee debt. The reference to § 17.101(a) was added in error by a final rule published by VA in 1996, 61 FR 21964. The correct reference in § 17.103(a) should be to the copayment provisions of §§ 17.108, 17.110 or 17.111. Accordingly, we are amending paragraph (a), introductory text, by removing the references made to the debt that represents charges made under § 17.101(a), and the Chief of the Fiscal activity of the facility to refer instead to the debt representing charges made under §§ 17.108, 17.110 or 17.111, and the Chief Financial Officer of the Consolidated Patient Account Center (CPAC) to make the statement in line with the authorizing statute for the CPAC. We are also amending the heading of § 17.103(a) to refer to the “Chief Financial Officers of the Consolidated Patient Account Centers” in order to correctly state the individual who is responsible for the financial activities of paragraph (a). We are also

amending § 17.103(a)(2), which uses the term “field station.” As we have stated in this rulemaking, the CPAC is now in charge of activities that were previously done in a field facility. We are, therefore, removing the term “a field station” in paragraph (a)(2) and adding, in its place, “the CPAC.” We are making a similar amendment in § 17.104(a), which states that questions concerning suspension or termination of collection action shall be referred to the Chief of the Fiscal activity of the station for application of the collection standards in § 1.900 *et seq.* Specifically, we are amending paragraph (a) by removing the reference to § 17.101(a) and (b). As previously stated in this rulemaking, these references are incorrect because the veteran is not responsible for charges under § 17.101; rather, the veteran is responsible for charges under §§ 17.108, 17.110 or 17.111. We are also amending the term “Chief of the Fiscal activity of the station” and replacing it with “Chief Financial Officer of the Consolidated Patient Account Center.”

Paragraph (c) of § 17.105 states that the Fiscal Officer at a VA medical facility where all or part of the debt was incurred will receive claims for waivers, and that the Fiscal Officer may also extend the time period for submitting said waiver. Paragraph (c) also states that a decision rendered by the Fiscal Officer under this provision is final. In an effort to maintain consistency, we are removing the words “Fiscal Officer at a VA medical facility where all or part of the debt was incurred” and replacing them with “the Consolidated Patient Account Center (CPAC) Chief Financial Officer.” We are also removing the term “Fiscal Officer” and replacing the term with “CPAC Chief Financial Officer” every time it appears. We are making these changes because the CPACs are now in charge of processing waivers of debts of charges for copayments.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for notice and public comment and good cause to publish this rule with an immediate effective date. This final rule merely revises VA's regulations so that they align with recent statutory amendments and corrects a citation that was added in error by a prior rulemaking. These are technical revisions only. Therefore, compliance with the notice-and-comment and delayed effective date requirements of 5 U.S.C. 553 is unnecessary.

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 FYTD.

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 program numbers and titles for this rule are as follows: 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care

Benefits; 64.010, Veterans Nursing Home Care; and 64.018, Sharing Specialized Medical Resources.

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 April 16, 2015, for publication.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking Penalties, Privacy Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 17

Administrative practice and procedure, Claims, Health care, Health facilities, Health records, Nursing homes, Reporting and recordkeeping requirements, Veterans.

Approved: April 21, 2015.

Michael Shores,
Chief Impact Analyst,
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, we amend 38 CFR parts 1 and 17 as follows:

PART 1 – GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

2. Revise § 1.956(a)(2)(iv) to read as follows:

§ 1.956 Jurisdiction.

(a) * * *

(2) * * *

(iv) The Chief Financial Officer of the Consolidated Patient Account Center is authorized to waive veterans' debts arising from medical care copayments (§ 17.105(c) of this chapter).

* * * * *

PART 17 -- MEDICAL

3. The authority citation for part 17 continues to read as follows:

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

4. Amend § 17.103 by:

a. In the heading of paragraph (a), removing the term “Chiefs of Fiscal activities” and adding, in its place, “Chief Financial Officers of the Consolidated Patient Account Centers”.

b. In paragraph (a) introductory text, removing “If the debt represents charges made under § 17.101(a), the compromise offer shall be referred to the Chief of the Fiscal activity of the facility” and adding, in its place, “If the debt represents charges made under §§ 17.108, 17.110, or 17.111, the compromise offer shall be referred to the Chief Financial Officer of the Consolidated Patient Account Center (CPAC)”.

c. In paragraph (a)(2), removing the term “a field station” and adding, in its place, “the CPAC”.

5. Amend § 17.104 by removing from paragraph (a) “If the debt represents charges made under § 17.101 (a) or (b) questions concerning suspension or termination of collection action shall be referred to the Chief of the Fiscal activity of the station” and adding, in its place, “If the debt represents charges made under §§ 17.108, 17.110, or 17.111 questions concerning suspension or termination of collection action shall be referred to the Chief Financial Officer of the Consolidated Patient Account Center”.

6. Revise § 17.105(c) to read as follows:

§ 17.105 Waivers.

* * * * *

(c) Of charges for copayments. If the debt represents charges for outpatient medical care, inpatient hospital care, medication or extended care services copayments made under §§ 17.108, 17.110, or 17.111, the claimant must request a waiver by

submitting VA Form 5655 (Financial Status Report) to the Consolidated Patient Account Center (CPAC) Chief Financial Officer. The claimant must submit this form within the time period provided in § 1.963(b) of this chapter and may request a hearing under § 1.966(a) of this chapter. The CPAC Chief Financial Officer may extend the time period for submitting a claim if the Chairperson of the Committee on Waivers and Compromises could do so under § 1.963(b) of this chapter. The CPAC Chief Financial Officer will apply the standard “equity and good conscience” in accordance with §§ 1.965 and 1.966(a) of this chapter, and may waive all or part of the claimant's debts. A decision by the CPAC Chief Financial Officer under this provision is final (except that the decision may be reversed or modified based on new and material evidence, fraud, a change in law or interpretation of law, or clear and unmistakable error shown by the evidence in the file at the time of the prior decision as provided in § 1.969 of this chapter) and may be appealed in accordance with 38 CFR parts 19 and 20.

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[FR Doc. 2015-09633 Filed: 4/24/2015 08:45 am; Publication Date: 4/27/2015]