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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP59

Hospital Care and Medical Services for Camp Lejeune Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations to reflect a statutory mandate that VA provide health care to certain veterans who served at Camp Lejeune, North Carolina, for at least 30 days during the period beginning on August 1, 1953, and ending on December 31, 1956. The law requires VA to furnish hospital care and medical services for these veterans for certain illnesses and conditions that may be attributed to exposure to toxins in the water system at Camp Lejeune. This rule does not address the statutory provision requiring VA to provide health care to these veterans' family members; regulations applicable to such family members will be promulgated through a separate final rule.

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

FOR FURTHER INFORMATION CONTACT: Bridget Souza, Deputy Director, Business Policy, VHA Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 382-2537. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 2012, the President signed into law the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112-154 ("the Act"). Among other things, section 102 of the Act amended section 1710 of title 38, United States Code (U.S.C.), to require VA to provide hospital care and medical services, for certain specified illnesses and conditions, to veterans who served at the Marine Corps base at Camp Lejeune, North Carolina (hereinafter referred to as Camp Lejeune), while on active duty in the Armed Forces for at least 30 days during the period beginning on January 1, 1957, and ending on December 31, 1987.

On September 11, 2013, VA published a notice of proposed rulemaking setting forth proposed regulations to provide hospital care and medical services to certain veterans who served at Camp Lejeune for at least 30 days from January 1, 1957, to December 31, 1987 ("the 1957 cohort"). 78 FR 55671-55675, Sept. 11, 2013. A final rule issuing those regulations was published on September 24, 2014, at 79 FR 57409-57415. In addition to various other provisions, the rule promulgated 38 CFR 17.400, Hospital care and medical services for Camp Lejeune veterans.

Subsequently, Congress passed the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235 ("the Consolidated Act"), which President Obama signed into law on December 16, 2014. Division I, Title II, § 243 of the law amended 38 USC 1710(e)(1)(F) by striking "January 1, 1957," and inserting "August 1, 1953." This added a new cohort of veterans to the group who are eligible for care pursuant to 38 USC 1710(e)(1)(F), namely, veterans who served on active duty in the

Armed Forces at Camp Lejeune, North Carolina, for not fewer than 30 days during the period from August 1, 1953, to December 31, 1956 (the “1953 cohort”). Although this rulemaking revises regulations to reflect this statutory amendment, we note that VA is currently providing health care to veterans in the 1953 cohort under section 1710(e)(1)(F), as amended.

Pursuant to the Consolidated Act, VA amends § 17.400 to account for the change in the date that begins the period of eligibility for Camp Lejeune veterans to receive VA hospital care and medical services. Specifically, we amend the definition of “Camp Lejeune veteran” in § 17.400(b) by deleting “January 1, 1957” and adding in its place “August 1, 1953.”

Currently, § 17.400(d)(2) establishes a right to retroactive reimbursement for the 1957 cohort for any copayments paid to VA for VA care provided to the veteran on and after August 6, 2012, so long as the veteran requests Camp Lejeune status no later than September 24, 2016. We previously noted in a Notice of Proposed Rulemaking that the basis for limiting beginning of this retroactivity period to August 6, 2012, was that the law authorizing Camp Lejeune benefits became effective on that date. We also explained in the proposed and final rules that the basis for the end date of September 24, 2016, was that it provided veterans with sufficient time (ultimately two years from the date that the regulation took effect) to file for retroactive benefits. 79 FR 57410. In this rulemaking, we are providing a similar retroactivity provision in § 17.400(d)(2) for the new 1953 cohort.

We further amend § 17.400(b) by adding a definition for “covered illness or condition.” This definition is comprised of the 15 illnesses and conditions for which VA

is required to provide hospital care and medical services to veterans under 38 USC 1710(e)(1)(F). These illnesses and conditions are currently listed in § 17.400(d)(1), which addresses exemptions from copayments. We remove the list of these illnesses and conditions from § 17.400(d)(1) and add it as part of the newly-added definition of “covered illness or condition” in § 17.400(b) for the purpose of improving the overall clarity of § 17.400. This is not a substantive change. We also amend § 17.400(b) to correct the spelling of the condition “Myelodysplastic syndromes,” which is misspelled in current § 17.400. Similarly, we amend § 17.400(b) to make the word “lymphoma” lower case.

We make one technical change to § 17.400(c) to remove the reference to “illnesses or conditions listed in paragraph (d)(1)(i) through (xv) of this section,” and add in its place a reference to “covered illness or condition,” because this term is now defined in § 17.400(b), as explained above. We make one clarifying change to § 17.400(c). Current § 17.400(c) refers to “the veteran's active duty in the Armed Forces” and “the veteran’s service,” but does not specifically reference the veteran’s active duty service at Camp Lejeune. We revise § 17.400(c) to state “VA will assume that a covered illness or condition is attributable to the veteran’s active duty service at Camp Lejeune unless it is clinically determined, under VA clinical practice guidelines, that such an illness or condition resulted from a cause other than such service.” This is not a substantive change. As we stated in the preamble to the proposed rule, “[i]n § 17.400(c), we would explain that VA would assume that a veteran who has been diagnosed with one of the 15 illnesses or conditions listed in § 17.400(d)(1)(A)-(O) has that specific condition or illness due to his or her exposure to contaminated water during

service at Camp Lejeune.” 78 FR 55671, 55673.

We make several amendments to § 17.400(d). First, we amend paragraph (d)(1) by removing the current list of covered illnesses and conditions and adding them to the definitions in § 17.400(b), as noted above.

We further amend § 17.400(d)(1) to specify the dates for each cohort for the exemption from copayments for hospital care and medical services provided for a covered illness or condition. Specifically, paragraph (d)(1)(i) provides that members of the 1957 cohort are not subject to such copayments for hospital care and medical services provided on or after August 6, 2012, the date that the Act was signed by the President and became effective. This provision is unchanged from the exemption provision for these veterans in former § 17.400(d)(1). Paragraph (d)(1)(ii) provides that members of the 1953 cohort are not subject to such copayments for hospital care and medical services provided on or after December 16, 2014, the date that the Consolidated Act was signed by the President and became effective. This distinction is required because the Consolidated Act’s amendment to 38 USC 1710(e)(1)(F) changed the date of active duty service at Camp Lejeune that would qualify a veteran for hospital care and medical services based on such service; but it did not make such eligibility retroactive to the date on which the Act became effective. Accordingly, VA must limit the 1953 cohort’s eligibility for exemption from copayments to the effective date of the Consolidated Act.

We also revise § 17.400(d)(2) to provide the criteria for eligibility for the 1953 and 1957 cohorts’ retroactive exemption from copayments, i.e., reimbursement of copayments previously paid to VA for hospital care and medical services for a covered

illness or condition. Under paragraph (d)(2)(i), a Camp Lejeune veteran in the 1957 cohort will be reimbursed for copayments if VA provided the hospital care or medical services to the veteran on or after August 6, 2012, the date the veteran became eligible for hospital care and medical services under the Act, and the veteran requested Camp Lejeune veteran status no later than September 24, 2016, two years after the date on which § 17.400 was initially promulgated. This is not a substantive change from the retroactive exemption for these veterans in former § 17.400(d)(2).

Under paragraph (d)(2)(ii), a Camp Lejeune veteran in the 1953 cohort will be reimbursed for copayments if VA provided the hospital care or medical services to the veteran on or after December 16, 2014, the date the veteran became eligible for hospital care and medical services by virtue of the Consolidated Act, and the veteran requested Camp Lejeune veteran status no later than July 18, 2018, two years after the effective date of this rule. We believe that two years will provide veterans sufficient time to learn about their new status and notify VA that they meet the requirements to be a Camp Lejeune veteran; this is the same look-back period provided to veterans in the 1957 cohort in paragraph (d)(2)(i). As in the case of exemptions from copayments, discussed above, we note that veterans in the 1953 cohort are not eligible for reimbursement for copayments made before December 16, 2014, because the Consolidated Act's amendment to 38 USC 1710(e)(1)(F) changed only the date of active duty service at Camp Lejeune that would qualify a veteran for Camp Lejeune status; it did not make such eligibility retroactive to the date of the Act. Accordingly, VA must limit the 1953 cohort's eligibility for reimbursement of copayments to the effective date of the Consolidated Act.

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.

Administrative Procedure Act

The Secretary of Veterans Affairs finds under 5 U.S.C. 553(b)(B) that there is good cause to publish this rule without prior opportunity for public comment, and under 5 U.S.C. 553(d)(3) that there is good cause to publish this rule with an immediate effective date. This rulemaking makes clarifying, non-substantive changes to § 17.400 in addition to amending that regulation to incorporate a provision mandated by Congress. See Public Law 113-235. Notice and public comment is unnecessary because it could not result in any change to this provision. Further, since the public law became effective on its date of enactment, VA believes it is impracticable and contrary to law and the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective 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 one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3501-3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), 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. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following amended information collection requirements. Veterans will apply for hospital care and medical services as a Camp Lejeune veteran under § 17.400 by completing VA Form 10-10EZ, "Application for Health Benefits," which is required under 38 CFR 17.36(d) for all hospital care and medical services. OMB previously approved the collection of information for VA Form 10-10EZ and an amendment to that information collection, inclusion of a specific checkbox for individuals to identify themselves as meeting the requirements of being a Camp Lejeune veteran based on the required service at Camp Lejeune between 1957 and 1987, and assigned OMB control number 2900-0091. An amendment to the

checkbox is needed so that veterans can identify themselves as meeting the requirements for being a Camp Lejeune veteran based on the required service at Camp Lejeune between August 1, 1953, and December 31, 1987. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA submitted this information collection amendment to OMB for its review. OMB approved the amended information collection requirements under existing control number 2900-0091.

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. 601-12). This final rule will directly affect only individuals and will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final flexibility analysis requirements of sections 603 and 604.

Executive Order 12866 and Executive Order 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.”

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this rule are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic

Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 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. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on June 30, 2016, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Homeless, Medical devices, Medical research, Mental health programs, Nursing homes, Veterans.

Dated: June 30, 2016

Jeffrey Martin
Office Program Manager
Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

For the reasons set forth in the supplementary information of this rulemaking, 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. Revise § 17.400 to read as follows:

§ 17.400 Hospital care and medical services for Camp Lejeune veterans.

(a) General. In accordance with this section, VA will provide hospital care and medical services to Camp Lejeune veterans. Camp Lejeune veterans will be enrolled pursuant to § 17.36(b)(6).

(b) Definitions. For the purposes of this section:

Camp Lejeune means any area within the borders of the U.S. Marine Corps Base Camp Lejeune or Marine Corps Air Station New River, North Carolina.

Camp Lejeune veteran means any veteran who served at Camp Lejeune on active duty, as defined in 38 U.S.C. 101(21), in the Armed Forces for at least 30 (consecutive or nonconsecutive) days during the period beginning on August 1, 1953, and ending on December 31, 1987. A veteran served at Camp Lejeune if he or she was stationed at Camp Lejeune, or traveled to Camp Lejeune as part of his or her professional duties.

Covered illness or condition means any of the following illnesses and conditions:

- (i) Esophageal cancer;
- (ii) Lung cancer;
- (iii) Breast cancer;
- (iv) Bladder cancer;
- (v) Kidney cancer;
- (vi) Leukemia;
- (vii) Multiple myeloma;
- (viii) Myelodysplastic syndromes;
- (ix) Renal toxicity;
- (x) Hepatic steatosis;
- (xi) Female infertility;
- (xii) Miscarriage;
- (xiii) Scleroderma;
- (xiv) Neurobehavioral effects; and
- (xv) Non-Hodgkin's lymphoma.

(c) Limitations. For a Camp Lejeune veteran, VA will assume that a covered illness or condition is attributable to the veteran's active duty service at Camp Lejeune unless it is clinically determined, under VA clinical practice guidelines, that such an illness or condition resulted from a cause other than such service.

(d) Copayments—(1) Exemption. (i) Camp Lejeune veterans who served at Camp Lejeune between January 1, 1957, and December 31, 1987, are not subject to copayment requirements for hospital care and medical services provided for a covered illness or condition on or after August 6, 2012.

(ii) Camp Lejeune veterans who served at Camp Lejeune between August 1, 1953, and December 31, 1956, are not subject to copayment requirements for hospital care and medical services provided for a covered illness or condition on or after December 16, 2014.

(2) Retroactive exemption. VA will reimburse Camp Lejeune veterans for any copayments paid to VA for hospital care and medical services provided for a covered illness or condition if either of the following is true:

(i) For Camp Lejeune veterans who served at Camp Lejeune between January 1, 1957, and December 31, 1987, VA provided the hospital care or medical services to the Camp Lejeune veteran on or after August 6, 2012, and the veteran requested Camp Lejeune veteran status no later than September 24, 2016; or

(ii) For Camp Lejeune veterans who served at Camp Lejeune between August 1, 1953, and December 31, 1956, VA provided the hospital care or medical services to the Camp Lejeune veteran on or after December 16, 2014, and the veteran requested Camp Lejeune veteran status no later than July 18, 2018.

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900-0091.)

(Authority: 38 U.S.C. 1710)

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