



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP55

Medical Care in Foreign Countries and Filing for Reimbursement for Community Care Not Previously Authorized by VA

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with no changes, a proposed rule amending its medical regulations related to hospital care and medical services in foreign countries. We simplified and clarified the scope of these regulations, address medical services provided to eligible veterans in the Republic of the Philippines, and removed provisions related to grants to the Republic of the Philippines that are no longer supported by statutory authority. VA also amends its medical regulations related to filing claims for reimbursement of medical expenses incurred for VA care not previously authorized. We provided a 60-day period to receive comments from the public on the proposed changes, and received no comments. VA adopts the proposed rule as final, with no changes.

DATES: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Director, Policy and Planning, Office of Community Care (10D1A1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (303) 372-4629. (This is not a toll-free number) or Joseph.Duran2@va.gov.

SUPPLEMENTARY INFORMATION:

Section 1724 of title 38 United States Code (U.S.C.) prohibits VA from furnishing hospital care or medical services outside any State except under specific circumstances. VA is authorized under 38 U.S.C. 1724(b)(1) to furnish care and services to an eligible veteran outside any State if VA “determines that such care and services are needed for the treatment of a service-connected disability of the veteran or as part of a rehabilitation program under chapter 31 of this title.” VA furnishes health care to eligible veterans in the Republic of the Philippines under this authority. In addition, 38 U.S.C. 1724(c) provides that “within the limits” of the Veterans Memorial Medical Center at Manila, Republic of the Philippines, VA may enter into contracts to furnish necessary hospital care to a veteran for any non-service-connected disability if such veteran is unable to defray the expenses of necessary hospital care. VA may also operate an outpatient clinic in the Republic of the Philippines to furnish necessary medical services to a veteran who has a service-connected disability. 38 U.S.C. 1724(e). Several sections of title 38 Code of Federal Regulations (CFR) part 17 address VA’s authority to provide for hospital care and medical services for eligible veterans outside the United States, as well as submission of claims for reimbursement for services obtained from community care providers outside the United States.

On January 31, 2018, VA proposed to revise or amend these regulations to consolidate similar content, clarify provisions, and ensure that these regulations reflect current VA practice and statutory authority. (83 FR 4454). We proposed simplifying language in § 17.35 to make it easier to understand, adding a new paragraph (b) to address hospital care and outpatient services provided to eligible veterans in the Republic of the Philippines as authorized in 38 U.S.C. 1724, and paragraph (c) to provide guidance on which sections of part 17 apply to claims for payment or reimbursement of services not previously authorized by the Foreign Medical Program. We proposed amending § 17.125 which focuses on filing claims. We proposed stating that in those cases where VA payment for such services has not been authorized in advance, claims for payment for such health care services provided in a State should be submitted to the VA medical facility nearest to where those services were provided. We also proposed amending that section to provide specific guidance on where and how to file claims.

We proposed removing §§ 17.140 and 17.141 as the subject matter of delegation of authority would be covered by proposed revisions to § 17.125. Finally, we proposed removing §§ 17.350 through 17.370 which addressed grants to the Republic of the Philippines, as our authority to provide these grants under 38 U.S.C. 1732(b) has expired. VA still retains authority under 38 U.S.C. 1731 to assist the Republic of the Philippines in fulfilling its responsibility in providing medical care and treatment for Commonwealth Army veterans and new Philippine Scouts in need of such care and treatment for service-connected disabilities and non-service-connected disabilities under certain conditions.

We provided a 60-day period to the public to comment on the proposed rule. The comment period closed April 2, 2018, and we received no comments. Based on the rationale set forth in the proposed rule and in this document, VA is adopting the provisions of the proposed rule as a final rule with no changes.

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 regulatory amendment does 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 rulemaking does not directly affect any small entities. Only VA beneficiaries and certain community care providers would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this

amendment is be exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563, and 13771

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.”

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that the action is not 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 website at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 through FYTD. [For information about economically significant regulations, see Impact Analysis Procedures guide on the 00REG intranet site.]

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of EO 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This final rule is not subject to the requirements of E.O. 13771 because there is no incremental cost associated with this rule.

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 expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for

inflation) in any given year. This final rule has no such effect on State, local, or 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: 64.008 - Veterans Domiciliary Care; 64.011 - Veterans Dental Care; 64.012 - Veterans Prescription Service; 64.013 - Veterans Prosthetic Appliances; 64.029 - Purchase Care Program; 64.040 - VHA Inpatient Medicine; 64.041 - VHA Outpatient Specialty Care; 64.042 - VHA Inpatient Surgery; 64.043 - VHA Mental Health Residential; 64.044 - VHA Home Care; 64.045 - VHA Outpatient Ancillary Services; 64.046 - VHA Inpatient Psychiatry; 64.047 - VHA Primary Care; 64.048 - VHA Mental Health clinics; and 64.050 - VHA Diagnostic Care.

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, 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.

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. Jacquelyn Hayes-Byrd, Acting Chief of Staff, Department of Veterans Affairs, approved this document on June 19, 2018, for publication.

Dated: June 19, 2018

Consuela Benjamin,
Regulation Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
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 is amended by adding statutory authority citations for §§ 17.35 and 17.125 in numerical order to read as follows:

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

Section 17.35 is also issued under 38 U.S.C. 1724.

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Section 17.125 is also issued under 38 U.S.C. 7304.

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2. Revise § 17.35 to read as follows:

§ 17.35 Hospital care and outpatient services in foreign countries.

(a) Under the VA Foreign Medical Program, VA may furnish hospital care and outpatient services to any veteran outside of the United States, without regard to the veteran's citizenship:

(1) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability;

(2) If the care and services are furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care and services for the reasons enumerated in § 17.47(i)(2).

(b) Under the Foreign Medical Program, the care and services authorized under paragraph (a) of this section are available in the Republic of the Philippines to a veteran who meets the requirements of paragraph (a) of this section. VA may also provide outpatient services to a veteran referenced in paragraph (a)(1) in the VA outpatient clinic in Manila for the treatment of such veteran's service-connected conditions within the limits of the clinic. Non-service connected conditions of a veteran who has a

service-connected disability may be treated within the limits of the VA outpatient clinic in Manila.

(c) Claims for payment or reimbursement for services not previously authorized by VA under this section are governed by §§ 17.123 – 17.127 and 17.129 – 17.132.

3. Revise § 17.125 to read as follows:

§ 17.125 Where to file claims.

Generally, VA must preauthorize VA payment for health care services provided in the community when such care is provided in a State as that term is defined in 38 U.S.C. 101(20).

(a) Where VA payment for such services has not been authorized in advance, claims for payment for such health care services provided in a State should be submitted to the VA medical facility nearest to where those services were provided.

(b) Claims for payment for hospital care and outpatient services authorized under § 17.35(a) and provided in Canada must be submitted to Veterans Affairs Canada, Foreign Countries Operations Unit, 2323 Riverside Dr., 2nd Floor, Ottawa, Ontario, Canada K1A OP5.

(c) All other claims for payment for hospital care and outpatient services authorized under § 17.35(a) and provided outside a State must be submitted to the Foreign Medical Program, PO Box 469061, Denver, CO 80246-9061.

§ 17.140 [Removed]

4. Remove §17.140 and the undesignated center heading “Delegations of Authority”, immediately preceding it.

§ 17.141 [Removed]

5. Remove § 17.141.

6. Add an undesignated center heading, “Delegation of Authority” immediately preceding § 17.142.

7. Remove the undesignated center heading, “Grants to the Republic of the Philippines”, immediately preceding § 17.350.

§§ 17.350 - 17.352, 17.355, 17.362 – 17.367, 17.369, and 17.370 [Removed]

8. Remove §§ 17.350 through 17.352, 17.355, 17.362 through 17.367, 17.369, and 17.370.

[FR Doc. 2018-13487 Filed: 6/22/2018 8:45 am; Publication Date: 6/25/2018]