



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AQ54

Veterans Healing Veterans Medical Access and Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern scholarships to certain health care professionals. This rulemaking implements the mandates of the VA MISSION Act of 2018 by establishing a pilot program to provide funding for the medical education of eligible veterans who are enrolled in covered medical schools.

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

FOR FURTHER INFORMATION CONTACT: Marjorie A. Bowman, MD, Chief Academic Affiliations Officer, Office of Academic Affiliations (10X1), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-9490. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on May 21, 2019, VA published a proposed rule, which proposed to amend its

regulations that govern scholarships to certain health care professionals. 84 FR 22990. VA provided a 60-day comment period, which ended on July 22, 2019. We received 7 comments on the proposed rule.

On June 6, 2018, section 304 of Public Law 115-182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, established a pilot program that would provide funding for medical education to 18 eligible veterans who enroll in covered medical schools. This is known as the Veterans Healing Veterans Medical Access and Scholarship Program (VHVMASP). For the VHVMASP, the VA MISSION Act of 2018 sets forth the eligibility criteria; the amount and types of available funding; established terms of an agreement to be entered into by the participant; as well as, the consequences for a breach in such agreement. This final rule establishes the regulations needed to carry out the VHVMASP. Immediately following title 38 of the Code of Federal Regulations (CFR) 17.612, we are adding a new undesignated center heading titled “Veterans Healing Veterans Medical Access and Scholarship Program” and add new §§ 17.613 through 17.618.

One commenter was in support of the proposed rule. The commenter stated that they commend the proposition of a program that allows those who have fought so selflessly for our country the opportunity to better themselves through education and then turn around and give back to fellow veterans. The commenter believes that the rule will not only be immensely powerful for the veterans that are able to have their medical education funded, but also for the large number of veterans that they will be able to help. We make no changes based on this comment.

Multiple commenters recommended that the program include more universities. In particular, a commenter stated that they understand that the pilot program is in its infancy, but recommends that more universities be included and more scholarships be granted as the program grows and progresses. Another commenter similarly stated that there needs to be more schools where the VHVMASP is provided since there is not even one covered school in every state that has a VA medical facility. This same commenter also stated that this is an amazing idea and maybe some other types of schooling should be included in the VHVMASP, such as law school and drug and alcohol training for counseling, as this is a big area of issues for veterans. Another commenter also stated that the program should not be limited to these six schools, but should be allowed to be available at any accredited medical school, for example, Harvard, Wisconsin, or the University of California at San Francisco. VA understands that the VHVMASP is limited. Section 304 of the VA MISSION Act of 2018 limits the VHVMASP to the nine covered medical schools and to provide funding specifically for medical education. VA does not have the authority to expand the program to additional medical schools or to expand the program to degrees that do not lead to a medical education. We are not making any changes based on these comments.

Multiple commenters also raised concerns about the limitation that a veteran is only eligible if discharged within the past ten years. A commenter questioned why the proposed rule stated that the veterans need to have only been out of the military for no more than ten years. Another commenter suggested that VA should reconsider and drop the within ten-year requirement because this requirement serves veterans to no benefit except to limit and disqualify a number of veterans who would be interested in

this program. This commenter stated that the program is already extremely limited because it is a pilot program and that there also seems to be no obvious benefit to VA except cutting out applicants for no good reason. The commenter added that if the limitation targeted older veterans less likely to complete the program it might be justifiable, but a requirement of having to have served within ten years does not target the age of the applicant. Also, an applicant could have been any age when retiring or being discharged from service. Lastly, the commenter stated that the limitation does not seem justified and should be reconsidered or VA should consider adding exceptions to this portion of the rule. Another commenter similarly stated that narrowing this program down to only veterans who have been out of the armed forces for a period of no less than ten years is a disservice to thousands of veterans. Several commenters stated that the current proposal allows a veteran out of the military for four years with a general discharge (or perhaps even a bad conduct discharge) to be eligible for this scholarship while a veteran with an honorable discharge who has been working as a nurse for ten years and wishes to take advantage of this program and go to medical school would not be eligible. The commenters indicated that at a minimum, there should be an exception to the ten-year rule for honorably discharged veterans or veterans should not be allowed to count time using the GI Bill or Vocational Rehabilitation against them (i.e.: if a veteran has been out of the military for 12 years but five years of that was spent using GI Bill or Vocational Rehabilitation, for this program VA should allow the veteran to subtract those five years from the 12). A commenter added that given that this scholarship is limited to two students per school, there is no burden to removing the ten-year requirement, VA saves no money capping it out at ten-years. A commenter stated

that the ten-year limitation should be extended to at least 15 years. The commenter indicated that someone who leaves the military at 24 could be engaged in graduate education at 39 and contribute to a supply of veteran physicians.

VA acknowledges that the VHVMASP has limitations, however, VA does not have the authority to amend the selection criteria for the VHVMASP. Section 304 of the VA MISSION Act of 2018 sets out the eligibility criteria for veterans to be eligible to receive the VHVMASP. The first criterion is that the veteran shall have been discharged from the Armed Forces not more than 10 years before the date of application for admission to a covered medical school. VA does not have the authority to amend this criterion. Also, section 211(b)(7) of the Department of Veterans Affairs Expiring Authorities Act of 2018 clarified that a veteran may not concurrently receive educational assistance under chapter 30, 31, 32, 33, 34, or 35 of title 38 United States Code or chapter 1606 or 1607 of title 10 United States Code at the time the veteran would be receiving VHVMASP funding. VA would not count time using the GI Bill or Vocational Rehabilitation against funding received for the VHVMASP, but the veteran would not be able to receive VHVMASP funding if such veteran is concurrently receiving other types of educational assistance. We are not making any changes based on these comments.

Another commenter stated that the ten-year limit should be dropped. The commenter added that three years would help ease the process for the program so that the veteran doesn't have to wait ten years and so the program can function properly with the rotation of veterans in need. The ten-year limitation is the maximum allowable time after a veteran is discharged from service to be eligible to apply for the VHVMASP.

The veteran does not have to wait ten years to apply for the program after they have left military service. We are not making any changes based on this comment.

A commenter stated that the proposed rule was not clear with respect to the period of obligated service. For instance, would a participating veteran work for VA upon graduation, would such employment be full time, will the veteran receive benefits, and good pay. VA disagrees that the rule is not clear regarding the period of obligated service. Section 304(d)(1)(E) of the VA MISSION Act of 2018, states that each eligible veteran who accepts funding for medical education under this section shall enter into an agreement with the Secretary that provides that the veteran agree to serve as a full-time clinical practice employee in the Veterans Health Administration for a period of four years, after completion of medical school and post-graduate training. We stated this requirement in proposed § 17.617(a)(4). We also stated in § 17.617(b)(1) that an eligible veteran's obligated service will begin on the date on which the eligible veteran begins full-time permanent employment with VA as a clinical practice employee. As a full-time permanent VA employee, the participant will receive pay as well as be entitled to any other benefit afforded to full-time clinical VA employees. We are not making any changes based on this comment.

Another commenter suggested that VA include the cost of the United States Medical Licensing Examination, Step 1 and Step 2 exams, as part of the covered costs for the participants of the VHVMASP. The commenter also recommended that VA clarify in the final rule that the monthly stipend will be adjusted for inflation. VA has various other scholarship programs and would like to administer the programs as consistently as possible. Under VA's current programs, such as the Employee Incentive

Scholarship Program, exams and certifications are not authorized expenses. As an example, students pursuing a nursing degree do not get reimbursed to take the National Council Licensure Exam (NCLEC). Also, the current Health Professional Scholarship Program (HPS) program does not pay for licensures or boards for other disciplines. VA will pay a monthly stipend directly to VHVMASP participants. The payment will be made for each month a participant is enrolled in coursework, beginning with the first month of the school year. The stipend will be adjusted annually based on the approved Cost of Living Allowance (COLA) increase. We are not making any changes based on this comment.

A commenter stated that in 2018, 351 American Medical College Application Service (AMCAS) applicants selected “veteran” for military status on their AMCAS application, and 175 applicants selected “active duty.” The commenter urged VA to clarify whether the VHVMASP is only applicable to the entering class of 2020 or whether it will be extended in future years. The commenter added that given the VA’s physician workforce shortages, they would support the extension of this program indefinitely and its expansion to additional medical schools. VA understands the commenter’s concern, however, section 304(b)(3) of the VA MISSION Act 2018, as amended by section 211(b)(7) of the Department of Veterans Affairs Expiring Authorities Act of 2018, specified that the VHVMASP would only be for the entering class of 2020. In addition, VA has other scholarship programs that are available for individuals who are enrolled in education courses that lead to degrees in various health care professions, such as the HPSP, the Visual Impairment and Orientation and Mobility Professional Scholarship Program, and the Employee Incentive Scholarship Program.

VA may award these other scholarships to veterans who meet the eligibility criteria for these other scholarship programs. We are not making any changes based on this comment.

A commenter was concerned that VA would not afford some flexibility for participants who fail to meet the terms of the acceptance agreement due to extenuating circumstances, such as life events, or other academic pursuits, that may require participants to take a leave of absence. This same commenter similarly requested that extenuating circumstances also be considered when VA recoups funds from participants who breach their agreement and must pay the amount owed within one year of such breach. Another commenter suggested that the requirement for repayment of any liability for failure to complete the program should be extended to at least five years rather than one year and should consider the possibility of a return to the educational track, i.e. someone might have to drop out for a year or two, but then be able to resume their medical education. VA takes into account a participant's extenuating circumstances when recouping funds. A participant may seek a waiver or suspension of the service or financial liability incurred under this program or agreement by written request to the Under Secretary for Health setting forth the basis, circumstances, and causes which support the requested action. We are clarifying the regulation text based on this comment by adding a new paragraph § 17.618(c) to state that the Under Secretary for Health, or designee, may waive or suspend any service or financial liability incurred by a participant whenever compliance by the participant is impossible, due to circumstances beyond the control of the participant, or whenever the

Under Secretary for Health, or designee, concludes that a waiver or suspension of compliance is in the VA's best interest.

A commenter stated that the proposed rule outlines the terms of the agreement, which includes completing post-graduate training leading to eligibility for board certification in a physician specialty applicable to VA. The commenter asks VA to clarify the definition of a physician specialty applicable to the VA. VA currently has many vacancies for physicians. A physician specialty applicable to VA is one which is focused on the diagnosis and treatment of healthcare conditions potentially experienced by veterans. Participants of the VHVMASP would fill these much-needed vacancies as part of the participant's obligated service. This language is also found in section 304 (d)(1)(C) of the VA MISSION Act of 2018. We are not making any changes based on this comment.

A commenter indicated that the proposed rule states that eligible veterans must ensure the State licenses are obtained in a minimal amount of time following completion of residency, or fellowship, if the veteran is enrolled in a fellowship program approved by the VA. The commenter requests that VA clarify whether participants will be required to enter a VA residency program to complete their training and comply with VHVMASP agreements. A participant will not be required to enter a VA residency program because, in general, VA does not have its own residency programs. VA will rely on graduate medical education (GME) programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association (AOA) and sponsored by academic affiliates to meet the participant's residency requirement. We are not making any changes based on this comment.

We made minor technical edits to the numbering in § 17.614. The edits consist of adding numbering to the individual statements in the definition of acceptable level of academic standing. We have also renumbered the definition of covered medical school. No other edits to the content of these paragraphs was made.

We clarified the definition of VHVMASP by adding the public law number for the VA MISSION Act of 2018. The amended definition of VHVMASP is the Veterans Healing Veterans Medical Access and Scholarship Program authorized by section 304 of the VA MISSION Act of 2018, Public Law 115-182.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule with the edits described in this rulemaking.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this final rulemaking, will 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 final rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 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. This final rule contains provisions constituting a new collection of information, at 38 CFR 17.617 and will be included under OMB Control #2900-0793 for approval and submitted under a separate PRA process as explained below. The provisions in this final rule, under 38 CFR 17.617, would require eligible veterans to sign and submit an agreement between VA and the eligible veteran who accepts funding for the VHVMASP. This provision would result in a new information collected burden under OMB control #2900-0793. The notice of proposed rulemaking (NPRM) preceding and associated with this final rule, published on May 19, 2019 (84 FR 22990). In that NPRM, VA detailed the new information collection burden associated with the provisions under 38 CFR 17.617 in the PRA section of the preamble. However, the associated PRA package was not submitted to OMB for approval due to another VA NPRM also requiring a revised information collection under the same approved OMB Control # 2900-0793. Despite this discrepancy published in the NPRM and in accordance with 44 U.S.C. 3507(d), VA submitted the new and revised information collection requests (ICRs) to OMB through a separate PRA process via ROCIS and sought public comment through a Federal Register Notice document (84 FR 42991). These separate ICRs are in the final review stage with OMB.

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. The provisions associated with this rulemaking are not processed by any other entities outside of VA. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 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. The Office of Information and Regulatory Affairs has determined that this rule 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.

This final rule is not expected to be an E.O. 13771 regulatory action because this final rule is not significant under EO 12866.

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.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

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 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.

Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on November 5, 2019, for publication.

Michael P. Shores,
*Director, Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.*

For the reasons set forth in the preamble, we are amending 38 CFR part 17 as follows:

PART 17 – MEDICAL

1. The authority citation for part 17 is amended by adding an entry for §§ 17.613 through 17.618 in numerical order to read in part as follows:

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

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Sections 17.613 through 17.618 are also issued under Pub. L. 115-182, sec. 304.

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2. Add an undesignated center heading and §§ 17.613 through 17.618 to read as follows.

VETERANS HEALING VETERANS MEDICAL ACCESS AND SCHOLARSHIP PROGRAM.

17.613 Purpose.

17.614 Definitions.

17.615 Eligibility.

17.616 Award procedures.

17.617 Agreement and obligated service.

17.618 Failure to comply with terms and conditions of agreement.

VETERANS HEALING VETERANS MEDICAL ACCESS AND SCHOLARSHIP PROGRAM.

§ 17.613 Purpose.

The purpose of §§ 17.613 through 17.618 is to establish the requirement for the Veterans Healing Veterans Medical Access and Scholarship Program (VHVMASP). The VHVMASP will provide funding for the medical education of two eligible veterans from each covered medical school.

§ 17.614 Definitions.

The following definitions apply to §§ 17.613 through 17.618.

Acceptable level of academic standing means:

- (1) Maintaining a cumulative grade point average at or above passing, as determined by the medical school;
- (2) Completing all required courses with a passing grade;
- (3) Successfully completing the required course of study for graduation within four academic years;
- (4) Successfully passing the required United States Medical Licensing Examinations steps 1 and 2, within the timeframe for graduation from medical school; and
- (5) Having no final determinations of unprofessional conduct or behavior.

Covered medical school means any of the following:

- (1) Texas A&M College of Medicine.
- (2) Quillen College of Medicine at East Tennessee State University.
- (3) Boonshoft School of Medicine at Wright State University.
- (4) Joan C. Edwards School of Medicine at Marshall University.
- (5) University of South Carolina School of Medicine.
- (6) Charles R. Drew University of Medicine and Science.
- (7) Howard University College of Medicine.
- (8) Meharry Medical College.
- (9) Morehouse School of Medicine.

VA means the Department of Veterans Affairs.

VHVMASP means the Veterans Healing Veterans Medical Access and Scholarship Program authorized by section 304 of the VA MISSION Act of 2018, Public Law 115-182.

§ 17.615 Eligibility.

A veteran is considered eligible to receive funding for the VHVMASP if such veteran meets the following criteria.

(a) Has been discharged or released, under conditions other than dishonorable, from the Armed Forces for not more than 10 years before the date of application for admission to a covered medical school;

(b) Is not concurrently receiving educational assistance under chapter 30, 31, 32, 33, 34, or 35 of title 38 United States Code or chapter 1606 or 1607 of title 10 United States Code at the time the veteran would be receiving VHVMASP funding;

(c) Applies for admission to a covered medical school for the entering class of 2020;

(d) Indicates on the application to the covered medical school that they would like to be considered for the VHVMASP;

(e) Meets the minimum admissions criteria for the covered medical school to which the eligible veteran applies; and

(f) Agrees to the terms stated in § 17.617.

§ 17.616 Award procedures.

(a) Distribution of funds. (1) Each covered medical school that opts to participate in the VHVMASP will reserve two seats in the entering class of 2020 for eligible veterans who receive funds for the VHVMASP. Funding will be awarded to two eligible veterans with the highest admissions ranking among veteran applicants for such entering class for each covered medical school.

(2) If two or more eligible veterans do not apply for admission at a covered medical school for the entering class of 2020, VA will distribute the available funding to eligible veterans who applied, and are accepted, for admission at other covered medical schools.

(b) Amount of funds. An eligible veteran will receive funding from the VHVMASP equal to the actual cost of the following:

(1) Tuition at the covered medical school for which the veteran enrolls for a period of not more than 4 years;

(2) Books, fees, and technical equipment;

(3) Fees associated with the National Residency Match Program;

(4) Two away rotations, performed during the fourth year of school, at a VA medical facility; and

(5) A monthly stipend for the four-year period during which the eligible veteran is enrolled in a covered medical school in an amount to be determined by VA.

§ 17.617 Agreement and obligated service.

(a) Agreement. Each eligible veteran who accepts funds from the VHVMASP will enter into an agreement with VA where the eligible veteran agrees to the following:

(1) Maintain enrollment, attendance, and acceptable level of academic standing as defined by the covered medical school;

(2) Complete post-graduate training leading to eligibility for board certification in a physician specialty applicable to VA;

(3) After completion of medical school and post-graduate training, obtain and maintain a license to practice medicine in a State. Eligible veterans must ensure that State licenses are obtained in a minimal amount of time following completion of residency, or fellowship, if the veteran is enrolled in a fellowship program approved by VA. If a participant fails to obtain his or her degree, or fails to become licensed in a State no later than 90 days after completion of residency, or fellowship, if applicable, the participant is considered to be in breach of the acceptance agreement; and

(4) Serve as a full-time clinical practice employee in VA for a period of four years.

(b) Obligated service--(1) General. An eligible veteran's obligated service will begin on the date on which the eligible veteran begins full-time permanent employment with VA as a clinical practice employee. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant completes residency, or fellowship, if applicable, or the date the participant becomes licensed in a State, whichever is later.

(2) Location and position of obligated service. VA reserves the right to make final decisions on the location and position of the obligated service.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0793.)

§ 17.618 Failure to comply with terms and conditions of agreement.

(a) Participant fails to satisfy terms of agreement. If an eligible veteran who accepts funding for the VHVMASP breaches the terms of the agreement stated in § 17.617, the United States is entitled to recover damages in an amount equal to the total amount of VHVMASP funding received by the eligible veteran.

(b) Repayment period. The eligible veteran will pay the amount of damages that the United States is entitled to recover under this section in full to the United States no later than 1 year after the date of the breach of the agreement.

(c) Waivers. The Under Secretary for Health, or designee, may waive or suspend any service or financial liability incurred by a participant whenever compliance by the participant is impossible, due to circumstances beyond the control of the

participant, or whenever the Under Secretary for Health, or designee, concludes that a waiver or suspension of compliance is in the VA's best interest.

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