



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900- AP46

Prosthetic and Rehabilitative Items and Services; Delayed Effective Date

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” and the OMB guidance M-21-14, “Implementation of Memorandum Concerning Regulatory Freeze Pending Review”, both issued on January 20, 2021, this action temporarily delays until February 26, 2021 the effective date of the rule entitled Prosthetic and Rehabilitative Items and Services, published in the **Federal Register** on December 28, 2020, to allow Department of Veterans Affairs (VA) officials the opportunity for further review and consider the new regulations.

DATES: The effective date of the rule amending 38 CFR part 17 published at 85 FR 84245, December 28, 2020, is delayed until February 26, 2021.

FOR FURTHER INFORMATION CONTACT: Penny Nechanicky, National Program Director for Prosthetic and Sensory Aids Service (10P4RK), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420; penny.nechanicky@va.gov; (202) 461-0337. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking adopts proposed amendments to VA’s regulations governing the provision of prosthetic and rehabilitative items and services as medical services to

veterans. It establishes a new section for the provision of prosthetic and rehabilitative items and services, clarifies eligibility for such items and services, and defines the types of prosthetic and rehabilitative items and services available to eligible veterans.

VA bases this action on the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review." That memorandum directed the heads of Executive Departments and Agencies to consider temporarily postponing for 60 days from the date of the memorandum the effective dates of all regulations that had been published in the Federal Register but had not yet taken effect. The memorandum also noted certain exceptions that do not apply here. VA therefore is delaying the effective date for the rule entitled "Prosthetic and Rehabilitative Items and Services" to February 26, 2021, determining 30 days is sufficient time to assess without unduly impacting or delaying delivery of support and services.

The Agency's implementation of this action without opportunity for public comment is based on the good cause exception in the Administrative Procedure Act, 5 U.S.C. 553(b)(B), in that seeking public comment would be impracticable, unnecessary and contrary to the public interest. The temporary delay in effective date until February 26, 2021, will give Agency officials the opportunity for review and consider the new regulations, as required by the memorandum of the Assistant to the President and Chief of Staff, dated January 20, 2021. The Prosthetic and Rehabilitative Items and Services rule would have taken effect on January 27, 2021, the effective date for this regulation will be extended by 30 days from the original effective date. It would not have been possible to provide a meaningful opportunity for public comment prior to that effective date, and delay of the effective date is in the public interest because it allows an opportunity for the new Administration to consider the policy implications of the final rule before it becomes final. Thus, the good cause exception in 5 U.S.C. 553(b)(B) applies to

VA's decision to extend the effective date of the Prosthetic and Rehabilitative Items and Services rule without first going through notice and comment.

In taking this action, the Agency also invokes the good cause exception in 5 U.S.C. 553(d)(3), which allows the action to be immediately effective for "good cause" rather than subject to the requirement in the Administrative Procedure Act (5 U.S.C. 553(d)) that a minimum of 60 days is required before a rule may become effective. The nature of this action is to extend by 30 days the effective date of a final rule that otherwise would become effective on January 27, 2021. Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest, in the orderly issuance and implementation of regulations.

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. Chris Diaz, Acting Chief of Staff and White House Liaison, Department of Veterans Affairs, approved this document on January 25, 2021, for publication.

Consuela Benjamin,

Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.