



DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Exempt Copayments for the First Three Mental Health Care Outpatient Visits Annually

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: VA intends to implement a new law that prohibits the collection of copayments for the first three mental health care outpatient visits of a Veteran in a calendar year for which the Veteran would otherwise be required to pay a copayment. VA's current regulations regarding copayments do not include an exemption for this purpose, but VA will revise them soon to align with the law. In April 2024, VA was able to modify its systems and processes to comply with the law for qualifying appointments that occurred on or after June 27, 2023. By law, the exemption will expire on December 29, 2027.

DATES: Implementation will be applicable upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Tamara Wagner, Office of Finance, Revenue Operations, (104RO2), Veterans Health Administration, Department of Veterans Affairs, 128 Bingham Road, Suite 1000, Asheville, NC 28806; 970-242-0731, extension 2219. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The primary purpose of this notice is to inform the public of VA's intent to modify its systems and processes to comply with new statutory requirements while rulemaking proceeds to modify existing regulations. On December 29, 2022, the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022 (the Act; Pub. L. 117-328, Division U), added a new section 1722C to title 38, U.S.C., that generally prohibits VA from imposing or collecting a copayment for the first three mental health care outpatient visits

of a Veteran in a calendar year for which the Veteran would otherwise be required to pay a copayment to VA. The Act defines a mental health care outpatient visit to mean an outpatient visit with a qualified mental health professional for the primary purpose of seeking either mental health care, or treatment for substance abuse disorder. The copayment exemption for the first three outpatient mental health care visits includes appointments completed in VA clinics as well as those conducted by community care providers.

VA will modify its regulations regarding copayments for outpatient mental health care, set forth at 38 CFR 17.108, to reflect this authority. Mental health care outpatient visits are defined in law to mean an outpatient visit with a qualified mental health professional for the primary purpose of seeking either mental health care or treatment for substance abuse disorder.

The determination of the first three mental health visits is expected to be complex due to a variety of issues, including the need to consider whether care is service-connected or otherwise exempt, how to handle Veterans with multiple appointments in the same day, and administrative requirements (such as establishing a tool to count the number of appointments a Veteran has had in a calendar year). To ensure the most effective application of this benefit and exempt copayments as applicable under the statute, VA will determine if a visit qualifies for a copayment exemption using the following process.

First, VA will evaluate the clinic where the appointment occurred. If the clinic is a mental health, psychiatry, psychology, or substance abuse clinic, VA will exempt the copayment, if applicable, if the appointment is one of the first three qualifying visits in a calendar year. Second, if the visit was not performed in such a clinic, VA will review what provider completed the appointment to determine if the visit applies for a copayment exemption. If the provider is a psychiatrist, psychologist, licensed

professional mental health counselor, marriage or family therapist, or social worker, and if the medical service provided is classified as an evaluation and management visit, mental health visit, group therapy visit, or psychiatric diagnostic assessment, VA will exempt the copayment, if applicable, provided the appointment is one of the first three qualifying visits in a calendar year. Veterans that are otherwise copayment exempt based on Priority Group or service connection should see no difference in their copayment status as the copayment would already be exempt for other reasons. If a Veteran has multiple appointments in one day, including a visit that would qualify for this exemption as well as a visit that does not, the copayment for the visit that does not qualify for this exemption will still apply (in other words, if a Veteran has a primary care appointment and a mental health appointment that would qualify for this exemption, the primary care copayment would still apply). Further examples are provided below to help illustrate how the copayment exemption will be applied.

Example 1: A Priority Group 7 Veteran has an appointment with the general mental health clinic and is treated by a psychologist. This is the first appointment of the calendar year for this Veteran. The Veteran is not service connected for any mental health conditions. Under the new law, a copayment will not be applied to this visit.

Example 2: A Priority Group 7 Veteran has an appointment with a primary care clinic and is treated by a general medicine provider. The Veteran discusses symptoms of depression and anxiety during the primary care visit. This visit is for a non-service-connected condition that would be subject to a copayment. This visit is not subject to the copayment exemption under the new law as the provider type and clinic location are not considered outpatient mental health care.

Example 3: A Priority Group 7 Veteran has an appointment with the general mental health clinic and is seen by a general medicine provider. This is the first visit of the year for the Veteran and is for a non-service-connected condition that would be

subject to a copayment. Under the new law, a copayment will not be applied to this visit as the visit occurred in a mental health clinic and meets the definition of outpatient mental health care.

Example 4: A Priority Group 7 Veteran has an appointment with the general mental health clinic with a psychologist for a psychological assessment using psychometric instruments for the purpose of neuropsychological testing. The Veteran has been followed by this provider for many months; however, this is the first visit for the Veteran in the calendar year and is for a non-service-connected condition. This service would normally be assessed a specialty copayment. Under the new law, this copayment would be waived as it is the first mental health visit in a calendar year.

Example 5: A Priority Group 8 Veteran has three appointments at a VA medical center (VAMC) on the same day. The first visit is in the primary care clinic with the Veteran's primary care provider. The second appointment is a specialty appointment with Cardiology following a prior referral by the primary care provider. The third appointment is with the substance abuse clinic and is with a licensed clinical social worker and is the first visit in the calendar year. All the care is considered non-service connected. As this Veteran had multiple appointments on the same day, a copayment decision is made for each service to determine which should apply. The basic copayment would normally apply for the first primary care visit. The specialty copayment would apply for the cardiology visit, which would take precedence over the basic copayment (thereby nullifying that obligation). The copayment for the substance abuse visit would be exempt on the same basis. This Veteran would be assessed one copayment for the day at the specialty copayment level for the cardiology visit, and the substance abuse visit would not count as one of the three mental health outpatient visits during the calendar year.

Example 6: A Priority Group 8 Veteran has two appointments at a VAMC on the same day. The first visit is in the primary care clinic with the Veteran's primary care provider. The second appointment is a specialty appointment with the mental health clinic, is with a licensed clinical social worker, and is the first visit in the calendar year. All the care is considered non-service connected. As this Veteran had multiple appointments on the same day, a copayment decision is made for each service to determine which should apply. The basic copayment would normally apply for the first primary care visit. The specialty copayment would apply for the mental health visit, which would take precedence over the basic copayment; however, because the copayment for the specialty care mental health visit would be exempt based on this law, the Veteran would be assessed one copayment for the day at the primary care copayment level for the primary care visit. The mental health visit would count as one of the three mental health outpatient visits exempted from a copayment during the calendar year.

Example 7: A Priority Group 8 Veteran has two appointments at a VAMC on the same day. The first visit is in the primary care clinic with the Veteran's primary care provider. The second appointment is a specialty appointment with the mental health clinic, is with a licensed clinical social worker, and is the fifth visit in the calendar year. All the care is considered non-service connected. As this Veteran had multiple appointments on the same day, a copayment decision is made for each service to determine which should apply. The basic copayment would normally apply for the first primary care visit. The specialty copayment would apply for the mental health visit, which would take precedence over the basic copayment; because the copayment for the specialty care mental health visit would not be exempt based on this law (as it not one of the first three visits), the Veteran would be assessed one copayment for the day at the specialty care copayment level for the mental health visit.

Section 1722C, by prohibiting the imposition or collection of copayments “for the first three mental health care outpatient visits of a Veteran in a calendar year for which the Veteran would otherwise be required to pay a copayment” to VA, intersects with section 1710(g), which subjects Veterans (generally in Priority Groups 7 and 8) to making copayments for the receipt of care. This intersection is discussed in the examples above. Section 1722C also intersects with section 1725A(f) (and VA’s regulations at 38 CFR 17.4600), which authorizes VA to furnish walk-in care from qualifying non-Department providers. Veterans receiving walk-in or urgent care under this authority may be subject to copayments in at least some cases. While theoretically mental health care outpatient visits exempt from copayments under section 1722C could be provided pursuant to the walk-in care authority of section 1725A, VA does not believe they are provided today under VA’s existing network of community providers. In the future, VA’s community network could expand to include services furnished in the clinics described above (a mental health, psychiatry, psychology, or substance abuse clinic) or by the provider types and services (psychiatrist, psychologist, licensed professional mental health counselor, marriage or family therapist, or social worker, and if the medical service provided is classified as an evaluation and management visit) described above. If this occurs, VA will provide additional guidance to Veterans on how these authorities would affect their copayment liability. For now, if Veterans have questions or concerns about outpatient mental health care copayments furnished in a community walk-in care clinic or urgent care facility, we recommend they contact the Revenue Department at the local VAMC for further information.

Section 193A(b) of the Act provided that the new 38 U.S.C. 1722C shall apply with respect to mental health care outpatient visits occurring on or after the date that is 180 days after the date of the enactment of this Act. The Act was enacted into law on December 29, 2022, and 180 days after that date was June 27, 2023. VA will apply the

process described above and issue a refund to Veterans who paid a copayment for the first three mental health care outpatient visits on or after June 27, 2023, during that calendar year. This will give effect to the applicability provisions set forth in section 193A(b) of the Act.

While this process is expected to identify the vast majority of qualifying mental health care outpatient visits, Veterans who believe a copayment was applied in error may contact VA to review its determination and correct the copayment, if applicable. Information on disputing VA copayments can be found on the VA website at www.va.gov/health-care/pay-copay-bill/dispute-charges/ or by contacting the Facility Revenue Department at the Veteran's local VAMC.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on May 6, 2024, 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.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

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