



## 38 CFR Parts 17 and 51

RIN 2900-AS01

### Changes to the Provision of Health Care for World War II Veterans

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Veterans Affairs (VA) medical regulations and its regulations on per diem for nursing home care of veterans in State homes to conform with section 101 of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement (Cleland-Dole) Act of 2022, which expanded the provision of hospital care, medical services, and nursing home care to World War II (WWII) veterans. VA is also amending its medical regulations to remove existing references to Mexican border and World War I (WWI) veterans.

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

**FOR FURTHER INFORMATION CONTACT:** Ralph Weishaar, Director, VHA Member Services (15MEM) Business Support Office, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (254) 755 - 0407. (This is not a toll-free telephone number.)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

VA has authority to furnish hospital care, medical services, and nursing home care pursuant to section 1710 of title 38, United States Code (U.S.C.). In general, section 1710(a)(1) lists the categories of veterans to whom the Secretary shall furnish hospital care and medical services that the Secretary determines to be needed; section 1710(a)(2) lists the categories of veterans to whom the Secretary shall furnish hospital care and medical services and may furnish nursing home care, which the Secretary determines to be needed; and section 1710(a)(3) states that in the case of a veteran who is not described in section 1710(a)(1) and (2), the Secretary may, to the extent resources and facilities are available, furnish hospital care, medical services, and nursing home care, which the Secretary determines to be needed.

Whether a veteran is eligible for VA care under section 1710(a)(1), (2), or (3) determines, among other benefits, priority for enrollment in VA health care. Section 1705(a) establishes eight priority categories for purposes of enrollment in VA health care. For example, priority category six includes veterans eligible for hospital care, medical services, and nursing home care under section 1710(a)(2) who are not otherwise eligible for priority category one through five. See 38 U.S.C. 1705(a)(6).

In addition to determining placement in a priority category, section 1710(a)(1) and (2) help determine whether a veteran is exempt from copayments for hospital care and medical services. Sections 1710(f)(1) and (g)(1) only require VA to charge a veteran a copayment for hospital care and medical services, if that veteran is eligible for such care under section 1710(a)(3). That is, veterans eligible to receive hospital care and medical services under section 1710(a)(1) and (2) do not have to pay a copayment for such care and services. Furthermore, VA shall pay per diem for eligible veterans receiving nursing home care in a State home pursuant to 38 U.S.C. 1741. See 38 Code of Federal Regulations (CFR) 51.50.

VA has regulated priority categories at § 17.36 and copayment exemption for inpatient hospital care and outpatient medical care at § 17.108. VA also has regulated eligibility for purposes of payment of per diem for nursing home care at State homes in § 51.50.

Historically, veterans of WWII were not listed as a category of veterans in 38 U.S.C. 1710(a)(1) or (2). Therefore, they were only eligible for hospital care, medical services, or nursing home care if they were otherwise eligible under other criteria in section 1710(a)(1), (2), or (3), or 38 U.S.C. 1710A. As such, some WWII veterans had to pay copayments for inpatient hospital care and outpatient medical care because they were eligible for VA health care under section 1710(a)(3) and others were not eligible to enroll in VA health care at all because they were in subcategories (v) and (vi) of priority category eight (which are not currently eligible to enroll in VA health care). See 38 CFR 17.36(c)(2).

## II. The Consolidated Appropriations Act, 2023

On December 29, 2022, the Cleland-Dole Act was signed into law. Effective March 31, 2023, section 101 of the Cleland-Dole Act amended 38 U.S.C. 1710(a)(2)(E) to expressly include veterans of WWII. WWII is defined in 38 U.S.C. 101(8) to mean the period beginning on December 7, 1941, and ending on December 31, 1946.

As the plain language of section 101 of the Cleland-Dole Act is clear and requires no interpretation, VA began implementing section 101 on March 31, 2023. In this regard, VA placed any WWII veteran who was in priority category seven or eight into priority category six. This made WWII veterans who were in subcategories (v) and (vi) of priority category eight both eligible for enrollment in VA health care as well as exempt from copayment for inpatient hospital care and outpatient medical care. VA's placement of WWII veterans in priority category six also exempted from copayment for inpatient

hospital care and outpatient medical care those WWII veterans who were already enrolled in VA health care and in priority category seven and subcategories (i) through (iv) of priority category eight. Additionally, effective March 31, 2023, WWII veterans are eligible veterans for purposes of payment of per diem for nursing home care in State homes. We note that WWII veterans may have been previously eligible for purposes of payment of per diem for nursing home care in State homes prior to March 31, 2023, if they met other eligibility criteria for such payment. See 38 CFR 51.50.

In this rulemaking, VA amends its regulations governing VA health care enrollment and priority categories (38 CFR 17.36) and copayments for inpatient hospital care and outpatient medical care (38 CFR 17.108) to conform to section 101 of the Cleland-Dole Act. Similarly, VA also amends its eligibility for purposes of payment of per diem for nursing home care in State homes (38 CFR 51.50) to explicitly include WWII veterans. We note that section 1710(a)(2)(E) expressly recognizes veterans of the Mexican border period and WWI as eligible for hospital care, medical services, or nursing home care under that paragraph. However, there are no longer any living veterans of these eras.<sup>1</sup> See 80 FR 34793 (June 17, 2015); 83 FR 61250 (December 28, 2018). In this rulemaking, VA also removes references to these veterans as explained in more detail below.

### III. Changes to VA Regulations

#### A. 38 CFR 17.36(b) Categories of veterans eligible to be enrolled.

Consistent with 38 U.S.C. 1705 and 1710, VA has established health care priority categories in its medical regulations at 38 CFR 17.36(b).

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<sup>1</sup> Courson, Paul. *Last Living U.S. World War I Veteran Dies*. CNN. February 27, 2011. <https://www.cnn.com/2011/US/02/27/wwi.veteran.death/>; Obituary: Samuel B. Goldberg, Legacy.com. 2024. <https://www.legacy.com/us/obituaries/providence/name/samuel-goldberg-obituary?id=16769095> (last accessed March 27, 2024).

Section 17.36(b)(6), in pertinent part, establishes that priority category six includes veterans of the Mexican border period or of WWI, among other groups of veterans listed in 38 U.S.C. 1710(a)(2).

VA revises 38 CFR 17.36(b)(6) to include WWII veterans within priority category six, consistent with section 101 of the Cleland-Dole Act. VA also amends 38 CFR 17.36(b)(6) to remove the references to Mexican border period and WWI veterans as there are no living veterans of these eras. Thus, the language in § 17.36(b)(6) is revised by removing the current language, “Veterans of the Mexican border period or of World War I” and adding, in its place, “Veterans of World War II”.

#### B. 38 CFR 17.108 Copayments for inpatient hospital care and outpatient medical care.

Consistent with 38 U.S.C. 1710(f) and (g), VA regulates copayments for inpatient hospital care and outpatient medical care and the groups of veterans that are exempt from such copayments at 38 CFR 17.108. Current § 17.108(d)(8) exempts veterans of the Mexican border period and of World War I from copayments for inpatient hospital care and outpatient medical care.

VA revises § 17.108(d)(8) to include WWII veterans as exempt from copayments for inpatient hospital care and outpatient medical care, consistent with section 101 of the Cleland-Dole Act. VA also amends § 17.108(d)(8) to remove the references to Mexican border period and WWI veterans because there are no living veterans of these eras. Thus, the language in § 17.108(d)(8) is revised by removing the current language, “A veteran of the Mexican border period or of World War I” and adding, in its place, “A veteran of World War II”.

#### C. 38 CFR 51.50 Eligible veterans – nursing home care.

Consistent with 38 U.S.C. 1741 through 1745, VA regulates per diem payments for nursing home care of veterans in State homes in 38 CFR part 51. Section 51.50 describes veterans who are eligible for purposes of payment of per diem for nursing home care in State homes.

VA has interpreted, and continues to interpret, amendments to 38 U.S.C. 1710(a)(2) to impact its State home regulations in 38 CFR part 51, including § 51.50. For example, see 80 FR 34801 (June 17, 2015) (proposing to amend § 51.50 to add veterans who were awarded the Purple Heart or the medal of honor as eligible for nursing home care in State homes); 83 FR 61250 (November 28, 2018).

Thus, consistent with 38 U.S.C. 1710(a)(2)(E), as amended by section 101 of the Cleland-Dole Act, VA revises 38 CFR 51.50 to reflect that WWII veterans are eligible veterans for purposes of payment of per diem for nursing home care in State homes. In § 51.50, VA is redesignating current paragraph (i), which states that an eligible veteran includes veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), as new paragraph (j). Because of this redesignation, VA is redesignating note 1 to current paragraph (i) as note 1 to paragraph (j). VA is also adding new paragraph (i) to state that veterans of WWII are eligible for nursing home care in State homes.

We note that this section does not currently include veterans of the Mexican border period or of WWI as such veterans were removed from 38 CFR 51.50 in 2018 because there were no longer any living veterans of those eras. See 80 FR 34793 (June 17, 2015); 83 FR 61250 (December 28, 2018).

### **Administrative Procedure Act**

The Secretary of Veterans Affairs finds that there is good cause under the Administrative Procedure Act (APA), 5 U.S.C. 553, to publish this rule without prior

opportunity for public comment and with an immediate effective date. Pursuant to 5 U.S.C. 553(b)(B), general notice and opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

This final rule amends 38 CFR 17.36, 17.108, and 51.50 to incorporate statutory changes mandated by Congress to furnish health care benefits to WWII veterans on the basis of their service. VA has interpreted, and continues to interpret, amendments to 38 U.S.C. 1710(a)(2) to impact its health care regulations in part 17 (see 84 FR 7813), as well its State home regulations in part 51 (see 80 FR 34801). VA’s authority is limited to implementing 38 U.S.C. 1710(a)(2)(E) as amended by Congress, and VA does not have discretion to administer benefits in a way inconsistent with section 1710(a)(2)(E). Thus, the Secretary finds that it is unnecessary to delay issuance of this rule for the purpose of soliciting prior public comment.

Additionally, the APA generally requires that agencies publish rules in the Federal Register with a 30-day delayed effective date. However, an agency may bypass the APA’s 30-day delay requirement if the rule grants or recognizes an exemption or relieves a restriction or the agency has good cause. 5 U.S.C. 553(d)(1) and (3). This rule both removes a restriction by including WWII veterans under 38 U.S.C. 1710(a)(2)(E), authorizing VA to furnish care to such veterans on the basis of their service, and recognizes an exemption, in particular, a copayment exemption for WWII veterans. Additionally, the Secretary has found there is good cause to forego notice and public procedure, as explained above, and for the same reasons finds good cause to make these amendments effective on the date of publication. This rule will therefore not have the 30-day delay before it becomes effective.

### **Executive Orders 12866, 13563 and 14094**

Executive Order 12866 (Regulatory Planning and Review) directs 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 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

### **Regulatory Flexibility Act (RFA):**

The Regulatory Flexibility Act, 5 U.S.C. 601-612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

## **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 (PRA)**

Although this final rule contains collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collections of information. The collections of information for 38 CFR 17.36 and 17.108 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900-0091 and 2900-0920. WWII veterans applying for health care under 38 U.S.C. 1710(a)(2)(E) would apply by completing VA Form 10-10EZ, "Application for Health Benefits," or VA Form 10-10EZR, "Health Benefits Update Form," which are approved under OMB control 2900-0091.

## **Congressional Review Act**

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

## **List of Subjects in 38 CFR Parts 17 and 51**

### **38 CFR Part 17**

Day care, Health care, Health facilities, Nursing homes, Veterans.

### **38 CFR Part 51**

Day care, Health care, Health facilities, Nursing homes, Veterans.

## **Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 13, 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.

***Consuela Benjamin,***  
Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of General Counsel,  
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR parts 17 and 51 as set forth below:

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.  
**§ 17.36 [Amended]**

2. Amend § 17.36(b)(6) by removing “Veterans of the Mexican border period or of World War I;” and adding, in its place, “Veterans of World War II;”.

**§ 17.108 [Amended]**

3. Amend § 17.108(d)(8) by removing “A veteran of the Mexican border period or of World War I” and adding, in its place, “A veteran of World War II”.

PART 51 – PER DIEM FOR NURSING HOME, DOMICILIARY, OR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

4. The authority citation for part 51 continues to read as follows:

**Authority:** 38 U.S.C. 101, 501, 1710, 1720, 1741-1743, 1745, and as follows.

5. Amend § 51.50 by:

- a. Redesignating paragraph (i) as paragraph (j);
- b. Redesignating note 1 to paragraph (i) as note 1 to paragraph (j);
- c. Adding new paragraph (i) to read as follows:

**§ 51.50 Eligible veterans - nursing home care.**

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- (i) Veterans of World War II;

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