

8320-01



This document is scheduled to be published in the Federal Register on 06/18/2024 and available online at <https://federalregister.gov/d/2024-13367>, and on <https://govinfo.gov>

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AR98

VA Health Professional Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, without changes, a proposed rule to amend its regulations that govern the VA Health Professional Scholarship Program (HPSP) by implementing the mandates of the Consolidated Appropriations Act, which would expand the number of scholarships available to those who are pursuing degrees or training in occupations providing care within mental health programs. This rule also adopts as final technical corrections under the Paperwork Reduction Act section to correct an approved Office of Management and Budget (OMB) control number.

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

FOR FURTHER INFORMATION CONTACT: Nicole Nedd, Director, Scholarships and Clinical Education, Workforce Management and Consulting Office, 810 Vermont Ave NW, Washington, DC 20420. ((504) 881-4036). (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: In a document published in the *Federal Register* (FR) on August 14, 2023, VA proposed to revise its VA Health Professional Scholarship Program (HPSP) regulations. The purpose of the HPSP is to award scholarships to students pursuing a course of study leading to a degree in certain health care occupations, listed in 38 U.S.C. 7401(1) and (3). See § 17.600. The HPSP allows VA to provide scholarship awards to facilitate recruitment and retention of employees in several hard-to-fill health care occupations. Id. In the proposed rule we stated that we would amend the HPSP to reflect statutory changes made by section 104(a) of Division V of the Consolidated Appropriations Act (the Act), Public Law 117-328, which expanded HPSP by requiring VA to specifically award scholarships to applicants pursuing degrees or training in mental health disciplines, including advanced practice nursing (with a focus on mental health or substance use disorder), psychology, and social work. Section 104(a) of the Act also required that VA provide no fewer than an additional 50 awards (as compared to academic year 2021, which provided 33 awards) to such applicants per academic year starting in academic year 2022. 88 FR 54972. The rule also proposed to make a technical edit to the HPSP regulations to correct an approved Office of Management and Budget (OMB) control number. Id.

VA provided a 60-day comment period, which ended on October 13, 2023. VA received 13 comments on the proposed rule. One comment supported the proposed rule and will not be further addressed in this final rule. The remaining comments are summarized and addressed in the discussion below.

Public Comments

Physician assistants

VA received 11 comments regarding physician assistants (PAs). The comments suggested or supported the inclusion of PAs as mental health care professionals eligible

to receive scholarships under proposed § 17.603(b)(2). For instance, a commenter suggested that generally PAs should receive scholarships under proposed § 17.603(b)(2) and another stated that PAs are a core mental health profession. VA does not make any changes based on these comments.

PAs are eligible to apply for and receive HPSP scholarships for mental health disciplines under proposed § 17.603(b)(2). Consistent with section 104(a) of Division V of the Act, VA proposed to revise § 17.603(b)(2) to expand HPSP to applicants who are pursuing degrees or training in mental health disciplines, including advanced practice nursing (with a focus on mental health or substance use disorder), psychology, and social work. As noted in the proposed rule, this is not an exhaustive list and merely mirrors section 104(a) of Division V of the Act. 88 FR 54974. VA acknowledges that PAs' training includes core mental health training and mandatory psychiatry clinical rotations, and they may provide mental health care. Thus, PAs are eligible to apply for and may receive HPSP scholarships for mental health disciplines under proposed § 17.603(b)(2) once this rule is final and effective.

Other commenters suggested that PAs be listed in proposed § 17.603(b)(2) as a mental health profession eligible for a HPSP scholarship pursuant to the Act. Relatedly, one commenter stated that VA should provide an exhaustive list of health care professions that may be awarded the HPSP scholarship under proposed § 17.603(b)(2). We do not make changes to the rule based on these comments.

As VA explained in the proposed rule, the list of mental health disciplines in proposed § 17.603(b)(2) is not an exhaustive list, as there are other mental health disciplines not included in the Act. (See 88 FR 54974). Other mental health disciplines may include licensed professional mental health counselor, marriage and family therapist, and rehabilitation counseling. The list in proposed § 17.603(b)(2) was merely meant to mirror the statutory language and is not exclusionary of other mental health

care professions. VA determined that it should maintain a non-exhaustive list in the regulation to permit flexibility so that new mental health professions can be included without the need to amend the regulations. Therefore, other occupations not listed in proposed § 17.603(b)(2) that may provide clinical care in mental health programs may, and are encouraged to, apply for and receive HPSP scholarships.

One commenter recommended that VA expand HPSP scholarships to mandate inclusion for PAs. We are not making any changes based on this comment.

To the extent that the commenter is suggesting that VA mandate that PAs be prioritized over other potential applicants, VA cannot mandate that PAs be selected over other health care professions. Under 38 U.S.C. 7612(D), VA may provide scholarships with a preference for applicants who are veterans. VA does not have any other preferential statutory authority. The awarding of HPSP scholarships is based on VA recruitment needs. As previously stated in this rulemaking, an HPSP scholarship will be awarded only when necessary to assist VA in alleviating shortages or anticipated shortages of personnel in the health professions.

One commenter raised concerns that the HPSP website indicates that existing HPSP scholarships are limited to only those PAs with veteran status. VA is not making any changes to the rule based on this comment.

VA acknowledges that its HPSP website previously indicated that the PA scholarship is only open to those that have veteran status. VA has since updated its HPSP website to ensure it clearly explains that all PA students are allowed to apply for an HPSP scholarship, but that a preference may be given to veterans, consistent with § 17.605. While the eligibility criteria for HPSP does not require that applicants have any military experience (see § 17.602), if there are a larger number of equally qualified applicants than there are awards to be made, VA will first select veterans, then use a

random method as the basis for further selection. See § 17.605(a). This provision applies to all health care professions eligible for HPSP scholarships, not just PAs.

Awarding HPSP scholarships in academic year 2023

One commenter encouraged VA to issue the 50 additional awards in the 2023 academic year, as increasing access to mental health care is critical.

Consistent with section 104(a) of Division V of the Act, VA proposed to provide no fewer than an additional 50 awards (as compared to academic year 2021) to applicants who are pursuing degrees or training in mental health disciplines per academic year starting in academic year 2022. See proposed § 17.603(b)(2) and 88 FR 54973. However, VA will not be able to implement this regulation until this final rule is published and effective, which will be after the start of the 2023 academic year. VA notes that under the current regulations, VA is authorized to provide HPSP scholarships to disciplines that provide clinical care within mental health programs and in academic year 2023, VA offered 87 scholarships for professions providing clinical care within mental health programs, which is more than the required 83 scholarships for mental health professions as required under the Act. VA is not making any changes based on this comment.

Chaplains

While not entirely clear, one commenter appeared to request chaplains be eligible for HPSP scholarships since they should be considered mental health professionals who are eligible under the changes VA proposed to make to § 17.603(b)(2) in the proposed rule. VA is not making changes based on this comment.

VA considers chaplains to be an integral part of the veteran's mental health and individuals who are pursuing a degree that leads to placement as a chaplain may be

eligible to receive HPSP scholarships under §§ 17.603(b)(2) and (3) as revised and made final in this rule. However, in order to be eligible under § 17.603(b)(2) the criteria in § 17.603(b)(1) still needs to be met, which provides that an HPSP scholarship will be awarded only when necessary to assist VA in alleviating shortages or anticipated shortages of personnel in the health professions stated in paragraph (b) of this section. These occupations are identified in OIG's Determination of Veterans Health Administration's Severe Occupational Staffing Shortages Fiscal Year 2023. However, the OIG's report did not list the chaplain occupation as one of the severe shortage occupations within VA. Therefore, VA cannot award HPSP scholarships to individuals who are pursuing a degree leading to a position as a VA chaplain at this time. VA may offer HPSP scholarships to these individuals in the future should there be a shortage of VA chaplains.

Employment in a mental health care profession.

A commenter questioned whether HPSP participants would be guaranteed placement in positions in VA that are mental health related if they are earning a degree that could be used to provide either mental health care or a different type of health care. VA is not making any changes based on this comment.

Pursuant to § 17.607(a), each participant is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Secretary. Consistent with § 17.607, individuals who are awarded an HPSP scholarship under § 17.603(b)(2), as revised and made final in this rule, will be placed in positions that are mental health related.

Comments that are beyond the scope of the proposed rule

Several comments were beyond the scope of the proposed rule. For instance, one commenter indicated that health care professionals need more mental health training. Another commenter requested changes be made to other VA directives and policies to better incorporate PAs as mental health providers. As these comments are beyond the scope of the rulemaking, we will not address them further.

Based on the rationale set forth in the proposed rule and in this final rule, VA is adopting the proposed rule as final with no changes.

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.

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). This final rule will solely be operated and administered within VA and will only affect individuals who apply and are awarded an HPSP scholarship. On this basis, the Secretary certifies that the adoption of 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. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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

Although this final rule contains an increase in the provisions constituting a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), this increase is already captured in an existing collection of information. The collection of information for 38 CFR 17.602 is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control

number 2900-0793. However, § 17.602 incorrectly reflects OMB control number 2900-0352. VA is correcting this technical error in this rulemaking by updating the reference in § 17.602 to OMB control number 2900-0793.

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 Part 17

Administrative practice and procedure, Health care, Health facilities, Health professions, Scholarships and fellowships.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 12, 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 part 17 as set forth below:

PART 17 - MEDICAL

1. The authority citation for part 17 is amended by adding an entry for §§ 17.600 through 17.612, in numerical order, to read as follows:

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

* * * * *

Sections 17.600 through 17.612 are also issued under 38 U.S.C. 7601-7619, 7633, 7634, 7636, and sec. 104(a), div. V, Pub. L. 117-328.

* * * * *

§ 17.602 [Amended]

2. Amend § 17.602 by revising the parenthetical at the end of the section to read as follows:

§ 17.602 Eligibility.

* * * * *

(Approved by the Office of Management and Budget under control number 2900–0793)

§ 17.603 [Amended]

3. Amend § 17.603 by:

- a. Redesignating paragraph (b)(2) as new paragraph (b)(3); and
- b. Adding new paragraph (b)(2) to read as follows:

§ 17.603 Availability of HPSP scholarships.

* * * * *

(b) * * *

(2) *Mental health disciplines.* Notwithstanding paragraphs (b)(1) and (3) of this section, VA will award not less than 83 HPSP scholarships each year to individuals who are accepted for or are enrolled in a program of education or training leading to employment in a mental health discipline, including, but limited to, advanced practice nursing (with a focus on mental health or substance use disorder), psychology, or social work.

* * * * *

[FR Doc. 2024-13367 Filed: 6/17/2024 8:45 am; Publication Date: 6/18/2024]