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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 17 and 43

RIN 2900-AP04

Updating Certain Citations in VA Medical Regulations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is making technical amendments to its medical regulations by updating the statutory authorities identified in certain sections where those statutes have been renumbered or where the authority citation is inaccurate for other technical, nonsubstantive reasons. VA is also amending outdated or incorrect cross-references to other Code of Federal Regulation sections.

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

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SUPPLEMENTARY INFORMATION:

To ensure the accuracy of VA's regulations, VA is updating the cross-references and authority citations in 38 CFR part 17. Virtually every section in part 17 has been

amended, often more than once, since part 17's initial publication on November 27, 1948, originally codified as part 25 in 38 CFR's first publication in 1938. 13 FR 7155. As regulations in part 17 were amended, other regulations that cross-referenced the amended regulations were not always updated. In addition, various statutes cited in our regulations have been renumbered since the initial publication of part 17. Finally, we have identified a few instances of erroneous references or citations to statutes and to regulations in part 17. Therefore, VA is amending the citations and authorities in its medical regulations to correct these oversights. VA is not making any substantive edits to the content of the sections amended by this rulemaking.

We are also amending the authority for part 43 of 38 CFR, as discussed below.

Section 17.30 Definitions

Paragraph (a) of § 17.30 defines medical services. Paragraph (a)(1) of § 17.30 cites 38 U.S.C. 1762 as the source of the statutory definition for preventive health services. The text of section 1762 was transferred to subsection (9) of 38 U.S.C. 1701 by the Veterans Health Care Act of 1992, Sec. 513, Pub. L. 102-585, 106 Stat. 4943 (1992). We are, therefore, updating the citation for preventive health services, in the definition of medical services under § 17.30(a)(1) to correctly cite section 1701(9).

Also, § 17.30(a)(3) reads that the entitlement information for transportation and incidental expenses is located at § 17.143. Section 17.143 was marked as reserved on

June 30, 2008, and the content was moved to § 70.10. 73 FR 36798. We are amending § 17.30(a)(3) to provide the correct reference to § 70.10.

Paragraph (b) of § 17.30 defines “domiciliary care” as “the furnishing of a home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services. The term further includes travel and incidental expenses pursuant to § 17.143.” Section 17.143 was marked as reserved on June 30, 2008. 73 FR 36798. The content of § 17.143 was moved to a new 38 CFR part 70 as § 70.10. We are replacing the reference to § 17.143 with the correct reference to § 70.10.

Section 17.43 Persons entitled to hospital or domiciliary care

Paragraph (c) of § 17.43 was originally added as paragraph (d) of § 17.46 on May 4, 1967. 32 FR 6841. The paragraph stated that hospital care may be provided “pursuant to a sharing agreement entered into under § 17.210.” Section 17.210, Sharing specialized medical resources, was established in the same regulatory action. On May 13, 1996, VA redesignated § 17.46 as § 17.43, and § 17.210 as § 17.240. 61 FR 21964. However, VA did not update § 17.43(c) to reflect the new citation for § 17.240. We are replacing the reference to § 17.210 in § 17.43 with the correct CFR reference, § 17.240.

Paragraph (d) of § 17.43 cross-references § 17.101 as the regulation containing information regarding charges for authorized services. However, on April 27, 1999, VA

renumbered § 17.101 as § 17.102. 64 FR 22676. We are amending § 17.43(d) to correctly cross-reference § 17.102.

Section 17.45 Hospital care for research purposes

Section 17.45 reads that “[s]ubject to the provisions of § 17.62(g), any person who is a bona fide volunteer may be admitted to a Department of Veterans Affairs hospital when the treatment to be rendered is part of an approved Department of Veterans Affairs research project and there are insufficient veteran-patients suitable for the project.” Section 17.62(g) of 38 CFR was renumbered as § 17.101(g) on May 13, 1996. 61 FR 21964. Section § 17.101(g) was then renumbered as § 17.102(g) on April 27, 1999. 64 FR 22676. VA did not update § 17.45 to reflect these changes. We are, therefore, updating § 17.45 to correctly cite § 17.102(g). We are also eliminating the words “the provisions of” from the phrase “[s]ubject to the provisions of § 17.102(g)” because these words do not add meaning to the sentence.

Section 17.47 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care

Paragraph (b)(1) of § 17.47 references § 3.800 for cases involving disability or death due to hospitalization under 38 U.S.C. 1151. At the time that § 17.47 was written, § 3.800 was the correct reference for cases involving disability or death due to hospitalization under 38 U.S.C. 1151. Section 3.800 applies to claims received before October 1, 1997. However, section 422(a) of Public Law 104-204 created the authority for claims received by VA on or after October 1, 1997, which VA codified as § 3.362. 63

FR 45004, Aug. 24, 1998; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Sec. 422(a), Pub. L. 104-204, 110 Stat. 2926-2927 (1996). We are amending § 17.47(b)(1) to correctly reflect the cross-reference of § 3.362 and § 3.362(b), as appropriate.

Section 17.47(d)(3) incorrectly cites 38 U.S.C. 1111(a) as the authority for the maximum rates of pension. When § 17.48(d)(3), the precursor to § 17.47(d)(3), was promulgated, we inadvertently referenced 38 U.S.C. 311(a), the precursor of 38 U.S.C. 1111(a), as the authority for the maximum rates of pension. 51 FR 25065. When section 311 was renumbered as section 1111, we revised § 17.47(d)(3) to reflect the change. 57 FR 31015. However, the original citation should have been to 38 U.S.C. 3112, not 311(a). Section 3112 has since been renumbered as 38 U.S.C. 5312. Department of Veterans Affairs Health-Care Personnel Act of 1991, Sec. 402, Pub. L. 102-40, 105 Stat. 187 (1991). We are updating § 17.47(d)(3) to reflect the correct cross-reference of 38 U.S.C. 5312(a).

Prior to the enactment of the Veterans' Health Care Eligibility Reform Act of 1996 (Act of 1996), Sec. 101, Pub. L. 104-262, 110 Stat. 3177, 38 U.S.C. 1712 served as the statutory authority for VA to provide outpatient and ambulatory care. This authority was moved by the Act of 1996 from 38 U.S.C. 1712 to 38 U.S.C. 1710. Section 1712 currently addresses dental care, drugs and medicines for certain disabled veterans, and vaccines. Section 1710 addresses eligibility for hospital, nursing home and domiciliary care.

Paragraph (f) of § 17.47 cites 38 U.S.C. 1710(a)(2) as the authority for nursing home care and section 1712(a)(4) as the authority for outpatient care. The language of section 1710(a)(2) was revised and redesignated as 1710(a)(3) by the Act of 1996, and 38 U.S.C. 1712(a)(4) refers to a contract dental care reporting requirement. Therefore, we are amending paragraph (f) to correctly reference 38 U.S.C. 1710(a)(3) instead of 38 U.S.C. 1710(a)(2) and 1712(a)(4) and to eliminate the reference to 38 U.S.C. 1712(a)(4).

Paragraphs (g)(1) and (2) of § 17.47 cite paragraphs (e), (f), (h), (i), (j), and (k) of § 17.60 as the provisions that govern outpatient medical services. Section 17.60 was amended on May 15, 1990. 55 FR 20150. As amended, § 17.60 did not include paragraphs (h), (i), (j), or (k) and new paragraphs (e) and (f) did not contain the same information as the previous paragraphs (e) and (f). On May 13, 1996, § 17.60 was renumbered as § 17.93. 61 FR 21965. We are correcting §§ 17.47(g)(1) and (g)(2) to cross-reference § 17.93.

Section 17.48 Compensated work therapy/transitional residences program

The authority citation at the end of § 17.48 is 38 U.S.C. 1772. However, section 5(a) of Public Law 107-95 renumbered 38 U.S.C. 1772 as 38 U.S.C. 2032. Homeless Veterans Comprehensive Assistance Act of 2001, Sec. 5(a), Pub. L. 107-95, 115 Stat. 903 (2001). We are updating the authority citation in § 17.48 to reflect this change.

Section 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Department of Veterans Affairs

Current § 17.50 cross-references §§ 17.46b, 17.47, 17.47(b)(2), and 17.47(c)(2). On July 10, 1986, VA amended § 17.47(c) by redesignating paragraph (c)(3) as (e)(1) and paragraphs (c)(1) and (2) became new paragraph (c). 51 FR 25064. On May 13, 1996, VA redesignated § 17.46b as § 17.44. 61 FR 21965. VA also removed paragraphs (a), (c), and (d) from § 17.47, and paragraphs (b) and (e) of § 17.47 became paragraphs (a) and (b) of § 17.46. VA amended § 17.50 to correctly cross-reference § 17.44 but did not update the cross-references to § 17.46 or § 17.47. We are correcting this oversight by amending the third sentence of § 17.50 to read, “Care in a Federal facility not operated by VA, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.44, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under § 17.44 or § 17.46(a)(2) regardless of whether he or she may have dual eligibility under other provisions of § 17.46.” We also amend § 17.50 to use VA instead of Department of Veterans Affairs, which is the modern trend in our regulations.

Section 17.52 Hospital care and medical services in non-VA facilities

Paragraph (a)(1)(v) of § 17.52 reads that non-VA care will be authorized “[f]or any disability of a veteran participating in a rehabilitation program under 38 U.S.C. ch. 31 and when there is a need for hospital care or medical services for any of the reasons enumerated in § 17.48(j).” Section 17.48 was redesignated as § 17.47 on May 13, 1996. 61 FR 21966. Paragraph (j) of § 17.47 was redesignated as § 17.47(i) on

October 6, 1999. 64 FR 54218. However, § 17.52 has not been amended to reflect these changes. We are removing the reference to § 17.48(j) and replacing it with § 17.47(i).

Also, § 17.52(b)(2) references § 17.48(e), but we have eliminated paragraphs (e)(1) through (5) of § 17.48. See 61 FR 21966. The information contained in former § 17.48(e)(1) through (5) is found in 38 U.S.C. 1710. For this reason, we are removing the reference to § 17.48(e) and citing to 38 U.S.C. 1710 instead.

Section 17.57 Use of community nursing homes

Paragraph (b) of § 17.57 reads, “To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in 38 U.S.C. 1710(a)(1), the Under Secretary for Health may furnish care under this paragraph to any veteran described in 38 U.S.C. 1710(a)(2) if the veteran agrees to pay the United States an amount as determined in 38 U.S.C. 1710(f).” Among other things, the Act of 1996 amended 38 U.S.C. 1710 by revising the language of subsection (a)(1) and redesignating it as (a)(1) and (2). The Act of 1996 also revised subsection (a)(2) and redesignated it as subsection (a)(3). Accordingly, we are amending paragraph (b) of § 17.57 by replacing 38 U.S.C. 1710(a)(1) with 38 U.S.C. 1710(a)(1) and (2), and by replacing 38 U.S.C. 1710(a)(2) with 38 U.S.C. 1710(a)(3).

Section 17.90 Medical care for veterans receiving vocational training under 38 U.S.C. chapter 15

Paragraph (a) of § 17.90 cross-references § 17.47(j) for the definition of “participating in a rehabilitation program under 38 U.S.C. chapter 31.” On October 6, 1999, VA redesignated paragraph (j) of § 17.47 as paragraph (i). 64 FR 54218. However, § 17.90(a) was not updated to reflect this amendment. We are amending § 17.90(a) to correctly cross-reference § 17.47(i).

Section 17.93 Eligibility for outpatient services

The authority citation after § 17.93(a) is 38 U.S.C. 1712. However, as previously stated in this rulemaking, the statute that covers outpatient services is now 1710. We are adding 1710 to the authority citation after § 17.93(a).

Current paragraph (b) of § 17.93 defines the term “shall furnish” as used in this section and 38 U.S.C. 1712(a)(1) and (2). Because § 17.93 regulates eligibility for outpatient services, sections 1712(a)(1) and (2) are no longer the correct authority for this discussion. We are amending paragraph (b) by replacing 38 U.S.C. 1712(a)(1) and (2) with the correct reference, which is 38 U.S.C. 1710(a)(1) and (2).

Paragraph (c)(1) of § 17.93 cross-references § 17.47(j) for the definition of “participating in a rehabilitation program under 38 U.S.C. chapter 31.” On October 6, 1999, VA redesignated paragraph (j) of § 17.47 as paragraph (i). 64 FR 54218. However, § 17.93(c)(1) was not updated to reflect this amendment. We are amending § 17.93(c)(1) to correctly cross-reference § 17.47(i).

The authority citation at the end of current § 17.93 is 38 U.S.C. 1717. Section 17.60, the precursor to § 17.93, was published on May, 15, 1990, and it included a paragraph (f), which addressed home health services and for which the authority was section 617, the precursor to section 1717. 55 FR 20151. However, paragraph (f) was deleted on May 13, 1996, making 38 U.S.C. 1717 an incorrect authority for § 17.93. 61 FR 21965. We are deleting section 1717 from the authority citation of § 17.93 and adding in its place 1710 and 1712.

Section 17.95 Outpatient medical services for Department of Veterans Affairs employees and others in emergencies

Current § 17.95 cross-references § 17.101 for charges for care or services in emergencies. As previously stated in this rulemaking, § 17.101 was renumbered to § 17.102 on April 27, 1997. 64 FR 22676. Therefore, we are amending § 17.95 to correctly cross-reference § 17.102.

Section 17.95 cites 38 U.S.C. 1711 as the authority for outpatient medical services for VA employees and others in emergencies. Section 1711 is the precursor to section 611, which was added as the authority on December 30, 1982, when VA published a new paragraph (b) to § 17.60b, the precursor to § 17.95. 47 FR 58249. However, on May 13, 1996, VA redesignated § 17.60b as new § 17.95 and removed the paragraph (b) that was added on December 30, 1982. 61 FR 21965. Because paragraph (b) was removed, 38 U.S.C. 1711 is no longer a correct authority citation for

§ 17.95. We are amending the authority citation in § 17.95 to cite the correct authority, 38 U.S.C. 1784.

Section 17.96 Medication prescribed by non-VA physicians

The authority for § 17.96 is currently 38 U.S.C. 1706, 1710, 17.12(d). However, 17.12(d) is not a section within 38 U.S.C. We are amending the authority for § 17.96 to correctly read, 38 U.S.C. 1706, 1710, 1712(d).

Section 17.98 Mental health services

Paragraph (a) of § 17.98 reads that “[f]ollowing the death of a veteran, bereavement counseling involving services defined in 38 U.S.C. 1701(6)(B), may be furnished to persons who were receiving mental health services in connection with treatment of the veteran under 38 U.S.C. 1710, 1712, 1712A, 1713, or 1717, or 38 CFR 17.84”. Section 1701(6)(B) of the United States Code was renumbered as section 1783. Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, Sec. 208, Pub. L. 107-135, 115 Stat. 2461 (2002). We are amending § 17.98(a) by replacing 1701(6)(B) with 1783. For this same reason, we are removing 1701(6)(B) as the authority citation for the section and adding 1783 in its place.

The Act of 1996 removed from 38 U.S.C. 1712 the provisions that govern outpatient care. Therefore, it is no longer accurate to state that treatment under section 1712 is covered for purposes of § 17.98. We are removing section 1712 from paragraph (a) of § 17.98, leaving the correct reference to section 1710. Also, 38 U.S.C.

1713 was renumbered as section 1781. Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, Sec. 208(c), Pub. L. 107-135, 115 Stat. 2461 (2002). We are amending § 17.98(a) by replacing section 1713 with section 1781. Section 17.84 was marked as reserved on September 9, 1998. 63 FR 48102. Because it contains no substantive content, we are removing the reference to § 17.84 from § 17.98.

Section 17.106 VA collection rules; third-party payers

Paragraph (c)(3) of § 17.106 reads, “The remedies authorized for collection of indebtedness due the United States under 31 U.S.C. 3701, et seq., 4 CFR parts 101 through 104, 28 CFR part 11, 31 CFR part 900, and 38 CFR part 1, are available to effect collections under this section.” On November 22, 2000, 4 CFR parts 101 through 104 were removed. 65 FR 70405. We are amending § 17.106(c)(3) by removing the cross-reference to “4 CFR parts 101 through 104.” We are also amending the cross-reference to 31 CFR part 900 to more accurately reflect the pertinent parts within 31 CFR, which are parts 900 through 904.

Section 17.107 VA response to disruptive behavior of patients

Section 17.107 of 38 CFR contains a Note at the end of the section that reads, “Note to § 17.106”. On June 24, 2011, 76 FR 37204, VA renumbered § 17.106 as § 17.107, but the Note was not amended to reflect this change. We are amending the Note at the end of § 17.107 to reflect the correct section number.

Section 17.142 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services

Paragraph (a) of § 17.142 authorizes the Under Secretary for Health to enter into “[s]haring agreements authorized under the provisions of 38 U.S.C. 8153 and § 17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8–3.204(c)”.

Section 17.210 was renumbered as § 17.240 on May 13, 1996. 61 FR 21966. Also, title 41 CFR was reorganized in 1983, eliminating paragraph 8–3.204(c). Title 41 was subsequently amended and § 8-3.204 was removed. We believe that it is sufficient to cite 38 U.S.C. 8153 as the authority for VA contracts. We are amending § 17.142(a) to read, “Sharing agreements authorized under 38 U.S.C. 8153 and § 17.240”.

Paragraph (c) of § 17.142 reads, “Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in § 17.99. All such contracts and agreements will be negotiated pursuant to 41 CFR chapters 1 and 8.” The approval referred to in this paragraph is VA’s approval of contracts authorized under 38 U.S.C. 513, which allows VA to enter into contracts or agreements with private or public agencies or persons. Although this paragraph (c) states that section 513 is the authority for medical and ancillary services, VA has determined that section 513 may not be used to procure services constituting day-to-day medical care operations. VA’s authority for such services is now 38 U.S.C. 8153. We are amending paragraph (c) to cite to 38 U.S.C. 8153. Section 104 of Public Law 104-262 allowed for some categories of veterans to be eligible for VA hospital and outpatient care even if not enrolled in the VA healthcare system. Veterans’ Health Care

Eligibility Reform Act of 1996, Sec. 104, Pub. L. 104-262, 110 Stat. 3177 (1996).

Section 17.37 was promulgated in response to the enactment of the public law, and § 17.99 was removed because it became redundant. 64 FR 54218. However, § 17.37 does not authorize VA to enter into contracts with non-VA facilities. The delegation of authority for purchase orders or individual contracts is found in 48 CFR 801.670-3.

Therefore, we are amending § 17.142(c) to correctly cite to 48 CFR 801.670-3. Also, because chapters 1 and 8 of 41 CFR no longer exist, we are amending the last sentence of § 17.142(c) to reflect the current contracting procedures for health-care resources, which are 48 CFR chapters 1 and 8. We are also removing 38 U.S.C. 513 as the authority for § 17.142 because VA's authority for contract medical and ancillary services is now 38 U.S.C. 8153, which is already cited as an authority to this section.

Section 17.150 Prosthetic and similar appliances

Paragraph (a) of § 17.150 references 38 U.S.C. 1712 as the authority for providing appliances or repairs as part of outpatient care. As previously stated in this rulemaking, the correct statutory authority for outpatient care is section 1710. We are removing the reference to section 1712 from paragraph (a) and replacing it with a reference to section 1710.

Paragraph (b)(4) of § 17.150 cross-references § 17.48(f) for the authorization of the treatment of nonservice-connected disabilities. Section 17.48(f) was renumbered several times as follows: as § 17.48(i) on July 10, 1986, 51 FR 25061; as § 17.47(i) on

May 13, 1996, 61 FR 21966; and, finally, as § 17.47(h) on October 6, 1999, 64 FR 54218. We are amending § 17.150(b)(4) to correctly cross-reference § 17.47(h).

Section 17.152 Devices to assist in overcoming the handicap of deafness

The authority citation for § 17.152 is 38 U.S.C. 3902. Section 3902 is the authority for assistance for providing automobiles and adaptive equipment for automobiles. The correct authority citation for § 17.152 is 38 U.S.C. 1717(c), Home health services; invalid lifts and other devices. We are amending § 17.152 to correct the authority citation to 38 U.S.C. 1717(c).

Section 17.160 Authorization of dental examinations

Paragraph (h) of § 17.160 reads, “Persons defined in § 17.60(d).” On May 13, 1996, § 17.60 was renumbered as § 17.93. 61 FR 21965. We are amending § 17.160(h) to correctly cross-reference § 17.93.

Section 17.161 Authorization of outpatient dental treatment

The authority citation after paragraph (e) of § 17.161 cites 38 U.S.C. 1712(b)(1)(F). On October 9, 1996, 38 U.S.C. 1712(b)(1)(F) was redesignated as 1712(a)(1)(F). Veterans’ Health Care Eligibility Reform Act of 1996, Sec. 101(c)(1), Pub. L. 104-262, 110 Stat. 3177 (1996). We are amending the authority citation after § 17.161(e) to correctly read, 38 U.S.C. 1712(a)(1)(F).

Section 17.163 Posthospital outpatient dental treatment

The authority citation for § 17.163 is 38 U.S.C. 1712(b)(5). On January 31, 1980, the authority citation for § 17.123b, the precursor to § 17.163, was 38 U.S.C. 612(b)(5). 45 FR 6939. However, section 103(a) of Public Law 97-72 amended 38 U.S.C. 612 by redesignating section 612(b)(5) as 612(b)(1)(E), which later became 38 U.S.C. 1712(b)(1)(E), on August 6, 1991. Veterans' Health Care, Training, and Small Business Loan Act of 1981, Sec. 103(a), Pub. L. 97-72, 95 Stat. 1047; Department of Veterans Affairs Codification Act, Sec. 5, Pub. L. 102-83, 105 Stat. 378 (1991). Also, on October 9, 1996, 38 U.S.C. 1712(b)(1)(E) was redesignated as 1712(a)(1)(E). Veterans' Health Care Eligibility Reform Act of 1996, Sec. 101(c)(1), Pub. L. 104-262, 110 Stat. 3177 (1996). Although the authority citation was amended to 38 U.S.C. 1712, the correct citation is 1712(a)(1)(E) and not 1712(b)(5). Accordingly, we are amending the authority citation of § 17.163 to correctly refer to 38 U.S.C. 1712(a)(1)(E).

Section 17.180 Delegation of authority

Paragraph (b) of § 17.180 cross-references 38 U.S.C. chapter 75 for the statutes that address the Veterans Canteen Service. On May 7, 1991, section 402(a) of Public Law 102-40 redesignated chapter 75 of 38 U.S.C. as chapter 78. Department of Veterans Affairs Health-Care Personnel Act of 1991, Sec. 402(a), Pub. L. 102-40, 105 Stat. 187 (1991). We are amending § 17.180(b) to correctly cite 38 U.S.C. chapter 78.

Section 17.197 Amount of aid payable

Current § 17.197 cross-references 38 U.S.C. 1741(a)(1) as the authority for the per diem rates for domiciliary care, and 38 U.S.C. 1741(a)(3) as the authority for the per diem rates for hospital care. On May 20, 1988, section 134 of Public Law 100-322 amended subsection (a) of 38 U.S.C. 641, the precursor of 38 U.S.C. 1741, by removing paragraphs (1) through (3) and adding new paragraphs (1) and (2). Veterans Benefits and Services Act of 1988, Sec. 134, Pub. L. 100-322, 102 Stat. 487 (1988). Also, on October 9, 1996, section 342 of Public Law 104-262 redesignated subsections (a)(1) and (2) of 1741 as subsections (a)(1)(A) and (B). Veterans' Health Care Eligibility Reform Act of 1996, Sec. 342, Pub. L. 104-262, 110 Stat. 3177 (1996). We are amending § 17.197 to state the correct authority for the per diem rates for domiciliary care as 38 U.S.C. 1741(a)(1)(A), and the authority for the per diem rates for hospital care as 38 U.S.C. 1741(a)(1)(B).

Section 17.230 Contingency backup to the Department of Defense

The second sentence of § 17.230(b) cites 38 U.S.C. 1712(f) and (g) as the authority for veterans receiving outpatient care. However, 38 U.S.C. 1712(g) was repealed by section 101(e)(2)(B) of Public Law 100-322. Veterans Benefits and Services Act of 1998, Sec. 101(e)(2)(B), Pub. L. 100-322, 102 Stat. 487 (1988). Also, section 1712(f) was transferred to 38 U.S.C. 1710(g) by section 101 of Public Law 104-262. Veterans' Health Care Eligibility Reform Act of 1996, Sec. 101, Pub. L. 104-262, 110 Stat. 3177 (1996). We are, therefore, amending paragraph (b) of § 17.230 by removing 38 U.S.C. 1712(g) and replacing 38 U.S.C. 1712(f) with 38 U.S.C. 1710(g).

Section 17.240 Sharing healthcare resources

On October 9, 1996, section 301(c)(1)(A) of Public Law 104-262 amended 38 U.S.C. 8153 by substituting “health-care resources” for “certain specialized medical resources;” “other health-care resources” for “other medical resources;” and “of health-care resources between Department health-care facilities and any health-care provider, or other entity or individual” for a listing of the different health care facilities. Veterans’ Health Care Eligibility Reform Act of 1996, Sec. 301(c)(1)(A), Pub. L. 104-262, 110 Stat. 3177 (1996). However, VA did not update § 17.240 to conform with the amendments to the public law. We are now amending the title in § 17.240 from “Sharing specialized medical resources” to “Sharing health-care resources.” We are also removing the term “specialized medical” where it appears in § 17.240 and adding, in its place, “health-care.” Lastly, we are removing “with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions, or medical schools or clinics in a medical community” from the introductory paragraph in § 17.240 and adding, in its place “between Department health-care facilities and any health-care provider, or other entity or individual.”

Section 17.255 Applications for grants for programs which include construction projects

Paragraph (c) of § 17.255 cross-references 40 U.S.C. 276a through 276a-5, The Davis-Bacon Act, as the statute that deals with local wage rates for laborers and mechanics engaged in construction activities. The Davis-Bacon Act, which was

originally codified as 40 U.S.C. 276a to 276a-5, was repealed and reenacted as sections 3141-3144, 3146, and 3147, codifying Title 40, United States Code-Public Buildings, Property, and Works, Sec. 1, 6(b), Pub. L. 107-217, 116 Stat. 1062 (2002). We are amending § 17.255 to cross-reference 40 U.S.C. 3141-3144, 3146, and 3147. We are also eliminating the reference to the term “the Davis-Bacon Act” at the end of paragraph (c).

Section 17.277 Third-party liability/medical care cost recovery

The current authority citation for § 17.277 includes 28 U.S.C. 2651. However, section 2651 is not a section under title 28 U.S.C. The correct reference should be to section 2651 of title 42. We are amending the authority citation for § 17.277 to correctly cite 42 U.S.C. 2651.

Section 17.509 Authorized disclosure: Non-Department of Veterans Affairs requests

The last sentence of paragraph (a) of § 17.509 reads, “The procedures outlined in 38 CFR 1.500 through 1.584 will be followed where applicable.” On June 7, 1996, VA removed, and marked as reserved, §§ 1.558, 1.559, 1.578, 1.581, 1.583, and 1.584. 61 FR 29023. These sections were removed because they were duplicative of language from the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a. We are amending § 17.509 to correctly cross-reference the procedures outlined in 38 U.S.C. 5701, 5 U.S.C. 552 and 552a, and 38 CFR 1.500 through 1.582.

Section 17.608 Deferment of obligated service

The authority citation for § 17.608(a) is 38 U.S.C. 7616(a)(A)(i). However, section 7616 does not contain a subsection (a)(A)(i). On July 7, 1989, VA cited section 4316(a)(A)(i) as the authority for § 17.608(a). 54 FR 28675. However, the citation should have been 4316(b)(3)(A)(i). Veterans Benefits and Services Act of 1988, Sec. 216, Pub. L. 100-322, 102 Stat. 487 (1988). That section was later renumbered as 38 U.S.C. 7616. Department of Veterans Affairs Health-Care Personnel Act of 1991, Sec. 402, Pub. L. 102-40, 105 Stat. 187 (1991). Therefore, we are correcting the authority citation after paragraph (a) of § 17.608 to correctly cite 38 U.S.C. 7616(b)(3)(A)(i).

Section 17.609 Pay during period of obligated service

The first sentence of § 17.609 cross-references 38 U.S.C. 7404(b)(1). Subsection (b)(1) of section 7404 was removed on December 3, 2004. Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004, Sec. 3(a), Pub. L. 108-445, 118 Stat. 2636 (2004). We are revising the first sentence of § 17.609 to correctly cross-reference 38 U.S.C. 7404(b).

The authority citation for § 17.609 cites Public Law 96-330, section 202 and 38 U.S.C. 7431-7440. We are removing the reference to Public Law 96-330, section 202 because it is no longer the authorizing statute for the Health Professional Scholarship Program. See Caregivers and Veterans Omnibus Health Services Act of 2010, Sec. 603, Pub. L. 111-163, 124 Stat. 1173 (2010). We are also eliminating 38 U.S.C. 7434 through 7440 from the authority citation. These sections were removed on December 3,

2004, by the Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004. Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004, Sec. 3(b), Pub. L. 108-445, 118 Stat. 2636 (2004). We are amending the authority citation to correctly cite 38 U.S.C. 7431 through 7433.

Section 17.900 Definitions

Section 17.900 defines the term “child for purposes of spina bifida” to mean “the same as individual as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as individual as defined at § 3.815(c)(2) of this title.” On January 25, 2011, VA redesignated paragraph § 3.814(c)(2) as paragraph (c)(3). 76 FR 4249. We are amending the definition of the term “child” in § 17.900 to correctly cross-reference the definition of “individual” in § 3.814(c)(3).

Part 43 Uniform administrative requirements for grants and cooperative agreements to state and local governments

The current authority for 38 CFR part 43 is “38 U.S.C. 501, 1712.” The Act of 1996 removed the statutory authority for outpatient care from 38 U.S.C. 1712. Outpatient care is now covered under 38 U.S.C. 1710. However, the statutory authority for part 43 is not 38 U.S.C. 1710. Part 43 of 38 CFR outlines the procedures for grants and cooperative agreements to state and local governments, not eligibility for VA care. VA’s authority to prescribe regulations to carry out the laws administered by VA is 38 U.S.C. 501. We rely on this general authority for all of part 43 and, where applicable,

state specific sections that have an additional authority. We are, therefore, amending the authority citation for part 43 to read “38 U.S.C. 501, and as noted in specific sections.”

Administrative Procedure Act

This final rule will not amend the substantive content of the regulations cited. We are merely providing technical revisions to update outdated statutory references and statutory authorities. We are also updating outdated CFR references. Accordingly, notice-and-comment procedures are not necessary for this rulemaking, and we find good cause to make these changes effective immediately. Consequently, this rule is exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA’s implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary rules or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

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 directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

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. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity,

competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be 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 Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

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 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

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. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on September 2, 2014, for publication.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 43

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 9, 2014

William F. Russo
Deputy Director
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, we amend 38 CFR parts 17 and 43 as follows:

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.

§ 17.30 [Amended]

2. Amend § 17.30 by:

a. In paragraph (a)(1), removing “38 U.S.C. 1762,” and adding in its place “38 U.S.C. 1701(9),”.

b. In paragraph (a)(3), removing “§ 17.143.” and adding in its place “§ 70.10 of this chapter.”.

c. In paragraph (b), removing “§ 17.143.” and adding in its place “§ 70.10 of this chapter.”.

§ 17.43 [Amended]

3. Amend § 17.43 by:

a. In paragraph (c), removing “§ 17.210,” and adding in its place “§ 17.240,”.

b. In paragraph (d), removing “§ 17.101.” and adding in its place “§ 17.102.”

§ 17.45 [Amended]

4. Amend § 17.45 by removing “the provisions of § 17.62(g),” and adding in its place “§ 17.102(g),”.

§ 17.47 [Amended]

5. Amend § 17.47 by:

a. In paragraph (b)(1), removing all references to “§ 3.800” and adding in each place “§ 3.362”, and removing all references to “§ 3.800(a)(2)” and adding in each place “§ 3.362(b)”.

b. In paragraph (d)(3), removing “38 U.S.C. 1111(a)” and adding in its place “38 U.S.C. 5312(a)”.

c. In paragraph (f), removing “hospital or nursing home care under 38 U.S.C. 1710(a)(2) or outpatient care under 38 U.S.C. 1712(a)(4)” and adding in its place “hospital, nursing home, or outpatient care under 38 U.S.C. 1710(a)(3)”.

d. In paragraph (g)(1) introductory text, removing “paragraphs (e), (f), (i), (j), and/or (k) of § 17.60” and adding in its place “§ 17.93”.

e. In paragraph (g)(2) introductory text, removing “paragraph (e), (f), (h), (i), (j), or (k) of § 17.60,” and adding in its place “§ 17.93,”.

6. Amend § 17.48 by revising the authority citation to read as follows:

§ 17.48 Compensated Work Therapy/Transitional Residences program.

* * * * *

(Authority: 38 U.S.C. 2032)

7. Revise § 17.50 to read as follows:

§ 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Department of Veterans Affairs.

Hospital facilities operated by the Department of Defense or the Public Health Service (or any other agency of the United States Government) may be used for the care of VA patients pursuant to agreements between VA and the department or agency operating the facility. When such an agreement has been entered into and a bed allocation for VA patients has been provided for in a specific hospital covered by the agreement, care may be authorized within the bed allocation for any veteran eligible under 38 U.S.C. 1710 or § 17.44. Care in a Federal facility not operated by VA, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.44, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under § 17.44 or § 17.46(a)(2) regardless of whether he or she may have dual eligibility under other provisions of § 17.46.

§ 17.52 [Amended]

8. Amend § 17.52 by:

a. In paragraph (a)(1)(v), removing “§ 17.48(j).” and adding in its place “§ 17.47(i).”.

b. In paragraph (b)(2), removing “in § 17.48(e).” and adding in its place “under 38 U.S.C. 1710.”.

§ 17.57 [Amended]

9. Amend § 17.57(b) by:

a. Before the comma, and immediately after “1710(a)(1)” adding “and (a)(2)”.

b. Removing “38 U.S.C. 1710(a)(2)” and adding in its place “38 U.S.C. 1710(a)(3)”.

§ 17.90 [Amended]

10. Amend § 17.90(a) by removing “§ 17.47(j).” and adding in its place “§ 17.47(i).”.

11. Amend § 17.93 by:

a. Revising the authority citation for paragraph (a).

b. In paragraph (b), removing “38 U.S.C. 1712(a)(1)” and adding in its place “38 U.S.C. 1710(a)(1)”.

c. In paragraph (c)(1), removing “§ 17.47(j).” and adding in its place “§ 17.47(i).”

d. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.93 Eligibility for outpatient services.

(a) * * *

(Authority: 38 U.S.C. 1710, 1712)

* * * * *

(Authority: 38 U.S.C. 1710, 1712)

12. Amend § 17.95 by:

- a. Removing “§ 17.101” and adding in its place “§ 17.102”.
- b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 17.95 Outpatient medical services for Department of Veterans Affairs employees and others in emergencies.

* * * * *

(Authority: 38 U.S.C. 1784)

13. Amend § 17.96 by revising the authority citation at the end of the section to read:

§ 17.96 Medication prescribed by non-VA physicians.

* * * * *

(Authority: 38 U.S.C. 1706, 1710, 1712(d))

14. Amend § 17.98 by:

a. In paragraph (a), removing “38 U.S.C. 1701(6)(B)” and adding in its place “38 U.S.C. 1783”, and

b. In paragraph (a), removing “38 U.S.C. 1710, 1712, 1712A, 1713, or 1717, or 38 CFR 17.84 of this part,” and adding in its place “38 U.S.C. 1710, 1712A, 1717, or 1781,”.

c. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 17.98 Mental health services.

* * * * *

(Authority: 38 U.S.C. 1783)

§ 17.106 [Amended]

15. Amend § 17.106(c)(3) by:

a. Removing “4 CFR parts 101 through 104,” and

b. Removing “31 CFR part 900” and adding in its place “31 CFR parts 900 through 904”.

§ 17.107 [Amended]

16. Amend the Note at the end of § 17.107 by removing “§ 17.106” and adding in its place “§ 17.107”.

§ 17.142 [Amended]

17. Amend § 17.142 by:

a. In paragraph (a), removing “the provisions of 38 U.S.C. 8153 and § 17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8-3.204(c);” and adding, in its place “38 U.S.C. 8153 and § 17.240;”.

b. Revising paragraph (c).

c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.142 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.

* * * * *

(c) When a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 8153 for medical and ancillary services. The authority under this section generally will be exercised by approval of proposed contracts or agreements negotiated at the health care facility level. Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in 48 CFR 801.670--3. All such contracts and agreements will be negotiated pursuant to 48 CFR chapters 1 and 8.

(Authority: 38 U.S.C. 512, 7409, 8153)

§ 17.150 [Amended]

18. Amend § 17.150 by:

a. In paragraph (a), removing “38 U.S.C. 1712” and adding in its place “38 U.S.C. 1710”.

b. In paragraph (b)(4), removing “§ 17.48(f),” and adding in its place “§ 17.47(h),”.

19. Amend § 17.152 by revising the authority citation at the end of the section to read as follows:

§ 17.152 Devices to assist in overcoming the handicap of deafness.

* * * * *

(Authority: 38 U.S.C. 1717(c))

§ 17.160 [Amended]

20. Amend § 17.160(h) by removing “§ 17.60(d).” and adding in its place “§ 17.93.”

21. Amend § 17.161 by revising the authority citation for paragraph (e) to read as follows:

§ 17.161 Authorization of outpatient dental treatment.

* * * * *

(e) * * *

(Authority: Pub. L. 100-322; Pub. L. 108-170; 38 U.S.C. 1712(a)(1)(F))

* * * * *

22. Amend § 17.163 by revising the authority citation at the end of the section to read as follows:

§ 17.163 Posthospital outpatient dental treatment.

* * * * *

(Authority: 38 U.S.C. 1712(a)(1)(E))

§ 17.180 [Amended]

23. Amend § 17.180(b) by removing “38 U.S.C. ch. 75,” and adding in its place “38 U.S.C. ch. 78,”.

§ 17.197 [Amended]

24. Amend § 17.197 by:

a. Removing “title 38 U.S.C., section 1741(a)(1)” and adding in its place “38 U.S.C. 1741(a)(1)(A)”.

b. Removing “section 1741(a)(3)” and adding in its place “sec. 1741(a)(1)(B)”.

§ 17.230 [Amended]

25. Amend § 17.230(b) by removing “38 U.S.C. 1712(f) and (g)” and adding in its place “38 U.S.C. 1710(g)”.

26. Amend § 17.240 by:

a. Revising the section heading.

b. In the introductory text, removing “with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions, or medical schools or clinics in a

medical community” and adding, in its place, “between Department health-care facilities and any health-care provider, or other entity or individual”.

c. Removing all references to “specialized medical” and adding in each place “health-care”.

The revision reads as follows:

§ 17.240 Sharing health-care resources.

* * * * *

§ 17.255 [Amended]

27. Amend § 17.255(c) by removing “40 U.S.C. 276a-276a-5 (The Davis-Bacon Act).” and adding in its place “40 U.S.C. 3141-3144, 3146, and 3147.”.

28. Amend § 17.277 by revising the authority citation at the end of the section to read as follows:

§ 17.277 Third-party liability/medical care cost recovery.

* * * * *

(Authority: 42 U.S.C. 2651; 38 U.S.C. 501, 1781)

§ 17.509 [Amended]

29. Amend § 17.509(a) by removing “38 CFR 1.500 through 1.584” and adding in its place “38 U.S.C. 5701, 5 U.S.C. 552 and 552a, and 38 CFR 1.500 through 1.582”.

30. Amend § 17.608 by revising the authority citation for paragraph (a) to read as follows:

§ 17.608 Deferment of obligated service.

(a) * * *

(Authority: 38 U.S.C. 7616(b)(3)(A)(i))

* * * * *

31. Amend § 17.609 by:

a. Removing “section 7404(b)(1) of title 38 U.S.C.” and adding in its place “38 U.S.C. 7404(b)”.

b. Revising the authority citation at the end of the section to read as follows:

§ 17.609 Pay during period of obligated service.

* * * * *

(Authority: 38 U.S.C. 7431-7433)

§ 17.900 [Amended]

32. Amend § 17.900 in the definition of “Child” by removing “§ 3.814(c)(2)” and adding in its place “§ 3.814(c)(3)”.

PART 43 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND
COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

33. Revise the authority citation for part 43 to read as follows:

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

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