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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP21

Vet Centers

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulation that governs Vet Center services. The National Defense Authorization Act for Fiscal Year 2013 (the 2013 Act) requires Vet Centers to provide readjustment counseling services to broader groups of veterans, members of the Armed Forces, including a member of a reserve component of the Armed Forces, and family members of such veterans and members. This interim final rule amends regulatory criteria to conform to the 2013 Act, to include new and revised definitions.

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

Comment date: Comments must be received by VA on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP21 – Vet Centers.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

FOR FURTHER INFORMATION CONTACT: Michael Fisher, Readjustment Counseling Service (10RCS), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461-6525. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 17, 2013, VA promulgated 38 CFR 17.2000, which implemented VA’s authority to provide readjustment counseling services through Vet Centers based on 38 U.S.C. 1712A, as amended by the Caregivers and Veterans Omnibus Health Services Act of 2010 (the 2010 Act), Public Law 111-163, sec. 304, 401(a) and (b). The 2010 Act amended section 1712A to require VA to provide readjustment counseling services to certain servicemembers and

veterans who served on active duty in specific theaters of combat operations, or in certain areas in which hostilities occurred. The 2010 Act also mandated that VA provide readjustment counseling to veterans and servicemembers of Operation Enduring Freedom and Operation Iraqi Freedom, and the family members of such veterans and servicemembers after the veterans and servicemembers return from deployment. Although not expressly stated in the 2010 Act, VA also considered veterans, servicemembers, and the family members of such veterans and servicemembers who participated in Operation New Dawn as eligible for readjustment counseling. In promulgating § 17.2000, VA implemented the mandates in the 2010 Act, as well as interpreted section 1712A to permit VA to provide readjustment counseling to family members of all veterans that were themselves eligible for readjustment counseling. See 77 FR 14707 and 78 FR 57067. The term “servicemembers” as used in § 17.2000 means a member of the Armed Forces, including a member of a reserve component of the Armed Forces. We note, however, that the terms servicemembers and member of the Armed Forces, including a member of a reserve component of the Armed Forces, are not used consistently in § 17.2000. We are, therefore, amending § 17.2000 to reflect the statutory language, which is member of the Armed Forces, including a member of a reserve component of the Armed Forces. This change in term will not affect or otherwise change the types of individuals who are eligible to receive care in Vet Centers.

On January 2, 2013, Congress enacted the National Defense Authorization Act for Fiscal Year 2013, Public Law 112-239 (Jan. 2, 2013) (the 2013 Act), section 727 of

the 2013 Act amended section 1712A to broaden the groups of individuals who are eligible to receive readjustment counseling from VA. Section 17.2000 is revised to conform to these amendments. Section 1712A(a)(1)(C)(i) requires VA to provide readjustment counseling to veterans and members of the Armed Forces, including a member of a reserve component of the Armed Forces, who served on active duty in a theater of combat operations or an area at a time during which hostilities occurred in that area, without restricting eligibility to any specific theater during combat operations, or any specific area of hostilities. Paragraph (a) of § 17.2000 is revised to restate this statutory eligibility in new § 17.2000(a)(1)(i). We note that § 17.2000(a)(1)(i), as revised by this rulemaking, encompasses the categories of eligible veterans and members of the Armed Forces, including a member of a reserve component of the Armed Forces, that are listed in current § 17.2000(a)(1) through (a)(4). The revisions made by this rulemaking merely restate and reorganize the existing language to clarify that the listed individuals have been and will continue to be eligible for readjustment counseling. Section 1712A(a)(1)(C)(ii) requires that VA provide readjustment counseling to a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who provided direct emergency medical or mental health care, or mortuary services to the casualties of combat operations or hostilities, but who at the time was located outside the theater of combat operations or area of hostilities. Paragraph (a) of § 17.2000 is revised to restate this statutory eligibility in new § 17.2000(a)(1)(ii). Section 1712A(a)(C)(1)(iii) states that VA shall provide readjustment counseling to a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who engaged in combat with an enemy of the

United States or against an opposing military force in a theater of combat operations or an area at a time during which hostilities occurred in that area by remotely controlling an unmanned aerial vehicle, notwithstanding whether the physical location of such veteran or member during such combat was within such theater of combat operations or area. Paragraph (a) of § 17.2000 is revised to restate this statutory eligibility in new § 17.2000(a)(1)(iii).

VA consulted with the Department of Defense (DoD) to clarify the individuals who are considered as remotely controlling an unmanned aerial vehicle. DoD indicated that individuals who remotely control unmanned aerial vehicles includes, but is not limited to, individuals who pilot the unmanned aerial vehicle as well as individuals who are crew members of the unmanned aerial vehicle and participate in combat related missions. The crew members could include, but are not limited to, intelligence analysts or weapons specialists who control the cameras, engage the weapon systems, as well as those individuals who are directly responsible for the mission of the unmanned aerial vehicle. We defer to DoD's expertise in classifying the individuals who remotely control an unmanned aerial vehicle because they are the ultimate subject matter experts in this field. We are not restricting who VA considers to control an unmanned aerial vehicle, we are merely clarifying who is eligible for readjustment counseling services. This clarifying language is included in paragraph (a)(1)(iii).

Section 1712A(1)(C)(iv) requires that VA provide readjustment counseling to any individual who received counseling under this section before the date of the enactment

of the National Defense Authorization Act for Fiscal Year 2013. We are revising § 17.2000(a) to include these individuals as eligible to receive readjustment counseling under new § 17.2000(a)(2). New paragraph (a)(2) is added to clearly state that VA will continue to provide readjustment counseling to individuals who had been receiving such counseling prior to the 2013 Act.

Section 1712A(a)(1)(C)(v)(I) requires that readjustment counseling shall be provided to the family members of a member of the Armed Forces, including a member of a reserve component of the Armed Forces, who is serving on active duty in a theater of combat operations or in an area at a time during which hostilities are occurring in that area. Readjustment counseling shall also be provided to family members of veterans and members of the Armed Forces, including a member of a reserve component of the Armed Forces, who are eligible to receive readjustment counseling under section 1712A, namely those previously listed in this rulemaking. See 38 U.S.C. 1712A(a)(1)(C)(v)(II). Paragraph (a) of § 17.2000 is revised to restate this statutory eligibility in new § 17.2000(a)(3), which uses the broader language in section 1712A(a)(1)(C)(v)(II), because it encompasses the eligibility in (a)(1)(C)(v)(I). Current § 17.2000(a)(5) already provides readjustment counseling broadly to all family members, and new § 17.2000(a)(3) is merely a renumbering of current § 17.2000(a)(5).

Section 1712A provides a definition of the term “family member” that is substantively identical to the definition of “family member” in current § 17.2000(a)(5), and this definition will be restated in new § 17.2000(a)(3).

Current paragraph (d) of § 17.2000 contains a list of the readjustment counseling services provided by the Vet Centers, defines a “psychosocial assessment,” and generally states that readjustment counseling may be provided to eligible veterans and servicemembers, and to their family members when such services would aid in the readjustment of a veteran or servicemember. Section 1712A(a)(1)(B) of 38 U.S.C. uses the term “comprehensive individual assessment” with a definition identical to “psychosocial assessment” as it is currently used in § 17.2000. We will continue to use the term “psychosocial assessment” because it is the term most widely used in VA. We do not interpret the term “psychosocial assessment” to have a different meaning than the statutory term “comprehensive individual assessment.” We are adding paragraphs (d)(1) through (d)(3) to § 17.2000(d) to better explain when readjustment counseling is provided to veterans, members of the Armed Forces, including a member of a reserve component of the Armed Forces, and their family members, consistent with subsections (a)(1)(B)(i) and (a)(1)(B)(ii) of section 1712A. New § 17.2000(d)(1) states that readjustment counseling is provided for the readjustment of veterans and members of the Armed Forces, including a member of a reserve component of the Armed Forces, to civilian life or readjustment to continued military service following participation in or in support of operations in a combat theater or area of hostility. New § 17.2000(d)(2) states that readjustment counseling is provided for the readjustment of a family member of a member of the Armed Forces, including a member of a reserve component of the Armed Forces, to aid the family member in coping with such member’s deployment. We had previously stated in a proposed rulemaking that readjustment counseling was

provided to the veteran's or servicemember's family to assist such veteran in readjusting to civilian life, and further that the readjustment counseling provided to the family members is only to the extent that such readjustment relates to the veteran's or servicemember's military experience. 77 FR 14707, Mar. 13, 2012. The 2013 Act also states that readjustment counseling is provided to such individuals to assist the individual in coping with the veteran's or member's of the Armed Forces, including a member of a reserve component of the Armed Forces, deployment, to assist in the readjustment of the veteran or member to civilian life. We are amending § 17.2000 by adding a new paragraph (d)(3) to conform with the 2013 Act and current VA policy by stating that readjustment counseling is provided to a family member of a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, to aid in a veteran's or member's readjustment to civilian or continued military service following participation in or in support of operations in a combat theater or area of hostility, only as it relates to the veteran's or member's military experience.

Section 1712A(h)(1) defines the term "Vet Center." We add a substantively identical definition of "Vet Center" as the last sentence in § 17.2000(e), to mean "a facility that is operated by VA for the provision of services under this section and that is situated apart from a VA general health care facility." Section 17.2000(e) deals with the confidentiality of Vet Center records and this definition will reassure the individuals who receive readjustment counseling that VA maintains the confidentiality of records associated with readjustment counseling.

The authority citation at the end of § 17.2000 is currently 38 U.S.C. 501, 1712A, 1782, and 1783; Pub. L. 111-163, sec. 304, 401, and 402. Because the 2013 Act supersedes the 2010 Act, we amend the authority citation at the end of § 17.2000 to simply state 38 U.S.C. 501, 1712A, 1782, and 1783.

#### Administrative Procedure Act

In accordance with U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date. This interim final rule incorporates a specific program requirement mandated by Congress in Public Law 112-239. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. This rule will increase the pool of individuals who are eligible to receive mental health care at Vet Centers. This rule will also increase access to much needed mental health care services in Vet Centers. For the above reason, the Secretary issues this rule as an interim final rule. VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the Federal Register.

#### Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this interim 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 guidance

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

Although this action contains provisions constituting collections of information, at 38 CFR 17.2000, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for § 17.2000 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0787.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this interim 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 interim 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 OMB, unless OMB waives such review, 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://www.va.gov/orpm/>, by following the link for VA Regulations Published from Fiscal Year 2004 to Fiscal Year to Date.

### 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 interim 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 numbers and titles for the programs affected by this document are as follows: 64.009, Veterans Medical Care Benefits; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 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. Robert L. Nabors, II, Chief of Staff, approved this document on July 29, 2015, for publication.



## List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Drug abuse, Health care, Health facilities, Homeless, Mental health programs, Veterans.

Dated: July 29, 2015

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William F. Russo  
Acting Director  
Office of Regulation Policy & Management  
US Department of Veterans Affairs

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 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.

2. Amend § 17.2000 by:

a. Revising paragraph (a).

b. In paragraph (b) introductory text, removing the term “servicemember’s” and adding in its place “member’s of the Armed Forces, including a member of a reserve component of the Armed Forces,”.

b. Revising paragraph (d).

- c. Revising paragraph (e).
- d. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.2000 Vet Center services.

(a) Eligibility for readjustment counseling. Upon request, VA will provide readjustment counseling to any individual who:

(1) Is a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who:

(i) Served on active duty in a theater of combat operations or an area of hostilities (i.e., an area at a time during which hostilities occurred in that area); or

(ii) Provided direct emergency medical or mental health care, or mortuary services, to the casualties of combat operations or hostilities, but who at the time was located outside the theater of combat operations or area of hostilities; or

(iii) Engaged in combat with an enemy of the United States or against an opposing military force in a theater of combat operations or an area at a time during which hostilities occurred in that area by remotely controlling an unmanned aerial vehicle operations, notwithstanding whether the physical location of such veteran or member during such combat was within such theater of combat operations or area. Individuals who remotely control unmanned aerial vehicles includes, but is not limited to, individuals who pilot the unmanned aerial vehicle as well as individuals who are crew members of the unmanned aerial vehicle and participate in combat related missions. The crew members include, but are not limited to, intelligence analysts or weapons

specialists who control the cameras, engage the weapon systems, as well as those individuals who are directly responsible for the mission of the unmanned aerial vehicle.

(2) Received counseling under this section before January 2, 2013.

(3) Is a family member of a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, who is eligible for readjustment counseling under paragraphs (a)(1) or (a)(2) of this section. For purposes of this section, family member includes, but is not limited to, the spouse, parent, child, step-family member, extended family member, and any individual who lives with the veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, but is not a member of the veteran's or member's family.

\* \* \* \* \*

(d) Readjustment counseling defined. For the purposes of this section, readjustment counseling includes, but is not limited to: psychosocial assessment, individual counseling, group counseling, marital and family counseling for military-related readjustment issues, substance abuse assessments, medical referrals, referral for additional VA benefits, employment assessment and referral, military sexual trauma counseling and referral, bereavement counseling, and outreach. A "psychosocial assessment" under this paragraph means the holistic assessing of an individual's psychological, social, and functional capacities as it relates to their readjustment from combat theaters. Readjustment counseling is provided to:

(1) Veterans and members of the Armed Forces, including a member of a reserve component of the Armed Forces, for the purpose of readjusting to civilian life or readjustment to continued military service following participation in or in support of operations in a combat theater or area of hostility.

(2) A family member of a member of the Armed Forces, including a member of a reserve component of the Armed Forces, for the purpose of coping with such member's deployment.

(3) A family member of a veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, to aid in a veteran's or member's readjustment to civilian or continued military service following participation in or in support of operations in a combat theater or area of hostility, only as it relates to the veteran's or member's military experience.

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(e) Confidentiality. Benefits under this section are furnished solely by VA Vet Centers, which maintain confidential records independent from any other VA or Department of Defense medical records and which will not disclose such records without either the veteran's or member's of the Armed Forces, including a member of a reserve component of the Armed Forces, voluntary, signed authorization, or a specific exception permitting their release. For more information, see 5 U.S.C. 552a, 38 U.S.C. 5701 and 7332, 45 CFR parts 160 and 164, and VA's System of Records 64VA15, "Readjustment Counseling Service Vet Center Program." The term Vet Center means a

facility that is operated by VA for the provision of services under this section and that is situated apart from a VA general health care facility.

(Authority: 38 U.S.C. 501, 1712A, 1782, and 1783)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900-0787.)

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