



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP37

Removing Net Worth Requirement from Health Care Enrollment

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to remove the regulatory provision regarding consideration by the Department of Veterans Affairs (VA) of the net worth of a veteran's assets as a factor in determining the veteran's eligibility for lower-cost VA health care. Prior to January 1, 2015, VA considered both the net worth of a veteran's assets and the veteran's annual income when determining a veteran's eligibility. Because of that, certain veterans who would have been eligible for VA health care based on their annual income alone were ineligible for care because the net value of their assets was too high, or they were placed in a less favorable eligibility category. Reporting asset information imposed a significant paperwork burden on veterans, and VA dedicated significant administrative resources to verifying reported information. VA changed its policy to improve access to health care to lower-income veterans and remove the reporting burden from veterans by discontinuing collection of asset information. This rulemaking

would amend the regulation to remove the reference to VA's discretionary statutory authority to consider net worth.

DATES: Comment Date: Comments must be received 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; 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-AP37--Removing Net Worth Requirement from Health Care Enrollment." 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.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office, (10NB6), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 382-2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

This rulemaking proposes to amend VA's regulations governing enrollment in the VA health care system by removing the regulatory provision restating VA's discretionary authority to consider the net worth of a veteran's assets when determining eligibility for lower-cost health care.

Pursuant to 38 U.S.C. 1705, VA has established a health care enrollment system with implementing regulations at 38 CFR 17.36. When veterans apply for health care benefits, VA assigns a priority category that reflects the basis for that veteran's eligibility, such as whether the veteran has been rated as having a service-connected disability or would be unable to defray the costs of necessary expenses because of low income. The veteran is placed in the highest priority category possible. These categories are described in § 17.36(b). Priority categories are used by VA to determine which veterans are eligible to enroll in the VA health care system, which VA does on an annual basis, in accordance with § 17.36(c). The priority category is also used to determine the amount of copayments veterans must pay to receive VA medical benefits. Veterans who are not eligible for enrollment in priority categories 1 through 4 but who are unable to defray the expenses of necessary care under 38 U.S.C. 1722(a) are placed in priority category 5. 38 CFR 17.36(b)(5). This rulemaking would affect a regulatory provision related to that category. Veterans are considered to be unable to defray the costs of necessary care if they have a low annual income, qualify for VA pension benefits, or meet other criteria under 38 U.S.C. 1722(a) and 38 CFR 17.47(d). VA has the authority to use net worth asset values to determine whether a veteran is unable to defray the cost of care at 38 U.S.C. 1722(d)(1), but this authority is not mandatory; i.e., VA is not required to consider the value of the estate of a veteran for

this purpose. 38 U.S.C. 1722(d)(1) (“Notwithstanding the attributable income of a veteran,” VA may determine that such veteran is not eligible “if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some part of the corpus of the estate of the veteran be consumed for the veteran’s maintenance”).

In 2013, VA informed the public of its intent to discontinue annual financial assessment reporting by veterans. 78 FR 64065 (Oct. 25, 2013), 78 FR 79564 (Dec. 30, 2013). VA notified the public that it would no longer request annual financial assessments from veterans enrolled in income-based priority categories, and would only request financial assessments for the initial health care enrollment process. Because we received no adverse responses to those notices and for the reasons that follow, as VA announced in March 2015, VA used its discretion under 38 U.S.C. 1722(d)(1) to cease consideration of the net worth of veterans’ assets to determine whether they are able to defray the expenses of necessary care and qualify for inclusion in priority category 5, effective January 1, 2015. To avoid potential confusion, this rulemaking would remove the regulatory provision referencing VA’s discretionary authority to consider net worth for purposes of priority category 5.

By eliminating consideration of the net worth of a veteran’s assets for purposes of health care enrollment, more veterans would qualify for VA health care in a higher priority category, improving access and affordability of health care for many lower-income veterans. VA estimates that in the first year of implementation of this policy, 53,000 veterans would be moved to category 5 from a lower priority category and would be able to make lower copayments for VA care. Over five years, VA expects that 135,000 veterans who previously were ineligible would be able to enroll in the VA health

care system because of this change. This change also reduces administrative burdens for veterans and VA. The burden on veterans to supply asset information to VA on an annual basis was considerable. In contrast, the burden is much lower for veterans to provide only an initial report of annual income during the enrollment process and future verification only in those cases where VA identifies a change to the veteran's income that would result in a change to the veteran's priority group status. In past years, VA had expended significant resources on verifying the reported figures because asset values are subjective and difficult to verify. Through established practices with the Internal Revenue Service and Social Security Administration, VA can verify veterans' reported annual income far more efficiently than reported assets. Therefore, this policy has eliminated the significant burden on veterans to report the worth of their assets, and also eliminated the need for VA to use resources to verify that information.

In light of the preceding discussion, we propose to remove § 17.47(d)(5) in its entirety and renumber current § 17.47(d)(6) as § 17.47(d)(5). Current paragraph (d)(5) restates VA's discretionary statutory authority to use the value of a veteran's estate to determine whether he is able to defray the costs of care. By removing the regulatory restatement of VA's discretionary statutory authority to consider a veteran's net worth, VA removes language in the regulation that could be perceived as inconsistent with the policy change, which is favorable to veterans.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, represents the exclusive legal authority on this subject. No contrary rules

or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with this rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed 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 proposed rule would 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 proposed rule would directly affect only individuals and would 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 (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 FY 2004 Through 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 proposed rule would 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 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 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. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on October 9, 2015, for publication

List of Subjects in 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, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: October 15, 2015,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 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.

§ 17.47 [Amended]

2. Amend § 17.47 by removing paragraph (d)(5) and redesignating paragraph (d)(6) as new paragraph (d)(5).

[FR Doc. 2015-26606 Filed: 10/19/2015 08:45 am; Publication Date: 10/20/2015]