



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP42

Prescriptions in Alaska and U.S. Territories and Possessions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to remove its medical regulation that governs medications provided in Alaska and territories and possessions of the United States because this regulation is otherwise subsumed by another VA medical regulation related to provision of medications that are prescribed by non-VA providers.

DATES: 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: by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; by fax to (202) 273-9026; or through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to “RIN 2900-[WP2013-04]-Prescriptions in Alaska and U.S. Territories and Possessions.” All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). 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 at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office (10NB6), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 382-2508.

(This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Under section 1712(d) of title 38 United States Code (U.S.C.), VA must furnish medications to veterans who receive increased compensation or pension benefits by reason of being permanently housebound or in need of regular aid and attendance, if such medications are prescribed for the treatment of any injury or illness suffered by such veteran. Section 1712(d) is distinct from the more general authority under 38 U.S.C. 1710 to provide medications to veterans as hospital care and medical services; veterans under section 1712(d) do not have to be receiving VA hospital care or medical services as a condition of VA furnishing medications to treat their injury or illness. VA originally promulgated two regulations on October 4, 1967, to implement section 1712(d), in title 38 Code of Federal Regulations (CFR) 17.60d and 17.60e. See 32 FR 13816. Because section 1712(d) does not require these certain veterans to be receiving VA hospital care or medical services as a condition of receiving medications from VA, § 17.60d provided that VA pharmacies would fill prescriptions for these veterans if such prescriptions were “not part of authorized Veterans Administration hospital or outpatient care,” and were “ordered by a private or non-VA” provider, and if

the medications were “prescribed as specific therapy in the treatment of any of the veteran’s illnesses or injuries.” See 32 FR 13816 (October 4, 1967). Section 17.60e, in turn, addressed geographic areas that, at the time, did not have VA pharmacies—§ 17.60e provided that in those areas without VA pharmacies, VA may reimburse the cost of prescriptions that otherwise would have been filled under § 17.60d. See 32 CFR 13816 (October 4, 1967). The intent of § 17.60e was to supplement § 17.60d, to ensure that eligible veterans under section 1712(d) and § 17.60d were able to have their medications furnished by VA, even if such veterans lived in Alaska and territories and possessions of the U.S. where there were no VA pharmacies.

Sections 17.60d and 17.60e were renumbered as §§ 17.96 and 17.97, respectively, and § 17.97 was further revised at that time to remove reference to the former § 17.60d and to insert a reference to the relevant section 1712 authority. See 61 FR 21964 (May 13, 1996). Section 17.96 was later revised to permit the filling of prescriptions by non-VA pharmacies in state homes under contract with VA. 63 FR 37779 (July 14, 1998). Sections 17.96 and 17.97 relate to the same cohort of veterans for whom VA is authorized to provide prescription medication under section 1712(d), and § 17.97 was intended to supplement § 17.96, although the supplementing effect of § 17.97 is not as apparent as when these regulations were first promulgated as §§ 17.60d and 17.60e. Because the same cohort of veterans is at issue in §§ 17.96 and 17.97, and because § 17.96 already provides for the filling of prescriptions in non-VA pharmacies, a separate § 17.97 to address prescriptions in non-VA pharmacies (pharmacies in areas without VA pharmacies) is no longer necessary. We would, therefore, remove § 17.97 and mark it reserved for future use, and would revise § 17.96

to clarify that any non-VA pharmacy under contract with VA may be used, not just those non-VA pharmacies in state homes.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed 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 amendment would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 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) 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 proposed rule 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; 64.014, 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 D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on January 29, 2016, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Veterans.

Dated: February 2, 2016.

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

For the reasons set forth in the preamble, we propose 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.

2. Amend § 17.96 by revising the introductory paragraph to read as follows:

§ 17.96 Medication prescribed by non-VA physicians.

Any prescription, which is not part of authorized Department of Veterans Affairs hospital or outpatient care, for drugs and medicines ordered by a private or non–Department of Veterans Affairs doctor of medicine or doctor of osteopathy duly licensed to practice in the jurisdiction where the prescription is written, shall be filled by a Department of Veterans Affairs pharmacy or a non–VA pharmacy under contract with VA, to include non-VA pharmacy in a state home under contract with VA for filling prescriptions for patients in state homes, provided:

* * * * *

[§ 17.97 Removed and Reserved]

3. Remove § 17.97 and mark as reserved for future use.

[FR Doc. 2016-02350 Filed: 2/5/2016 8:45 am; Publication Date: 2/8/2016]