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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AP68

Telephone Enrollment in the VA Healthcare System

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This rulemaking amends VA's medical regulations to allow veterans to complete applications for health care enrollment by telephone by providing application information to a VA employee, agreeing to VA's provisions regarding copayment liability and assignment of third-party insurance benefits, and attesting to the accuracy and authenticity of the information provided over the phone. This action will make it easier for veterans to apply to enroll and will speed VA processing of applications.

DATES: Effective Date: This rule is effective on [insert date of publication in the FEDERAL REGISTER]. Applicability dates: This rule applies on March 15, 2016, to veterans who served in a theater of combat operations after November 11, 1998, and were discharged or released from active service on or after January 28, 2003. This rule applies to all other veterans on and after July 5, 2016.

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 1066, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to [“RIN 2900-AP68 –Telephone enrollment in the VA healthcare system.”] Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1066, 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: Mathew J. Eitutis, Acting Director, Member Services 3401 SW 21st St. Building 9 Topeka, KS 66604; 785-925-0605. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 1710 of title 38, United States Code (U.S.C.), authorizes VA to provide health care to veterans, and section 1705 requires VA to enroll most veterans in the VA healthcare system before providing health care. This rulemaking amends VA’s enrollment regulations, § 17.36(d)(1) of title 38, Code of Federal Regulations (CFR), to allow veterans to apply for enrollment in the VA healthcare system by telephone, in addition to submitting an application on paper or online. Submitting an application does not guarantee enrollment in the VA health care system.

VA’s regulation at 38 CFR 17.36 (d)(1) has allowed veterans to apply for enrollment in VA health care in two ways, by submitting a signed paper application on the VA Form

10-10EZ or by completing that application online. The current regulation provides for submission of the form to a VA medical facility, which any veteran may. The mailing address on the form, however, is to a VA office not in a VA medical facility. We propose to revise the regulation to explicitly include that the veteran may also submit the form to the address on the form, consistent with actual practice. This change also makes the rule more transparent, showing how veterans actually access VA health care.

The current paper application and its online counterpart include the veteran's consent to pay any copayments the law requires the veteran pay for treatment or services, 38 U.S.C. 1710 and 1722A, and to assign insurance benefits to VA. 38 U.S.C. 1729; 42 U.S.C. 2651. The application also includes a notification of the consequences of making a materially false statement in an application for enrollment.

Under the existing regulations, it is VA's practice to assist veterans in filling out the VA Form 10-10EZ, which often occurs when veterans call a designated telephone number; however, in order to complete the application process, VA currently requires the veteran's signature. In these cases, a VA employee enters into the VA application form the information the veteran provides over the telephone, then VA mails the form to the veteran to sign and return to VA. With this rulemaking, VA is now able to complete the entire enrollment application for the veteran based on information given and attestations made by the veteran over the telephone that are legally equivalent to those in VA Form 10-10EZ. Analysis of our current application process persuades us we can potentially enroll veterans more quickly using this method, particularly those who are

transitioning from active duty to veteran status. We also believe the new process will be less burdensome on veterans.

To accomplish a telephone application for enrollment under revised § 17.36(d)(1), a VA employee will verify the veteran's identify based on information already in VA's records or records VA can access, and obtain the information necessary to complete the veteran's application. The VA employee will also inform the veteran of the consequences of making a materially false statement and explain the VA copayment obligation and the assignment of benefits provision.

With respect to the copayment obligation, VA is required by law to charge some veterans a copayment for treatment or services. 38 U.S.C. 1710 and 1722A . As part of the telephone application, the VA employee will provide notice to the veteran that he or she is agreeing to make applicable copayments and that by accepting care or services from VA, he or she may be subject to copayment obligations. In addition, pursuant to 38 U.S.C. 1729 and 42 U.S.C. 2651, VA is authorized to recover or collect from a veteran's health plan or other legally responsible third party for the reasonable charges of nonservice-connected VA care or services. As part of the telephone application, the VA employee will obtain the veteran's verbal consent to assign his or her third-party insurance benefits to VA and inform the veteran that in order to pursue third-party collections, VA may disclose certain information about the veteran and his or her treatment.

The VA employee will obtain the veteran's verbal assurance of his or her understanding of these potential consequences and obligations and continued intent to apply for enrollment in the VA healthcare system. After those steps are complete, the veteran will attest to the accuracy and authenticity of the information provided in the application and must provide verbal confirmation that he or she consents to VA copayment obligations and third-party billing procedures. These steps will be considered to complete the application process in the same manner as submitting the online application or signed paper form under current regulations.

By adding the telephone application to VA's regulations with this amendment, VA will now offer three ways to enroll under 38 CFR 17.36(d)(1). For clarity, we are reorganizing paragraph (d)(1) to show the three alternatives as (d)(1)(i), (ii), or(iii). Paragraphs (d)(1)(i) and (ii) restate the existing means to apply, by paper submission in person or by mail, (d)(1)(i); or online, (d)(1)(ii). We are removing the Web address from the regulation at new paragraph (d)(1)(iii) because VA may change the location of its Web application in the future. Veterans are informed of the Web address in a number of other media. New paragraph (d)(1)(iii) authorizes applications to be completed over the telephone by calling a designated phone number, submitting application information verbally, attesting to the accuracy and authenticity of the verbal application for enrollment and consenting to VA's copayment obligations and third-party billing procedures.

We will begin telephone applications in two phases. Veterans in the first applicability date group (first group) are eligible to receive cost-free VA health care for combat-related conditions and enrollment in Priority Group 6 for 5 years after their separation from active duty. 38 U.S.C. 1710(e). Because these veterans are eligible for a benefit Congress created with a limited duration, their opportunity to enroll in VA health care with enhanced Priority Group assignment is passing quickly. For this reason, VA will take telephone applications from them first. Beginning March 15, 2016, VA will telephone veterans in the first group with pending applications for enrollment in VA health care to offer them an opportunity to complete their applications by telephone. Veterans in the first group without pending applications may begin calling VA on March 15, 2016, to apply by telephone to enroll in VA health care. All veterans who are not in the first group may begin calling VA on July 5, 2016, to apply by telephone to enroll in VA health care.

The phased initiation of telephone applications permits VA to best marshal limited resources as we perfect the program, which we can only do by processing real applications this new way, while preparing to marshal the additional resources necessary to serve all applicants for enrollment in VA health care who wish to apply by telephone. Although we could wait until we develop the capacity to serve all potential applicants from the first day of this program, that would delay initiating telephone application, and there is no good reason for that delay.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. Failure to authorize verbal applications as soon as possible is contrary to the public interest because it prolongs current delays in processing applications for enrollment in the VA healthcare system. Recently separated combat veterans comprise a large portion of new applicants for VA health care, with an especially great need for immediate access to care. Prompt processing of applications for enrollment in the VA health care system will ease their transition to civilian life. Any delay in initiating an available, viable means of enrolling this group would be detrimental to their well-being and consequently contrary to the public interest.

We are dispensing with the 30-day delay requirement for the effective date of a rule for good cause under 5 U.S.C. 553(d)(3). The object of this rulemaking is to expedite the healthcare application and enrollment process. We anticipate that this regulation will be uncontroversial and believe that any further delay in allowing VA to complete applications by telephone would be contrary to the public interest, for the same reasons described above.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this interim final rulemaking, will represent the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance must be read to conform with this interim final

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 17.36(d)(1), 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 interim final rule. It will amend an approved collection by allowing a new method for veterans to submit the requested information, but this change will not affect the burden on the public under the approved collection. The information collection requirements for 38 CFR 17.36(d)(1) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900-0091.

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 will directly affect 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 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 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 interim final 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 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 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 D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on February 9, 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, 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: March 9, 2016

Michael P. Shores,
Chief Impact Analyst,
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, 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.

2. Amend § 17.36 to revise paragraph (d)(1) to read as follows:

§17.36 Enrollment—provision of hospital and outpatient care to veterans.

* * * * *

(d) * * *

(1) Application for enrollment. A veteran who wishes to be enrolled must apply by submitting a VA Form 10-10EZ:

- (i) To a VA medical facility or by mail it to the U.S. Postal address on the form; or
- (ii) Online at the designated World Wide Web internet address; or
- (iii) By calling a designated telephone number and submitting application information verbally. To complete a telephone application, the veteran seeking enrollment must attest to the accuracy and authenticity of their verbal application for enrollment and consent to VA's copayment requirements and third-party billing procedures.

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