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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: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is removing 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: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office (10D), 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:

In a document published in the Federal Register on February 8, 2016 (81 FR 6479), VA proposed to amend part 17 of 38 CFR by amending the regulations that govern medication provided in Alaska and territories and possessions of the United States. We provided a 60-day comment period, which ended on April 8, 2016. We received no comments on the proposed rule. 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. 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. 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 and § 17.60d provided that VA pharmacies would fill prescriptions for these veterans when they were receiving care from a non-VA provider to treat 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).

Sections 17.60d and 17.60e were renumbered as §§ 17.96 and 17.97, respectively, and relate to the same cohort of veterans for whom VA is authorized to provide prescription medication under section 1712(d). 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 are, therefore, removing § 17.97 and marking it as reserved for future use, and are also revising § 17.96 to clarify that any non-VA pharmacy under contract with VA may be used, not just those non-VA pharmacies in a state home under contract with VA for filling prescriptions for patients in state homes.

We are making one edit to the proposed revision of the introductory paragraph in § 17.96 for grammatical accuracy. No change to the meaning of the proposed regulation text is intended by this edit.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with the edit discussed in this final rule.

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 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

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 would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment 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 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 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; 64.014, 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. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on June 30, 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: June 30, 2016

Jeffrey Martin
Office Program Manager
Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

For the reasons set forth in the preamble, we 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 text 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, including 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 and reserve § 17.97.

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