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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP91

VA Dental Insurance Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document revises Department of Veterans Affairs (VA) medical regulations to reflect the codification of the authority for the VA Dental Insurance Program (VADIP), a program through which VA contracts with private dental insurers to offer premium-based dental insurance to enrolled veterans and certain survivors and dependents of veterans. The VA Dental Insurance Reauthorization Act of 2016 codified the authority of the VADIP, and this final rulemaking accordingly revises the authority citation in the VA medical regulations that implement VADIP.

DATES: Effective Date: This rule is effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Bridget Souza, Deputy Director, Business Policy, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 382-2537. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 510 of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163, required VA to carry out a pilot program to assess the feasibility and advisability of providing a dental insurance plan to veterans and certain survivors and dependents of veterans, known as the VA Dental Insurance Program (VADIP). Under VADIP and as required by law, VA contracts with private insurers to offer the dental insurance, and the private insurer is then responsible for the actual administration of the dental insurance plans and the provision of dental benefits. VA's role under VADIP is primarily to form the contract with the private insurer and to verify the eligibility of veterans, survivors, and dependents. VA establishes VADIP criteria related to eligibility, benefits, enrollment, and other program elements as required by law, in 38 CFR 17.169 (78 FR 32126, 79 FR 62441).

The VA Dental Insurance Reauthorization Act of 2016, Public Law 114-218, codified the VADIP authority at 38 U.S.C. 1712C and established a sunset date for VADIP of December 31, 2021. Public Law 114-218 did not otherwise make any substantive changes to the VADIP established in section 510 of Public Law 111-163 and implemented in 38 CFR 17.169. Therefore, the only regulatory change required by Public Law 114-218 is the revision of the authority citation for § 17.169 to read 38 U.S.C. 1712C, and we make this revision in this final rule. While we recognize that the authority to operate the VADIP expires on December 31, 2021, we do not revise §17.169 to include this date.

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.

Administrative Procedure Act

The VA Secretary finds under 5 U.S.C. 553(b)(B) that there is good cause to publish this rule without prior opportunity for public comment, and under 5 U.S.C. 553(d)(3) that there is good cause to publish this rule with an immediate effective date. This rulemaking makes a non-substantive change to update the authority citation for 38 CFR 17.169 (Public Law 114-218). Notice and public comment are unnecessary because they could not result in any change to this provision. Further, since Public Law 114-218 became effective on its date of enactment and is already in effect, VA finds good cause to make this change effective on the date of its publication.

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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number (5 CFR 1320.8(b)(3)(vi)). This action contains no new or revised collections of information.

Regulatory Flexibility Act

The VA 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. 601-12). This final rule merely updates the authority citation for 38 CFR 17.169; it does not revise any substantive criteria in the regulation, and this rulemaking will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the regulatory flexibility analysis requirements of section 604.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 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 final rule have been examined and 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."

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this rule are 64.009 Veterans Medical Care Benefits and 64.011 Veterans Dental Care.

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 March 29, 2017, for publication.

Dated: March 30, 2017.

Janet Coleman,
Chief,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Dental health, Government contracts,
Health care, Health professions, Health records, Veterans.

For the reasons set forth in the supplementary information of this rulemaking, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17 -- MEDICAL

1. The authority citation for part 17 is amended by adding an entry for §17.169 in numerical order to read in part as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

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Section 17.169 also issued under 38 U.S.C. 1712C.

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§17.169 [Amended]

2. Amend § 17.169 by removing the sectional authority citation.

[FR Doc. 2017-06579 Filed: 4/3/2017 8:45 am; Publication Date: 4/4/2017]