



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO15

Use of Medicare Procedures to Enter Into Provider Agreements for Extended Care Services

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) published a notice of proposed rulemaking in the Federal Register on February 13, 2013, that proposed amending its regulations to allow VA to enter into provider agreements to obtain extended care services for Veterans from community providers. Since publication of that proposed rule, further review has led VA to conclude VA cannot achieve the proposal's goals without a statutory change. For this reason, VA withdraws the proposed rule.

DATES: This proposed rule is withdrawn as of [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Daniel Schoeps, Office of Geriatrics and Extended Care (10P4G), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; (202) 461-6763 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA published a notice of proposed rulemaking in the Federal Register on February 13, 2013, that proposed to allow VA to enter into provider agreements to obtain extended care services for Veterans from community providers under 38 U.S.C. 1720(c)(1) (see 78 FR 10117). Since publication of that proposed rule, further review has led VA to conclude the goals of this regulation cannot be achieved without a statutory change. For this reason, VA withdraws the proposed

rule. VA has proposed and continues to support legislation that would authorize VA to use provider agreements to purchase care in the community.

After publication of the proposed rule, section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113-146, 128 Stat.1754, hereafter referred to as “the Choice Act”) created the Veterans Choice Program, which provides legal authority for VA to enter into provider agreements to obtain certain extended care services for Veterans. The Veterans Choice Program also has regulations, at 38 CFR § 17.1500, et seq., that are currently operational and have criteria similar to those in the proposed rule AO15, including eligibility standards for non-VA providers and standards for payment rates.

Although the Choice Act provider agreements are similar in kind, and might seem to provide the same authority, they do not. Proposed AO15 would have authorized the use of provider agreements to provide “extended care services,” defined as “geriatric evaluation; nursing home care; domiciliary services; adult day-health care; noninstitutional palliative care, noninstitutional hospice care, and home health care when they are noninstitutional alternatives to nursing home care; and respite care” (see 70 FR 10121 (Feb. 13, 2013)). Although the Choice Act provides clear legal authority for VA to enter into provider agreements, the authority is limited to care authorized under the Veterans Choice Program for eligible Veterans and furnished by Choice-eligible providers. Further, the Veterans Choice Program covers only hospital care and medical services in VA’s medical benefits package (see 38 C.F.R. 17.38); this captures some extended care services (noninstitutional alternatives to nursing home care like adult day-health care and respite care) but not the full scope of services proposed AO15 would have covered. Finally, the Veterans Choice Program will expire when the Choice Fund, established under section 802 of the Choice Act, has been exhausted. VA will

continue to use provider agreements authorized by the Choice Act until the Veterans Choice Program expires, but to accomplish the goals of the proposed rule, Congress would need to enact a provider agreement provision authorizing VA to use provider agreements to purchase care in the community. For these reasons, VA withdraws the proposed rule.

#### 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 May 4, 2017, for publication.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: May 5, 2017.

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

[FR Doc. 2017-09449 Filed: 5/9/2017 8:45 am; Publication Date: 5/10/2017]