



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP83

Ecclesiastical Endorsing Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations by establishing in regulation the eligibility requirements that ecclesiastical endorsing organizations must meet in order to provide ecclesiastical endorsements of individuals seeking employment as VA chaplains, or of individuals who are seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under the United States Code. VA considers veterans' spiritual care an integral part of their overall health care. As such, VA is committed to providing qualified VA chaplains to address the veterans' spiritual needs by engaging chaplains that are ecclesiastically endorsed. Ecclesiastical endorsement certifies that the individual is qualified to perform all the religious sacraments, rites, rituals, ceremonies and ordinances needed by members of a particular faith.

DATES: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John Batten, Program Analyst, National Chaplain Center, Veterans Health Administration, Department of Veterans Affairs Medical Center, 100 Emancipation Dr., Hampton, VA 23667; (757) 728-7062 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on January 5, 2017, VA proposed to establish in its medical regulations the eligibility requirements that ecclesiastical endorsing organizations must meet in order to provide ecclesiastical endorsements of individuals seeking employment as VA chaplains or of individuals who are seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. See 82 FR 1288. VA provided a 60-day comment period, which ended on March 6, 2017. We received two comments on the proposed rule. Under 38 CFR 17.33, VA must make available to each patient the opportunity for religious worship. The VA National Chaplain Service was established on August 1, 1945, to provide veterans the opportunity for such worship and other forms of spiritual care. VA employs chaplains in accordance with 5 CFR 213.3102(a) to provide for the spiritual component of health care in accordance to the spiritual needs of veterans. VA may employ chaplains in temporary appointments, on an on-facility fee basis appointment under 38 U.S.C. 7405, and may engage chaplains under contract. By requiring that chaplains be ecclesiastically endorsed, VA ensures that chaplains are qualified to perform the rites, rituals, or ceremonies that are unique to each faith. Before the year 2000, VA did not have a process in place to address endorsement of chaplains and relied on criteria established by the Department of

Defense's (DoD) Armed Forces Chaplain Board (AFCB) at DoD Instruction 1304.28.

Under this criteria, an individual cannot serve as chaplain unless he or she is endorsed by an ecclesiastical endorsing organization. The purpose is to ensure that the chaplain is recognized as an individual who is authorized by that organization to perform pastoral duties. The ecclesiastical endorsing organization must submit a request to VA to designate an ecclesiastical endorser. This request provides VA with the information on the ecclesiastical endorsing organization and identifies the individual whom the organization designates as the official authorized to sign ecclesiastical endorsements. VA reviews the information provided and approves the request.

Before the year 2000, VA accepted endorsements from ecclesiastical endorsing organizations recognized by DoD to perform this function as a means of avoiding duplication of effort on VA's part and because such organizations would be better able to address veterans' needs, having provided for the veterans' spiritual care while on active duty. In 1998, VA determined that it needed to establish its own policy on accepting ecclesiastical endorsements. The rationale was that there might be organizations that would endorse members seeking to work for VA, but would not permit their members to work as military chaplains, either for theological or other reasons. VA has been successfully implementing since the year 2000, via internal policy, the eligibility requirements that ecclesiastical endorsing organizations must meet to endorse individuals who are seeking employment as VA chaplains or of individuals who are seeking to be engaged by VA under contract or appointed as on-facility fee basis VA

chaplains under 38 U.S.C. 7405.¹ However, VA subsequently determined a formal rulemaking is prudent in order to make the process transparent as well as safeguard VA from the appearance of favoritism of an ecclesiastical endorsing organization over another. We are establishing this process in 38 CFR 17.655.

One commenter stated that the proposed rule appears to favor one faith over another citing that the Oxford dictionary defines the term “ecclesiastical” as “relating to the Christian Church.” However, the proposed rule’s definition of ecclesiastical endorsement and ecclesiastical endorsing organization expanded the commonly defined term “ecclesiastical” to include all other faith groups. By defining these terms, VA is not favoring ecclesiastical endorsing organizations of the Christian faith; rather, it is including all faith groups. We are not making any edits to the rule based on this comment.

The two commenters stated that VA should expend its resources on the health care of the veteran rather than their spiritual care. VA believes that a veteran’s overall health care includes spiritual care. Chaplains are an integral part of the VA patient care team. Chaplains safeguard a veteran’s right for religious worship, as well as safeguard the veterans who do not wish to have religion imposed on them. It is always a veteran’s choice to receive or decline pastoral care. As stated in the proposed rule, patients’ rights (for residents and inpatients) include the opportunity for religious worship under § 17.33(b)(7). Also, VA does not fund an ecclesiastical endorsing organization. This rule merely seeks to establish via regulation a point of contact within an ecclesiastical

¹ Ecclesiastical Endorsing Organizations, VHA Handbook 1111.01 and VHA related policy VHA Directive 1111, Spiritual and Pastoral Care, which incorporates by specific reference the terms of VHA HB 1111.01.

endorsing organization in order to verify if an individual who is seeking employment as VA chaplains or who is seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405 is qualified to perform all of the religious rites, rituals, ceremonies, and ordinances needed by members of a particular faith. We are not making any edits to the rule based on this comment.

Proposed paragraph (d)(2) stated that an ecclesiastical endorsing organization must submit “A copy of an Internal Revenue Service document verifying that the organization currently holds a section 501(c)(3) exempt status (Reference (i)).” However, section 501(c)(3) of the Internal Revenue Code does not contain any “references.” See 26 U.S.C. 501. We are amending proposed paragraph (d)(2) by eliminating the term “(Reference (i)).” This edit does not change the meaning of paragraph (d)(2) as proposed.

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 with the edit discussed.

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

The Paperwork Reduction Act of 1995 (44 U.S.C. 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. See also 5 CFR 1320.8(b)(2)(vi).

This final rule contains the following new information collection requirements. Section 17.655 contains a collection of information under the Paperwork Reduction Act of 1995. VA was previously collecting this information under OMB control number 2900-0610, which expired on September 2, 2008. Paragraph (d) in § 17.655 states the documentation that an ecclesiastical endorsing organization needs to submit in order for VA to accept ecclesiastical endorsements of individuals of such organization. The information is needed to establish the eligibility requirements that an ecclesiastical endorsing organization must meet in order to provide ecclesiastical endorsements of an individual who is seeking employment as a VA chaplain or who is seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. VA has collected this information in the past through internal policy and guidance.² As required by 44 U.S.C. 3507(d), VA submitted this information collection to OMB for its review. OMB approved these new information collection

² Ecclesiastical Endorsing Organizations, VHA Handbook 1111.01 and VHA related policy VHA Directive 1111, Spiritual and Pastoral Care, which incorporates by specific reference the terms of VHA HB 1111.01.

requirements associated with the final rule and assigned OMB control number 2900-0852.

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 will impose no burden on small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 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 to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. 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

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Health professions, Veterans.

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 August 31, 2017, for publication.

Dated: November 3, 2017.

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

For the reasons set out in the preamble, VA is amending 38 CFR part 17 as follows:

PART 17 - MEDICAL

1. The authority citation for part 17 is revised to read as follows:

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

Section 17.38 also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

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

Sections 17.380 and 17.412 are also issued under sec. 260, Public Law 114-223, 130 Stat. 857.

Section 17.410 is also issued under 38 U.S.C. 1787.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Sections 17.640 and 17.647 are also issued under sec. 4, Public Law 114-2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Public Law 114-2, 129 Stat. 30.

Section 17.655 also issued under 38 U.S.C. 501(a), 7304, 7405.

2. Add an undesignated center heading and § 17.655 to read as follows:

CHAPLAIN SERVICES

§ 17.655 Ecclesiastical endorsing organizations.

(a) Purpose. This section establishes the eligibility requirements that an ecclesiastical endorsing organization must meet in order to provide ecclesiastical endorsements of individuals who are seeking employment as VA chaplains or seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. Acceptance of an ecclesiastical endorsement by VA does not imply any approval by VA of the theology or practices of an ecclesiastical endorsing organization, nor does it obligate VA to employ the endorsed individual or any other member of the organization.

(b) Definitions. The following definitions apply to this section:

(1) Ecclesiastical endorsement means a written statement addressed to VA and signed by the designated endorsing official of an ecclesiastical endorsing organization certifying that an individual is in good standing with the faith group or denomination and, in the opinion of the endorsing official, is qualified to perform the full range of ministry, including all sacraments, rites, ordinances, rituals, and liturgies required by members of the faith group. Ecclesiastical endorsement is a condition of employment as a VA chaplain. An individual must obtain and maintain a full and active ecclesiastical endorsement to be employed as a VA chaplain.

(2) Ecclesiastical endorsing official means an individual who is authorized to provide or withdraw ecclesiastical endorsements on behalf of an ecclesiastical endorsing organization.

(3) Ecclesiastical endorsing organization means an organization that meets the eligibility requirements of paragraph (c) of this section and has been properly

designated as an endorsing organization in accordance with paragraph (e) of this section.

(c) Eligibility to serve as an ecclesiastical endorsing organization. An ecclesiastical endorsing organization must meet the following requirements before such organization can endorse an applicant for VA chaplaincy:

(1) Be organized and function exclusively or substantially to provide religious ministries to a lay constituency and possess authority to both grant and withdraw initial and subsequent ecclesiastical endorsements;

(2) Have tax-exempt status as a religious organization or church under the Internal Revenue Code, section 501(c)(3);

(3) Agree to abide by all Federal and VA laws, regulations, policies, and issuances on the qualification and endorsement of persons for service as VA chaplains;

(4) Agree to notify VA in writing of any withdrawal of an existing ecclesiastical endorsement within ten days after the date of such withdrawal;

(5) Provide VA the documents stated in paragraph (d) of this section;

(6) Notify VA in writing within 30 days of any change of the name, address or contact information of the individual that it designates as its ecclesiastical endorsing official; and

(7) An ecclesiastical endorsing organization that is part of an endorsing organization by which its members can be endorsed cannot become a separate endorsing organization without the written permission of the larger endorsing organization.

(d) Request to designate ecclesiastical endorser. In order for an ecclesiastical endorsing organization to be recognized by VA such organization must submit the following:

(1) A complete VA form that requests the designation of an ecclesiastical endorsing official;

(2) A copy of an Internal Revenue Service document verifying that the organization currently holds a section 501(c)(3) exempt status as a church for Federal tax purposes from the Internal Revenue Service (IRS) (note “church” is used by the IRS not to denote a belief system, but to distinguish “churches” from other types of religious organizations; see IRS Instructions for Form 1023 Schedule A). Such rules stipulate that the particular religious beliefs of the organization are truly and sincerely held and that the practices and rituals associated with the organization’s religious belief or creed are not illegal or contrary to clearly defined public policy. In order to determine whether a particular religious organization has properly acquired, and currently maintains, an IRS tax exempt status and does not engage in practices that are illegal or contrary to defined public policy, VA shall take appropriate steps to verify compliance with these requirements;

(3) A document verifying that the organization shall provide chaplains who shall function in a pluralistic environment, and who shall support directly and indirectly the free exercise of religion by all veterans, their family members, and other persons authorized to be served by VA;

(4) That it agrees to abide by all VA Directives, Instructions, and other guidance, regulations and policies on the qualification and endorsement of ministers for service as VA chaplains;

(5) Documentation that states the structure of the organization, including copies of the articles of incorporation, by-laws and constitution, membership requirements of the organization, if any, the religious beliefs and practices of the organization, and the organization's requirements to become clergy; and

(6) The name and address of the individual who is applying to become a VA chaplain.

(e) Approval of request to designate an ecclesiastical endorsing official. If an ecclesiastical endorsing organization meets the requirements of paragraph (c) of this section and has submitted the documents stated in paragraph (d) of this section, VA will notify the organization in writing that such organization has been designated as an ecclesiastical endorsing organization. The designation will be for a period of 3 years from the date of notification. Once an organization is designated as an ecclesiastical endorsing organization, VA will accept ecclesiastical endorsements from that organization without requiring any further documentation from the organization during the 3 year period, unless VA receives evidence that an organization no longer meets the requirements of this section. VA will only take action on an initial request to designate an ecclesiastical endorsing official when VA receives an application from an individual who is seeking employment as a VA chaplain or is seeking to be engaged under VA contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405.

(f) Reporting requirement. (1) To certify that VA chaplains continue to be endorsed by an ecclesiastical endorsing organization, such organization must provide VA an alphabetical listing of individuals who are endorsed by that endorsing organization and are employed as VA chaplains or are engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405 by January 1 of every calendar year.

(2) In order for VA to continue to recognize an ecclesiastical endorsing organization, such organization must provide written documentation that it continues to meet the requirements of this section every 3 years.

(g) Rescission of ecclesiastical endorsing organization. VA may rescind an organization's status as an ecclesiastical endorsing organization and refuse to accept ecclesiastical endorsements from such organization if it no longer meets the requirements of paragraph (c) of this section. VA will take the following steps before it rescinds the organization's status:

(1) VA will give the ecclesiastical endorsing organization written notice stating the reasons for the rescission and give the organization 60 days to provide a written reply addressing VA's concerns.

(2) VA will notify the ecclesiastical endorsing organization and all VA chaplains endorsed by the organization in writing of its decision after VA reviews the evidence provided by the organization or after the 60 day time period has expired, whichever comes first.

(3) Ecclesiastical endorsing organizations that are notified that they may no longer endorse individuals for VA chaplaincy because they do not meet the

requirements of paragraph (c) of this section must resubmit all of the evidence stated in paragraph (d) of this section in order to be reconsidered as an endorsing organization.

(4) If an ecclesiastical endorsing organization is no longer able to endorse individuals for VA chaplaincy in accordance with this section, all ecclesiastical endorsements issued by that organization are considered to be withdrawn.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0852.)

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