



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP55

Medical care in foreign countries and filing for reimbursement for community care not previously authorized by VA.

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its medical regulations related to hospital care and medical services in foreign countries. We would amend the regulations to simplify and clarify the scope of these rules. We would address medical services provided to eligible veterans in the Republic of the Philippines, and remove regulations related to grants to the Republic of the Philippines that are no longer supported by statutory authority. VA also proposes to amend its medical regulations related to filing claims for reimbursement of medical expenses incurred for VA care not previously authorized.

DATES: Written comments must be received on or before [insert date 60 days after the date of publication in the Federal Register].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave, NW, Room 1063B, Washington, DC 20420; or by

fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP55 - Medical care in foreign countries and filing for reimbursement for community care not previously authorized by VA.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 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: Joseph Duran, Director, Policy and Planning, Office of Community Care (10D1A1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (303) 372-4629. (This is not a toll-free number) or Joseph.Duran2@va.gov.

SUPPLEMENTARY INFORMATION:

Section 1724 of title 38 United States Code (U.S.C.) prohibits VA from furnishing hospital care or medical services outside any State except under specific circumstances. VA is authorized under 38 U.S.C. 1724(b)(1) to furnish care and services to an eligible veteran outside any State if VA “determines that such care and services are needed for the treatment of a service-connected disability of the veteran or as part of a rehabilitation program under chapter 31 of this title.” VA furnishes health care to eligible veterans in the Republic of the Philippines under this authority. In addition, 38 U.S.C. 1724(c) provides that “within the limits” of the Veterans Memorial

Medical Center at Manila, Republic of the Philippines, VA may enter into contracts to furnish necessary hospital care to a veteran for any non-service-connected disability if such veteran is unable to defray the expenses of necessary hospital care. VA may also operate an outpatient clinic in the Republic of the Philippines to furnish necessary medical services to a veteran who has a service-connected disability. 38 U.S.C. 1724(e).

Several sections of title 38 Code of Federal Regulations (CFR) part 17 address VA's authority to provide for hospital care and medical services for eligible veterans outside the United States, as well as submission of claims for reimbursement for services obtained from community care providers outside the United States. VA proposes to revise or amend these regulations to consolidate similar content, clarify provisions, and ensure that these regulations reflect current VA practice and statutory authority.

§ 17.35 Hospital care and outpatient services in foreign countries.

Current § 17.35 states that the Secretary may furnish hospital care and medical services to any veteran sojourning or residing outside the United States, without regard to the veteran's citizenship if necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability; or, if the care is furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care for the reasons enumerated in 38 CFR 17.47(i)(2).

We would revise § 17.35 by simplifying the rule and adding a paragraph to address medical services provided to eligible veterans in the Republic of the Philippines. VA proposes to remove the phrase “sojourning or residing” as it creates an unnecessary distinction. VA may furnish medical care and services to any veteran outside the United States, regardless of whether the veteran is sojourning (temporarily staying), has established residence outside of the United States, or in some other status that does not fit the broad definitions of either “sojourning or residing.” In addition, the term “sojourning” is antiquated. While it remains a defined term in many dictionaries it is not commonly used by the public. We would also amend the introductory sentence to refer to VA rather than the Secretary of VA which is how VA is referred to in recently published rulemakings. We would designate the introductory sentence in this section as paragraph (a), and current paragraphs (a) and (b) as paragraphs (a)(1) and (2) respectively. Finally, we would change the references to “medical services” in the current regulation to “outpatient services.” The term “outpatient services” is similarly used in § 17.38 and other VA regulations instead of “medical services,” and we believe it is more understandable to the reader.

We would add a new paragraph (b) to address hospital care and outpatient services provided to eligible veterans in the Republic of the Philippines as authorized in 38 U.S.C. 1724. Paragraph (b) would state that under the VA Foreign Medical Program VA may furnish hospital care and outpatient services in the Republic of the Philippines to a veteran who meets the requirements of § 17.35(a). VA may also provide outpatient services to a veteran in the VA outpatient clinic in Manila for the treatment of such veteran’s service-connected conditions within the limits of the clinic. A veteran’s non-

service connected conditions may also be treated within the limits of the VA outpatient clinic in Manila, if the veteran has a service-connected disability.

Paragraph (c) would provide guidance on which sections of part 17 apply to claims for payment or reimbursement of services not previously authorized by the Foreign Medical Program. We would state that such claims are governed by §§ 17.123 – 17.127 and 17.129 – 17.132. This is consistent with the requirements for claims for payment or reimbursement for medical services not previously authorized by VA provided within the United States.

§17.125 Where to file claims.

Current § 17.125 addresses where veterans must file claims for payment or reimbursement of medical expenses incurred for care not previously authorized in the United States, including the Territories and possessions of the United States, Puerto Rico, the Republic of the Philippines, and other foreign countries. Paragraph (a) focuses on medical care rendered in the U.S. and U.S. Territories or possessions other than Puerto Rico. Puerto Rico is addressed in a separate paragraph in current § 17.125 since it is the only U.S. territory with a VA medical center. Paragraph (a) directs that claims should be filed with the Chief, Outpatient Service, or Clinic Director of the VA facility designated as a clinic or jurisdiction which serves the region in which the care or services were rendered.

We would amend § 17.125 by amending the prefatory statement to state that, generally, VA must preauthorize VA payment for health care services provided in the community when such care is provided in a State as that term is defined in 38 U.S.C.

101(20). This definition of “State” encompasses each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. Paragraph (a) would be amended to state that in those cases where VA payment for such services has not been authorized in advance, claims for payment for such health care services provided in a State should be submitted to the VA medical facility nearest to where those services were provided. We believe these changes would simplify the claims submission process. Under the current rule, a veteran must first determine which VA facility is designated as a clinic or jurisdiction which serves the region in which the care or services were rendered. This may not be the VA facility nearest to where community care was rendered, and that information is not always readily available. The proposed amendment would require only that the veteran determine which VA facility is geographically closest to where community care was rendered. In addition, the proposed change would simplify the rule, as there would be no separate paragraph addressing reimbursement for community care provided in Puerto Rico.

Current § 17.125 does not specifically address submission of claims for medical care provided in Canada. VA entered into a reciprocal agreement with Canada in 1956 which provides that Veterans Affairs Canada will furnish medical service and hospital care to U.S. veterans in Canada to the extent requested by VA. Medical services and hospital care furnished by Veterans Affairs Canada under this agreement is that authorized under VA’s Foreign Medical Program. Consistent with that agreement, if a U.S. veteran obtains hospital or medical care in Canada which is authorized under 38 CFR 17.35, the veteran must submit the claim to Veterans Affairs Canada, a

department of the government of Canada equivalent to VA. In turn, Canadian veterans who incur certain hospital or medical expenses in the United States must submit any claim for reimbursement to VA. Proposed paragraph (b) would state that claims for payment for health care services under proposed 38 CFR 17.35(a) that are provided in Canada must be submitted to the Foreign Countries Operations Unit of Veterans Affairs Canada. The Foreign Countries Operations Unit is the office designated by Veterans Affairs Canada to accept claims for reimbursement of medical expenses from U.S. veterans.

Current paragraph (c) provides that claims for the expenses of care or services rendered in other foreign countries must be mailed to the Health Administration Center (HAC). The program office currently responsible for administering health care provided to veterans outside of the U.S. is the Foreign Medical Program, Office of Community Care. In proposed paragraph (c) we would state that all other claims for payment for health care services under proposed 38 CFR 17.35(a) that are provided outside a State must be submitted to the Foreign Medical Program, PO Box 469061, Denver, CO 80246-9061.

§§ 17.140 and 17.141 Delegation of authority.

Current § 17.140 states that the VA medical facility with responsibility for the fee basis program in the region or territory (including the Republic of the Philippines) served by such medical facility has authority to adjudicate all claims for the payment or reimbursement of the expenses of services not previously authorized rendered in the region or territory. Current § 17.141 states that HAC has authority to adjudicate claims

for the payment or reimbursement of the expenses of services not previously authorized rendered in any foreign country except the Republic of the Philippines which will be referred to the VA Outpatient Clinic in Pasay City. We propose to remove §§ 17.140 and 17.141 and mark those sections as reserved for future use. VA believes that these sections are no longer required as the subject matter would be covered by proposed revisions to § 17.125.

§§ 17.350 through 17.370 Grants to the Republic of the Philippines.

Executive Order 11762 provides that the President has delegated authority to VA relating to grants-in-aid to the Republic of the Philippines for medical care and treatment of veterans under 38 U.S.C. 1731 through 1734. Under 38 U.S.C. 1732(b) VA is authorized to provide grants to the Veterans Memorial Medical Center for the purpose of assisting the Republic of the Philippines in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of such center. Grants under this section are for the purpose of providing effective care and treatment of United States veterans in the Veterans Memorial Medical Center, and the amount of such grants is limited to funds specifically appropriated for that purpose. Authority to provide grants under 38 U.S.C. 1732(b) extended only through September 30, 1990. VA published regulations at 38 CFR 17.350 through 17.370 to administer these grants. As VA's authority to provide grants under 38 U.S.C. 1732(b) has expired, we propose to remove §§ 17.350 through 17.370. VA still retains authority under 38 U.S.C. 1731 to assist the Republic of the Philippines in fulfilling its responsibility in providing medical care and treatment for Commonwealth Army veterans and new Philippine Scouts in need of such

care and treatment for service-connected disabilities and non-service-connected disabilities under certain conditions. Since 2002, under that separate authority, VA has provided several grants to the Republic of the Philippines to furnish, install and maintain medical equipment at the Veterans Memorial Medical Center.

Effect of rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed 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 proposed regulatory amendment would 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 rulemaking would not directly affect any small entities. Only VA beneficiaries and certain community care providers would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this

amendment would be exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review, defines "significant regulatory action" to mean 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."

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be a significant

regulatory action under E.O. 12866. This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

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 expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this proposed rule are as follows: 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.018, Sharing Specialized Medical Resources.

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, 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, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, 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 25, 2017, for publication.

Dated: January 26, 2018.

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

For the reasons stated in the preamble, the 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.

Section 17.35 is also issued under 38 U.S.C. 1724.

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

Section 17.125 is also issued under 38 U.S.C. 7304.

Section 17.169 is 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.

2. Revise § 17.35 to read as follows:

§ 17.35 Hospital care and outpatient services in foreign countries.

(a) Under the VA Foreign Medical Program, VA may furnish hospital care and outpatient services to any veteran outside of the United States, without regard to the veteran's citizenship:

(1) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability;

(2) If the care and services are furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care and services for the reasons enumerated in 38 CFR 17.47(i)(2).

(b) Under the Foreign Medical Program, the care and services authorized under paragraph (a) of this section are available in the Republic of the Philippines to a veteran who meets the requirements of paragraph (a) of this section. VA may also provide outpatient services to a veteran referenced in paragraph (a)(1) in the VA outpatient clinic in Manila for the treatment of such veteran's service-connected conditions within the limits of the clinic. Non-service connected conditions of a veteran who has a service-connected disability may be treated within the limits of the VA outpatient clinic in Manila.

(c) Claims for payment or reimbursement for services not previously authorized by VA under this section are governed by §§ 17.123 – 17.127 and 17.129 – 17.132 of this title.

3. Revise § 17.125 to read as follows:

§ 17.125 Where to file claims.

Generally, VA must preauthorize VA payment for health care services provided in the community when such care is provided in a State as that term is defined in 38 U.S.C. 101(20).

(a) Where VA payment for such services has not been authorized in advance, claims for payment for such health care services provided in a State should be submitted to the VA medical facility nearest to where those services were provided.

(b) Claims for payment for hospital care and outpatient services authorized under section 17.35(a) of this title and provided in Canada must be submitted to Veterans Affairs Canada, Foreign Countries Operations Unit, 2323 Riverside Dr., 2nd Floor, Ottawa, Ontario, Canada K1A OP5.

(c) All other claims for payment for hospital care and outpatient services authorized under section 17.35(a) of this title and provided outside a State must be submitted to the Foreign Medical Program, PO Box 469061, Denver, CO 80246-9061.

§ 17.140 [Reserved]

4. Remove §17.140 and the undesignated center heading “Delegations of Authority”, immediately preceding it.

§ 17.141 [Reserved]

5. Remove § 17.141.

6. Add an undesignated center heading, “Delegation of Authority” immediately preceding § 17.142.

§§ 17.350 - 17.370 [Reserved]

7. Remove the undesignated center heading, “Grants to the Republic of the Philippines”, immediately preceding § 17.350.

8. Remove §§ 17.350 through 17.370.

[FR Doc. 2018-01865 Filed: 1/30/2018 8:45 am; Publication Date: 1/31/2018]