

death of an individual representative; illness or incapacity of an individual representative that renders it impractical for a participant to continue with him or her as representative; or withdrawal of an individual representative. Motions for extensions must be filed prior to the expiration of the time period for which a motion is being requested. Motions must be in writing, and filed with the participating VA regional office that has jurisdiction over the claim, unless the case has been certified and transferred to the Board, in which case the motion must be filed with the Board. Motions must include the name of the participant, the applicable Department of Veterans Affairs file number; and an explanation as to why the extension request is being made.

(Authority: 38 U.S.C. 501(a))

§ 20.1510 Rule 1510. Termination of the Initiative.

VA may terminate the Initiative at any time. In the event of such termination, VA will notify participants and their representatives in writing and inform them that any covered claims will be processed from the date of termination in the same manner as if the participant had not elected to participate in the Initiative.

(Authority: 38 U.S.C. 501(a))

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AM81

Elimination of Co-Payment for Weight Management Counseling

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Veterans Affairs (VA) medical regulations concerning co-payments for inpatient hospital care and outpatient medical care. More specifically, it would designate weight management counseling (individual and group sessions) as a service that is not subject to co-payment requirements. The intended effect of this proposed rule is to increase participation in weight management counseling by removing the co-payment barrier. This proposed rule would also amend the medical regulations by making nonsubstantive

changes to correct references to statutory provisions.

VA is also using direct final rulemaking for this action because we expect that there will be no significant adverse comments on the rule. (See RIN 2900-AM59). If no significant adverse comments are received, VA will confirm the effective date of the direct final rule and withdraw this proposed rule. If significant adverse comments are received, VA will withdraw the direct final rule and proceed with rulemaking on this proposed rule. A subsequent **Federal Register** document will be published to announce VA's action.

DATES: Written comments must be received on or before May 16, 2008.

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 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AM81—Elimination of Co-payment for Weight Management Counseling." 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: Tony Guagliardo, Director, Business Policy, Chief Business Office (16), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254-0384 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document proposes to amend VA's "Medical" regulations, which are set forth at 38 CFR part 17 (referred to below as the regulations), to eliminate co-payments for weight management counseling (individual and group sessions).

A large number of veterans using VA medical facilities are overweight (body mass index of 25–29.9) or obese (body mass index of 30 or higher). Among male veterans using VA medical facilities in 2000, 40 percent were classified as overweight and 33 percent were classified as obese. Among female veterans using VA medical facilities in 2000, 31 percent were classified as

overweight and 37 percent were classified as obese.

Poor diet and physical inactivity are rapidly overtaking smoking as the leading preventable cause of morbidity and mortality in the United States. Further, most of the morbidity and mortality related to poor diet and physical inactivity can be attributed to excess weight. However, even modest weight loss and increased physical activity can result in improved health outcomes, especially for individuals with diabetes or likely to get diabetes, a highly prevalent condition among veterans seeking healthcare at VA facilities. Being overweight or obese are also conditions clearly associated with coronary heart disease (CHD), CHD risks (hypertension, hyperlipidemia), certain cancers, gallbladder disease, obstructive sleep apnea, osteoarthritis, and all-cause mortality. Consequently, the health care costs for obesity-associated conditions throughout the United States are substantial with estimates of the total annual expenditures in the United States consisting of as much as \$107.2 billion in 2006 dollars.

To combat the effects of being overweight or obese, VA has established "Managing Overweight/Obesity for Veterans Everywhere!" (MOVE!). This is a comprehensive, evidence-based weight management program that consists of both individual and group counseling.

Currently, VA regulations require many veterans to agree to make co-payments as a condition for participation in the MOVE! program. However, field providers report that co-payments are a significant barrier to participation in the counseling program. The co-payment requirement is estimated to generate approximately \$1,001,294 annually. However, we believe that not imposing co-payments would be clearly cost effective based on the conclusion that the costs of healthcare for overweight and obese individuals become significantly lower as they lose weight. Accordingly, we propose to eliminate co-payments for weight management counseling.

The MOVE! program is based primarily upon the National Institutes of Health/National Heart, Lung, and Blood Institute's *Clinical Guidelines for the Identification, Evaluation, and Treatment of Overweight and Obesity* and is consistent with the weight management recommendations of the U.S. Preventive Services Task Force, supported by the Agency for Healthcare Research and Quality in the Department of Health and Human Services. An Executive Council consisting of federal weight management experts and

external expert advisors reviewed *MOVE!* and declared the *MOVE!* program to be consistent with current medical guidance and recommendations for weight management.

MOVE! became widely implemented across VA facilities as a standard clinical program over the past several years. The *MOVE!* program provides much of its care through frequent group sessions, a very effective and efficient format of weight management care. Effective treatment typically results in a 5–10 percent weight loss, which is associated with improvement in weight-related conditions such as hypertension, dyslipidemia, and diabetes. VA expects that elimination of the copayment associated with weight management treatment visits will facilitate continued patient engagement in treatment, resulting in better clinical outcomes. Over the long run, the loss in revenue from elimination of the copayment is expected to be offset by lower health care costs for weight-related conditions.

Limited research exists to fully understand the exact impact of a policy change such as this. While VA expects this change to be cost effective in the long run, VA will monitor results to assist in future decision-making concerning this and similar programs. VA will work with its research community to retrospectively evaluate the impact of this policy change.

This document proposes to amend 38 CFR 17.47(e)(2) by making nonsubstantive changes to correct references to statutory provisions. Section 17.47(e)(2) currently states that if a veteran provided inaccurate information on an application and is incorrectly deemed eligible for care under 38 U.S.C. 1710(a)(1) rather than section 1710(a)(2), VA shall retroactively bill the veteran for the applicable copayment. When § 17.47(e)(2) was initially promulgated, section 1710(a)(2) pertained to veterans who were not described in section 1710(a)(1) and who were therefore subject to the copayment requirements then set forth in section 1710(f). In 1996, section 1710(a) was amended by section 101(a) of Public Law 104–262. Under the amendments, veterans previously described in section 1710(a)(1) are now described in section 1710(a)(1) and (a)(2). Veterans previously described in section 1710(a)(2) are now described in section 1710(a)(3). The amendment to § 17.47(e)(2) corrects the references to these statutory provisions.

Administrative Procedure Act

Concurrent with this proposed rule, we also are publishing a separate, substantively identical direct final rule

in the “Rules and Regulations” section of this **Federal Register**. The simultaneous publication of these documents will speed notice and comment rulemaking under section 553 of the Administrative Procedure Act should we have to withdraw the direct final rule due to receipt of significant adverse comments.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or why it would be ineffective or unacceptable without change. If significant adverse comments are received, VA will publish a notice of receipt of significant adverse comments in the **Federal Register** withdrawing the direct final rule.

Under direct final rule procedures, unless significant adverse comments are received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that no adverse comments were received and confirming the date on which the final rule will become effective. VA will also publish a separate notice in the **Federal Register** withdrawing this proposed rule.

In the event the direct final rule is withdrawn because of significant adverse comments, VA can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the direct final rule will be treated as comments regarding the proposed rule. VA will consider such comments in developing a subsequent final rule. Likewise, significant adverse comments submitted regarding the proposed rule will be considered as comments regarding the direct final rule.

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. The adoption of the proposed rule would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Executive Order classifies 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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order 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 principles set forth in the Executive Order.

Paperwork Reduction Act

This document does not contain any provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

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 rule would have no such effect on State, local, or tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; and 64.012, Veterans Prescription Service.

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.

Approved: December 26, 2007.

James B. Peake,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on April 11, 2008.

For the reasons set out in the preamble, VA 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, 1721, unless otherwise noted.

2. Amend § 17.108 by redesignating paragraphs (e)(12) and (e)(13) as paragraphs (e)(13) and (e)(14), respectively; and by adding a new paragraph (e)(12) to read as follows:

§ 17.108 Co-payments for inpatient hospital care and outpatient medical care.

* * * * *

(e) * * *

(12) Weight management counseling (individual and group);

* * * * *

§ 17.47 [Amended]

3. In § 17.47(e)(2), remove “under 38 U.S.C. 1710(a)(1) rather than § 1710(a)(2)” and add, in its place, “under 38 U.S.C. 1710(a)(1) or (a)(2) rather than 38 U.S.C. 1710(a)(3)”.

[FR Doc. E8–8098 Filed 4–15–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[FWS–R8–ES–2007–0008]; [92210–1117–0000 B4]

RIN 1018–AV07

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, changes to the proposed critical habitat revision, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our June 19, 2007, proposed revision to critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) under the Endangered Species Act of 1973, as amended (Act). In this document, we also propose to: Increase the size of proposed critical habitat Unit 1 (Santa Ana River Wash), and add two new proposed units: Unit 4 (Cable Creek Wash) and Unit 5 (Bautista Creek). In total, we are adding approximately 1,579 acres (ac) (638 hectares (ha)), which are currently designated as critical habitat for this subspecies, to our proposed revision to critical habitat. We also announce the availability of the draft economic analysis (DEA) of the proposed revision of critical habitat and an amended required determinations section of the proposal. The DEA estimates potential costs attributed to the revised critical habitat designation (incremental costs) to be approximately \$71.2 million in present value terms using a 3 percent discount rate over a 23-year period in areas proposed as critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the original proposed revision of critical habitat, the additions to revised critical habitat proposed in this document, the associated DEA, and the amended required determinations section. Comments previously submitted on this rulemaking do not need to be resubmitted, as they will be incorporated into the public record and fully considered when preparing our final determination.

DATES: We will accept comments received or postmarked on or before May 16, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV07; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760/431–9440; facsimile 760/431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:**Public Comments**

We will accept written comments and information during this reopened comment period on our proposed revision to critical habitat for the San Bernardino kangaroo rat published in the **Federal Register** on June 19, 2007 (72 FR 33808), the additions to revised critical habitat proposed in this document, the DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), specifically the benefits of excluding or the benefits of including any particular area as critical habitat.

(2) *Specific information on:*

- The amount and distribution of San Bernardino kangaroo rat habitat,
- Areas occupied by the subspecies at the time of listing that contain features essential for the conservation of the subspecies we should include in the designation and why, and

- Areas not occupied by the subspecies at the time of listing are essential to the conservation of the subspecies and why.