

regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

#### *Regulatory Flexibility Act*

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

#### *Paperwork Reduction Act*

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

#### *Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"*

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate 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 and that such rulemaking will not significantly or uniquely affect small governments.

#### *Executive Order 13132, "Federalism"*

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### **List of Subjects in 32 CFR Part 322**

Privacy.

1. The authority citation for 32 CFR part 322 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Amend Section 322.7, by adding a new paragraph (q) as follows:

#### **§ 322.7 Exempt systems of records.**

\* \* \* \* \*

(q) GNSA 20.

(1) *System name:* NSA Police Operational Files.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) Authority: 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act

would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: August 3, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04-18079 Filed 8-6-04; 8:45 am]

**BILLING CODE 5001-06-M**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 17**

**RIN 2900-AL66**

#### **Patients' Rights**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend VA's medical regulations to update the patients' rights regulation by bringing its provisions regarding medication, restraints and seclusion into conformity with current law and practice. The changes are primarily intended to clarify that it is permissible for VA patients to receive medication prescribed by any health care professional legally authorized to prescribe medication, and that it is permissible for any authorized licensed

health care professional to order the use of restraints and seclusion when necessary. We are also proposing to make nonsubstantive changes in the patients' rights regulation for purposes of clarification.

**DATES:** Comments must be received on or before October 8, 2004.

**ADDRESSES:** Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail to [VAregulations@mail.va.gov](mailto:VAregulations@mail.va.gov); or, through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AL66." All 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) 273-9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Audrey Drake, Program Director (108), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 565-6740.

**SUPPLEMENTARY INFORMATION:** In 1982, the Department of Veterans Affairs published a final rule articulating patients' rights with respect to a wide array of matters including such things as clothing, worship, money, exercise, visitation and communication, grievances and confidentiality of information. The rule is currently set forth at 38 CFR 17.33.

Paragraph (e) of the current § 17.33 addresses the topic of medications. The first sentence of the paragraph provides that "Patients have a right to be free from unnecessary or excessive medication." The remainder of the paragraph sets forth various procedures to ensure that patients will be free from unnecessary or excessive medication. Thus, the second sentence of paragraph (e) states, "Except in an emergency, medication will be administered only on the written order of a physician in that patient's medical record." The paragraph further provides that a physician must countersign any telephonic prescription within 24 hours, that the attending physician will be responsible for all medication given or administered to a patient, and that the attending physician must review a patient's drug regimen at least every 30 days. Similarly, paragraph (d) of § 17.33 contains provisions stating that patients may be physically restrained or placed

in seclusion only upon the written order of a physician.

When VA promulgated the patients' rights rule in 1982, physicians were generally the only health care providers authorized to prescribe medication and order the use of restraints and seclusion. However, that is no longer the case. Under current law, other health care professionals are legally licensed to prescribe medication and typically do so in health care settings across the Nation. For example, licensed registered nurse practitioners are licensed to independently prescribe medication in virtually every state in the United States. Similarly, physicians are not the only licensed health care professionals that are authorized to order the use of restraints and seclusion.

To update the patients' rights regulation, and bring its provisions regarding medication, restraints and seclusion into conformity with current law and practice, VA is proposing to eliminate the specific references to physicians in § 17.33(d) and (e), and to substitute references to appropriate health care professionals. This proposed change would not in any way change the substantive patient protections in the regulation. Thus, the regulation would continue to provide that VA could administer medication and restrain patients and place them in seclusion only on the basis of a written order, that telephonic orders would have to be countersigned, and that VA would have to ensure review of a patient's drug regimen at least every 30 days.

The proposed amendments would also delete references in the regulation to specific time limits on how long restraints or seclusion may be used before the health care professional must examine or reexamine the patient, and how frequently the patient must be monitored. Instead, the regulation would provide that restraints and seclusion could be used for a time period that is in compliance with current community and/or accreditation standards. Timeframes considered appropriate for the use of restraints and seclusion have changed over the years, and may change again in the future. To avoid having to change the regulation each time, VA believes it would be better to have the regulation state that those timeframes must be in compliance with the currently accepted community and/or accreditation standards or as is reasonable under existing circumstances.

We are also proposing to make nonsubstantive changes for purposes of clarification in § 17.33, including, with no intended change in meaning, using

the term "health care professional" rather than "health or mental health professional" or "health professional."

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

#### **Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### **Executive Order 12866**

The Office of Management and Budget has reviewed this document under Executive Order 12866.

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

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

#### **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: June 2, 2004.

Anthony J. Principi, Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as set forth below:

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. Section 17.33 is amended by:

a. In paragraph (b) introductory text, removing "paragraph (c)" and adding, in its place, "paragraphs (c) and (d)".

b. In paragraphs (c)(1) introductory text, (c)(2) introductory text, and (c)(2)(iv), removing "health or mental health professional" and adding, in its place, "health care professional".

c. In paragraph (c)(1)(ii), removing "detaining" and adding, in its place, "detailing".

d. In paragraph (c)(2) introductory text, removing "this paragraph" and adding, in its place, "paragraph (c) of this section".

e. In paragraph (c)(3), removing "(c)(1)" and adding, in its place, "(b)".

f. In paragraph (c)(4), removing "pursuant to this paragraph", and adding, in its place, "under paragraph (c) of this section".

g. In paragraph (c)(5), removing "orders" and adding, in its place, "orders under paragraph (c) of this section".

h. Revising paragraphs (d)(1), (d)(2), and (e).

The revisions read as follows:

§ 17.33 Patients' rights.

\* \* \* \* \*

(d) \* \* \* (1) Each patient has the right to be free from physical restraint or seclusion except in situations in which there is a substantial risk of imminent harm by the patient to himself, herself, or others and less restrictive means of preventing such harm have been determined to be inappropriate or insufficient. Patients will be physically restrained or placed in seclusion only on the written order of an appropriate licensed health care professional. The reason for any restraint order will be clearly documented in the progress notes of the patient's medical record. The written order may be entered on the basis of telephonic authority, but in such an event, an appropriate licensed health care professional must examine the patient and sign a written order within an appropriate timeframe that is in compliance with current community and/or accreditation standards. In

emergency situations, where inability to contact an appropriate licensed health care professional prior to restraint is likely to result in immediate harm to the patient or others, the patient may be temporarily restrained by a member of the staff until appropriate authorization can be received from a health care professional. Use of restraints or seclusion may continue for a period of time that does not exceed current community and/or accreditation standards, within which time an appropriate licensed health care professional shall again be consulted to determine if continuance of such restraint or seclusion is required. Restraint or seclusion may not be used as a punishment, for the convenience of staff, or as a substitute for treatment programs.

(2) While in restraint or seclusion, the patient must be seen within appropriate timeframes in compliance with current community and/or accreditation standards:

(i) By an appropriate health care professional who will monitor and chart the patient's physical and mental condition; and

(ii) By other ward personnel as frequently as is reasonable under existing circumstances.

\* \* \* \* \*

(e) Medication. Patients have a right to be free from unnecessary or excessive medication. Except in an emergency, medication will be administered only on a written order of an appropriate health care professional in that patient's medical record. The written order may be entered on the basis of telephonic authority received from an appropriate health care professional, but in such event, the written order must be countersigned by an appropriate health care professional within 24 hours of the ordering of the medication. An appropriate health care professional will be responsible for all medication given or administered to a patient. A review by an appropriate health care professional of the drug regimen of each patient shall take place at least every thirty (30) days. It is recognized that administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, for the convenience of the staff, or in quantities which interfere with the patient's treatment program.

\* \* \* \* \*

[FR Doc. 04-18106 Filed 8-6-04; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA146-5080b; FRL-7798-5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Major Stationary Source Applicability for Reasonably Available Control Technology in the Northern Virginia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia specifying that the Northern Virginia Ozone Nonattainment Area is now subject to the severe major source permitting requirements and lowering the major stationary source threshold for nitrogen oxide (NOx) from 50 tons per year to 25 tons per year. In the Final Rules section of this Federal Register, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 8, 2004.

ADDRESSES: Submit your comments, identified by VA146-5080 by one of the following methods:

A. Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

B. E-mail: morris.makeba@epa.gov

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.