Federal Register

Friday,
January 17, 2003

Part IV

Department of Veterans Affairs

38 CFR Part 17

Enrollment—Provision of Hospital and Outpatient Care to Veterans Subpriorities of Priority Categories 7 and 8 and Annual Enrollment Level Decision; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL51

Enrollment—Provision of Hospital and Outpatient Care to Veterans Subpriorities of Priority Categories 7 and 8 and Annual Enrollment Level Decision

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: As required by Pub. L. 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, the Secretary of Veterans Affairs must make an annual decision concerning enrollment in VA's health-care system in order to ensure that medical services provided are both timely and acceptable in quality. An enrollment system is necessary because the provision of VA health care is discretionary and can be provided only to the extent that appropriated resources are available for that purpose. In recognition of that fact, Congress has prioritized eligibility to enroll in the VA system by creating eight priority categories, with priority category 8 veterans (those who do not have compensable service-connected disabilities, and whose incomes exceed geographic-means tests) having the lowest priority for enrollment. The law recognizes the higher obligation owed to veterans requiring care for their service-connected disabilities, and to lower-income veterans. Since the implementation of the enrollment requirement in 1998, all veterans seeking VA care have been permitted to enroll. However, due to a tremendous growth in the number of veterans seeking VA health-care benefits in recent months, VA has been unable to provide all enrolled veterans with appointments within a reasonable time. Many VA facilities have either placed new enrollees on waiting lists or have scheduled appointments so far in the future that the services cannot be considered timely. This document announces the enrollment decision required by law. VA will continue to treat all veterans currently enrolled in any category, and will treat new enrollees in categories 1 through 7. However, to protect the quality and improve the timeliness of care provided to veterans in higher enrollment-priority categories, VA will suspend the enrollment of additional veterans who are in the lowest statutory enrollment category (priority category 8). It is emphasized that this decision will not affect veterans already enrolled in the VA system, nor affect eligibility for treatment of service-connected disabilities which exists independently of enrollment requirements. This enrollment decision is effective January 17, 2003. To facilitate this decision, this document also amends existing regulations to establish additional subpriorities within priority category 8. Although the document takes no action that will affect the enrollment of veterans in priority category 7, the document will nevertheless also amend the existing regulations to establish the same additional subpriorities within priority category 7.

DATES: *Effective Date:* This interim final rule is effective January 17, 2003. Comments must be received by VA on or before March 18, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL51.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Amy Hertz, Office of Policy and Planning (105D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–8934.

SUPPLEMENTARY INFORMATION: Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, required VA to establish a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care, within available appropriated resources. It directed that the enrollment system be managed in such a way as ''to ensure that the provision of care to enrollees is timely and acceptable in quality,'' and authorized such subprioritization of the seven statutory enrollment categories ''as the Secretary determines necessary.'' The law also provided that starting October 1, 1998, most veterans had to enroll in the VA health-care system as a condition for receiving VA hospital and outpatient care. Since that time, VA has enrolled all eligible veterans who sought enrollment in the VA system.

Subsequently on January 23, 2002, Congress enacted the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, further amending the law governing enrollment. It altered the enrollment system by establishing, effective October 1, 2002, an additional priority category 8.

This document amends 38 CFR 17.36 to add two new subpriorities to both enrollment priority categories 7 and 8, for a total of four subpriorities in each category. It also announces that VA will suspend enrollments of additional veterans in priority category 8. Veterans who VA would not enroll would be those who have no compensable service-connected disability or other status making them eligible for placement in a higher priority category. All of these veterans have annual incomes above a statutory income threshold (geographic means test threshold) applicable to the location in which they reside. The suspension of new enrollments is necessary to prevent further erosion of VA's capacity to provide needed health-care services of high quality to veterans in a timely and medically appropriate manner.

Projections for Increased Placement of Veterans on Wait Lists

An existing regulation (38 CFR 17.36(c)) requires that the Secretary determine which categories of veterans are eligible to be enrolled and that the Secretary notify eligible enrollees of the determination by announcing it in the **Federal Register**. In making that determination, the Secretary must consider an array of factors including economic information such as available resources, projections of demand for enrollment, and the length of waiting times for appointments for care.

There has been an unprecedented surge in enrollments in the VA health-care system. Between October 1, 2001 and September 2002, VA enrolled an additional 830,237 veterans. Of these new enrollees, 425,000 had annual income and net worth above the statutory ''means test'' income threshold that required VA to place them in enrollment priority category 7. The majority of those enrollees now fall within the new priority category 8. As a result of this growth in enrollment, many VA facilities have been unable to provide timely access to needed care. Many VA facilities have informed enrolled veterans that they are being placed on a wait list for care and that they will be notified when an appointment for care is possible. Other facilities have scheduled appointments for enrollees far into the future.

As of December 2002, VA estimates that there were almost 236,000 veterans who have been unable to schedule an

appointment or have an appointment scheduled more than 6 months from the desired date. Moreover, VA estimates that the number of veterans waiting for appointments more than 6 months from the desired date would increase in FY 2003. VA also estimates that between January and September 2003, as many as 164,367 priority category 8 veterans would seek to enroll for VA health care services. Without action to suspend new enrollment, this would adversely affect quality, patient safety, and access.

VHA's total FY 2003 medical care appropriation is estimated to be $23.892 billion. This is supplemented by an additional $1.881 billion from collections for copayments, third-party reimbursements for services, other revenue, and carry-over funds. The sum of these resources is $25.773 billion. These resources include $4.224 billion for services provided that are not included in the medical benefits package, including long-term care, domiciliary care, dental care, emergency care, CHAMPVA, readjustment counseling, certain prosthetic services, and counseling treatment for sexual trauma. This leaves $21.549 billion available for the medical benefits package.

The following table shows the projected average enrollment for FY 2003 together with the projected expenditures that would be needed to provide the medical benefits package to all enrollees.

TABLE—FISCAL YEAR 2003 PROJECTIONS

Priority category	Average enrollment	Medical benefits package expenditures	Cumulative medical benefits package expenditures
1	564,556	$4,170,231,000	$4,170,231,000
2	419,580	1,341,312,000	5,511,543,000
3	876,839	2,225,614,000	7,737,157,000
4	174,887	2,815,995,000	10,553,152,000
5	2,509,805	9,595,156,000	20,148,308,000
6	142,835	159,128,000	20,307,436,000
7	785,243	1,113,375,000	21,420,811,000
8	1,517,660	2,034,405,000	23,455,216,000
Total	6,991,405	23,455,216,000	

As can be seen from the expected appropriation and the table above, VA projects that available resources will be considerably less than needed to meet the strains that new enrollees would place on the system. Without VA's actually limiting enrollment, demand will overwhelm the system's ability to provide timely care of the quality veterans expect and deserve.

Past enrollment growth has exhausted VA's marginal capacity, and the projected growth for FY 2003 and beyond exceeds both VA's primary and specialty care capacity. By suspending enrollment of additional priority category 8 veterans, VA would avoid very significant additional medical benefits costs and begin to bring demand in line with capacity, which will reduce the number of veterans on wait lists. In FY 2003, 164,367 veterans who were expected to enroll in priority category 8 would not be enrolled. Further, this number is expected to grow to over 520,000 by FY 2005.

CUMULATIVE APPLICANTS FOR ENROLLMENT FROM JANUARY 17, 2003

Priority category 8	FY 2003 applicants from 1/17/03 to 9/30/03	FY 2004 cumulative applicants from 1/17/03	FY 2005 cumulative applicants from 1/17/03
0% SC	5,192	11,500	16,500
NSC	159,175	348,500	505,500
Total	164,367	360,000	522,000

Moreover, VA projects that enrollment in priority categories 1 through 7, which totaled 5,089,542 in FY 2002, will continue to grow significantly, as shown by the following table.

PROJECTED PRIORITY CATEGORY 1–7 ENROLLMENT

Fiscal year:	
2003	5,473,745
2004	5,754,701
2005	5,966,957

Immediate action is needed to limit enrollment to ensure VA's ability to provide already-enrolled veterans and new higher-priority veterans timely, medically appropriate access to high-quality health-care services. By suspending additional enrollments of priority category 8 veterans, VA will be better able to provide care to veterans in higher priority groups. Accordingly, effective January 17, 2003 additional priority category 8 veterans will not be enrolled. For this purpose, veterans who have completed the enrollment forms and submitted them to VA (or had them postmarked) prior to January 17, 2003 will be considered to have enrolled before the cutoff date.

Subpriorities

Existing regulations currently provide for two subpriorities within both priority categories 7 and 8. The first subpriority includes those veterans with noncompensable zero percent service-connected disabilities. The second subpriority includes all other veterans in priority category 7 or 8.

This document amends the existing regulation, 38 CFR 17.36, to establish a

total of four subpriorities within both categories 7 and 8. They would be the following:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (i); and

(iv) Nonservice-connected veterans not included in paragraph (ii).

This rule change reflects VA's view that veterans who are enrolled in the VA system should have a higher priority than those who have not sought enrollment and that those veterans with a service-connected disability should have a higher priority than those without a service-connected disability. This change also is necessary in order to carry out the announcement in this document that VA will cease enrolling additional veterans that VA would be required to place in the third and fourth subpriority in priority category 8.

Administrative Procedure Act and Congressional Review Act

We have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) and the notice and public procedure provisions of the Congressional Review Act (5 U.S.C. 801–808) because compliance with such provisions would be impracticable and contrary to the public interest.

Changes made by this rule reflect a VA enrollment decision based on available funding. Delaying implementation would exacerbate problems with providing enrolled veterans with timely access to needed care.

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 consequential effect on State, local, or tribal governments.

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

This rule is economically significant under Executive Order 12866 and major under the Congressional Review Act. The Office of Management and Budget have reviewed this rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

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: January 8, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended 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. In § 17.36 paragraphs (b)(7), (b)(8) and (c)(2) are revised to read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

* * * * *

(b) * * *

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes ''low income'' under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable ''low-income'' income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable ''low-income'' income limits for the area in which the veteran resides, the veteran will be considered to have ''low income'' for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the ''low income'' income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(7)(i) of this section; and

(iv) Nonservice-connected veterans not included in paragraph (b)(7)(ii) of this section.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further

prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a **Federal Register** document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) of this section; and

(iv) Nonservice-connected veterans not included in paragraph (b)(8)(ii) of this section.

(c) * * *

(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll all priority categories of veterans set forth in § 17.36(b) beginning January 17, 2003 except that those veterans in priority category 8 who were not in an enrolled status on January 17, 2003 or who requested disenrollment after that date, are not eligible to be enrolled.

* * * * *

[FR Doc. 03–1201 Filed 1–16–03; 8:45 am]

BILLING CODE 8320–01–U