

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–142 is added to read as follows:

#### § 165.T07–142 Security Zone; Hutchinson Island, St. Lucie, Florida and Turkey Point, Biscayne Bay, Florida City, Florida.

(a) *Regulated area.* The Coast Guard has established temporary security zones around the Saint Lucie and Turkey Point power plants. The security

zone area for Hutchinson Island includes all waters within lines connecting the following points: 27°21.20' N, 080°16.26' W; 27°19.18' N, 080°15.21' W; 27°20.36' N, 080°12.83' W; and 27°22.43' N, 080°13.8' W. The security zone area for Turkey Point includes all land and water within lines connecting the following points: 25°26.8' N, 080°16.8' W; 25°26.8' N, 080°21' W; 25°20' N, 080°16.8' W; and 25°20' N, 080°20.4' W.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The COTP may issue a Broadcast Notice to Mariners on VHF–FM Channels 16 and 22 (157.1 MHz) notifying mariners when they are allowed to temporarily enter the zone. Law enforcement patrol boats will be on scene and may be contacted on channel 16 VHF/FM.

(c) *Dates.* This section is effective from 8 p.m. on December 10, 2001 through 11:59 p.m. on June 15, 2002.

(d) *Authority.* This section is promulgated under 33 U.S.C. 1226, 33 U.S.C. 1231, 33 CFR 1.05–(g) and 49 CFR 1.46.

Dated: December 10, 2001.

**J. A. Watson, IV,**

*Captain, U.S. Coast Guard, Captain of the Port, Miami, Florida.*

[FR Doc. 02–2210 Filed 1–29–02; 8:45 am]

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### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

#### RIN 2900–AK89

#### Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** This rule implements provisions of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and the Veterans' Survivor Benefits Improvements Act of 2001. These changes extend CHAMPVA eligibility to persons age 65 and over who would have otherwise lost their CHAMPVA eligibility due to attainment of entitlement to hospital insurance benefits under Medicare Part A. This rule also implements coverage of physical examinations required in connection with school enrollment for

beneficiaries through age 17 and reduces the catastrophic cap for CHAMPVA dependents and survivors (per family) from \$7,500 to \$3,000 for each calendar year. These regulatory changes implement the statutory provisions.

**DATES: Effective Dates:** This document is effective on January 30, 2002; except for 38 CFR 17.271(b) and 17.272(a)(31)(x) which are effective October 1, 2001, and for 38 CFR 17.274(c) which is effective January 1, 2002.

**Comment Date:** Written comments must be received by VA on or before April 1, 2002.

**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](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are submitted in response to "RIN 2900–AK89." 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:

Susan Schmetzer, Chief, Policy & Compliance Division, VA Health Administration Center, P.O. Box 65020, Denver, CO 80206–9020, telephone (303) 331–7552.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview of the Rule

CHAMPVA provides health care benefits to the dependents and survivors of veterans rated as 100% permanently and totally disabled from a service-connected condition; to the survivors of veterans who died from a service-connected medical condition; or to survivors of veterans who died in the line of duty and who are not otherwise covered under the TRICARE program.

On October 30, 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, was enacted. On June 5, 2001, the Veterans' Survivor Benefits Improvements Act of 2001, Public Law 107–14, was enacted. This interim final rule implements these Acts for the CHAMPVA program. 38 U.S.C. 1713 requires CHAMPVA to provide the same or similar benefits as the DoD TRICARE program (formerly known as CHAMPUS).

## II. CHAMPVA Eligibility for Individuals 65 Years of Age and Older

Prior to October 1, 2001, CHAMPVA coverage was terminated when a beneficiary became entitled to Part A of Medicare by virtue of becoming age 65. The age limitation for the provision of benefits was the same for TRICARE beneficiaries. Public Laws 106-398 and 107-14 eliminated the age limitation. The following is an explanation of the amended regulations implementing this statutory change.

CHAMPVA beneficiaries age 65 and older prior to June 5, 2001, regain eligibility effective October 1, 2001, for covered inpatient and outpatient benefits, secondary to Medicare and any other health insurance coverage. A beneficiary, who had Parts A and B of Medicare on June 5, 2001, must retain Part B to continue CHAMPVA eligibility. Beneficiaries age 65 on or after June 5, 2001, who are entitled to Medicare Part A must also be enrolled in Part B of Medicare to retain CHAMPVA eligibility effective October 1, 2001.

To be eligible, the individual must be a dependent, spouse or surviving spouse, age 65 or older, of a veteran who is rated 100% permanently and totally disabled from a service-connected condition; died of a service-connected medical condition; or died in active duty. The dependent, spouse or surviving spouse must not otherwise be eligible for benefits under the DoD TRICARE program. Benefits include specified medical services and supplies from authorized civilian sources such as hospitals, other authorized institutional providers, physicians, other authorized professional providers, professional ambulance services, prescription drugs, authorized medical supplies, and rental or purchase of durable medical equipment. Benefits do not include services and supplies for conditions that are expressly excluded from the CHAMPVA benefit by statute or regulation. There may be services that are payable under Medicare that are not payable under CHAMPVA; or conversely there may be benefits that are payable under CHAMPVA that are not payable under Medicare. However, many health care services and supplies are a benefit provided and paid for by both Medicare and CHAMPVA.

For all services and supplies, Medicare supplemental insurance plans or Medicare HMO plans are considered other health insurance and will pay prior to CHAMPVA. Cost sharing, deductible, and annual catastrophic cap requirements are applicable. Beneficiaries will continue to be

responsible for payment of their applicable Medicare or CHAMPVA cost-share and deductible. For health care services for which payment may be made under both plans, CHAMPVA will pay up to the CHAMPVA allowable amount for the actual out-of-pocket costs incurred by the beneficiary over the sum paid by Medicare and the total of all amounts paid or payable by third party payers other than Medicare (such as other health insurance).

When a Medicare+Choice enrollee obtains unauthorized out-of-system care that Medicare+Choice will not cover or only partially cover, CHAMPVA will not process the claim as primary. This is because Medicare already paid for the health care the beneficiary needs in the form of a capitation payment to the Medicare+Choice plan. CHAMPVA will not become the primary payer for services that would have been covered by the Medicare+Choice plan had the beneficiary followed applicable requirements.

## III. School-Required Physicals

Prior to October 1, 2001, CHAMPVA provided for routine physical examinations under the well-child care provisions for children from birth to age six. Public Law 106-398 extended the provision for school-required physicals for TRICARE dependent children to age 12. This rule extends coverage of school-required physical examinations to CHAMPVA eligible beneficiaries through age 17. We believe the small size of CHAMPVA's population under age 18, and the added potential for financial vulnerability for children of 100% permanently and totally disabled veterans or veterans who died of a service-connected condition, supports expanding this benefit to beneficiaries through age 17. Further, the costs required to support this benefit for all dependent children who are required to undergo a school physical is minimal since there are far fewer dependents in this age group than there are in TRICARE. The school-required physicals are subject to the applicable cost sharing and deductibles for all outpatient services.

## IV. Reduction of Catastrophic Cap

Previously, for CHAMPVA, the catastrophic cap was \$7,500 per calendar year, per family. Under this rule, the catastrophic cap on payments is reduced to \$3,000, per calendar year, per family, for CHAMPVA eligible beneficiaries. The benefit is the same as that provided under Public Law 106-398 for the TRICARE program with the exception of the effective date. TRICARE computes the catastrophic cap

based on a fiscal year (October through September of the following year) whereas CHAMPVA computes the catastrophic cap based on a calendar year. For this reason the effective date for CHAMPVA beneficiaries is January 1, 2002.

## V. Regulatory Procedures

### *Administrative Procedure Act*

The changes made by this interim final rule in large part reflect statutory changes. Moreover, 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). Compliance with such provisions would be impracticable, unnecessary, and contrary to the public interest. A delay in the establishment of the rule would result in significant delays in providing these increased benefits. Also, to avoid significant administrative confusion, it is in the public's interest to provide these benefits within approximately the same period as similar benefits are provided to DoD's TRICARE beneficiaries.

### *Paperwork Reduction Act*

This interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511).

### *Unfunded Mandates*

The Unfunded Mandates Reform Act requires (in section 202) 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.

### *Executive Order 12866*

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

### *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. It is estimated that there are approximately 89,500 potential beneficiaries over age 65 that will use the benefit of coverage secondary to Medicare, approximately 2,000 beneficiaries impacted by the inclusion of school-required physical examination

benefit; and approximately 2,500 families benefiting from the reduction of the catastrophic cap. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. 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*

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

#### **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: November 21, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 17 is amended 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. In § 17.271, paragraphs (a) introductory text and (b) are revised to read as follows:

##### **§ 17.271 Eligibility.**

(a) *General Entitlement.* The following persons are eligible for CHAMPVA benefits provided that they are not eligible under Title 10 for the TRICARE Program or Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraph (b) of this section.

\* \* \* \* \*

(b) *CHAMPVA and Medicare entitlement.*

(1) Individuals under age 65 who are entitled to Medicare Part A and enrolled in Medicare Part B, retain CHAMPVA eligibility as secondary payer to Medicare Parts A and B, Medicare

supplemental insurance plans, and Medicare HMO plans.

(2) Individuals age 65 or older, and not entitled to Medicare Part A, retain CHAMPVA eligibility.

**Note to paragraph (b)(2):** If the person is not eligible for Part A of Medicare, a Social Security Administration "Notice of Disallowance" certifying that fact must be submitted. Additionally, if the individual is entitled to only Part B of Medicare, but not Part A, or Part A through the Premium HI provisions, a copy of the individual's Medicare card or other official documentation noting this must be provided.

(3) Individuals age 65 on or after June 5, 2001, who are entitled to Medicare Part A and enrolled in Medicare Part B, are eligible for CHAMPVA as secondary payer to Medicare Parts A and B, Medicare supplemental insurance plans, and Medicare HMO plans for services received on or after October 1, 2001.

(4) Individuals age 65 or older prior to June 5, 2001, who are entitled to Medicare Part A and who have not purchased Medicare Part B, are eligible for CHAMPVA as secondary payer to Medicare Part A and any other health insurance for services received on or after October 1, 2001.

(5) Individuals age 65 or older prior to June 5, 2001, who are entitled to Medicare Part A and who have purchased Medicare Part B must continue to carry Part B to retain CHAMPVA eligibility as secondary payer for services received on or after October 1, 2001.

\* \* \* \* \*

3. In § 17.272, paragraph (a)(31)(x) is added to read as follows:

##### **§ 17.272 Benefit limitations/exclusions.**

(a) \* \* \*

(31) \* \* \*

(x) School-required physical examinations for beneficiaries through age 17 that are provided on or after October 1, 2001.

\* \* \* \* \*

4. Section 17.274 is revised to read as follows:

##### **§ 17.274 Cost sharing.**

(a) With the exception of services obtained through VA facilities, CHAMPVA is a cost-sharing program in which the cost of covered services is shared with the beneficiary. CHAMPVA pays the CHAMPVA-determined allowable amount less the deductible, if applicable, and less the beneficiary cost share.

(b) In addition to the beneficiary cost share, an annual (calendar year) outpatient deductible requirement (\$50 per beneficiary or \$100 per family) must be satisfied prior to the payment of

outpatient benefits. There is no deductible requirement for inpatient services or for services provided through VA facilities.

(c) To provide financial protection against the impact of a long-term illness or injury, a calendar year cost limit or "catastrophic cap" has been placed on the beneficiary cost-share amount for covered services and supplies. Credits to the annual catastrophic cap are limited to the applied annual deductible(s) and the beneficiary cost-share amount. Costs above the CHAMPVA-allowable amount, as well as costs associated with non-covered services are not credited to the catastrophic cap computation. After a family has paid the maximum cost-share and deductible amounts for a calendar year, CHAMPVA will pay allowable amounts for the remaining covered services through the end of that calendar year.

(i) Through December 31, 2001, the annual cap on cost sharing is \$7,500 per CHAMPVA-eligible family.

(ii) Effective January 1, 2001, the cap on cost sharing is \$3,000 per CHAMPVA-eligible family.

(d) If the CHAMPVA benefit payment is under \$1.00, payment will not be issued. Catastrophic cap and deductible will, however, be credited.

(Authority: 38 U.S.C. 1713)

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 63**

[MD001-1000; FRL-7135-9]

#### **Approval of Section 112(I) Authority for Hazardous Air Pollutants; State of Maryland; Department of the Environment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule and delegation of authority.

**SUMMARY:** EPA is taking direct final action to approve Maryland Department of the Environment's (MDE's) request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, secondary lead smelting, hazardous waste combustors, and portland cement manufacturing