

mixture must comply with applicable state and local requirements in addition to the CSA regulatory controls.

Dated: January 28, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 05-2212 Filed 2-3-05; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AK94

Payment for Non-VA Physician and Other Health Care Professional Services Associated With Either Outpatient or Inpatient Care Provided at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) medical regulations concerning payment for non-VA health care professional services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. Currently, the medical regulations require all VA facilities to reimburse for non-VA health care professional services based upon the Centers for Medicare and Medicaid Services (CMS) physician fee schedule in effect at the time the services are provided. However, if the standard payment methodology is implemented in Alaska, VA payments will be significantly less than the usual and customary charges for the state. This may limit VA patient access to non-VA health care. Since a large portion of VA health care provided in Alaska is obtained from non-VA sources, this could negatively impact the quality of care provided veterans living in that state. This rule establishes an Alaska-specific payment methodology for inpatient and outpatient non-VA health care professional services within that state. The rule ensures that amounts paid to health care providers represent the local cost to furnish a service, while continuing to achieve program cost reductions.

DATES: *Effective Date:* This rule shall become effective on March 7, 2005.

Applicability Date: This rule shall be applicable to all claims for payment for services rendered on or after April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Schmetzer, Chief, Policy &

Compliance Division, Health Administration Center, Department of Veterans Affairs, P.O. Box 65020, Denver, CO 80206, telephone 303-331-7552. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 29, 2003 (68 FR 44507) we proposed to amend VA's medical regulations at 38 CFR part 17 to provide for the payment of non-VA physician services in Alaska that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. We provided a 60-day comment period that ended on September 29, 2003. We received one comment, in which the commenter suggested that VA adopt the Official Alaska Workers' Compensation Medical Fee Schedule as a basis for such payments. No changes are made based on this comment, as adoption of the Official Alaska Workers' Compensation Medical Fee Schedule would not achieve the dual goal of ensuring that the amounts paid to health care providers better represent the local cost to furnish a service, while continuing to achieve program cost reductions.

A number of technical changes of a non-substantive nature have been made in this final rule. The proposed rule described the title of this rule as *Payment for Non-VA Physician Services Associated with Either Outpatient or Inpatient Care Provided at Non-VA Facilities*. The use of the phrase "non-VA physician," both in the title of 38 CFR 17.56 and throughout the regulation, is imprecise, as the rule applies to all non-VA physician and other health care professional services associated with outpatient or inpatient care provided at non-VA facilities. In order to reconcile the terminology used in this rule with common practice in VA, the phrase "non-VA physician" will be replaced with "non-VA health care professional services." Additionally, the language was clarified to state the rates payable are based on the geographic location of where the services were rendered.

The proposed rule stated that VA would rely on Current Procedural Terminology (CPT) codes utilized by Centers for Medicare and Medicaid Services (CMS) to pay for these non-VA services. The reference to CPT codes was too restrictive, as CMS uses other national coding sets for health care professional services. Therefore, the references to CPT codes were removed. The final rule refers generally to the use of national standard code sets.

The proposed rule referenced Fiscal Year (FY) 2002 as the base year for

determining various costs. In light of the passage of time since publication of the proposed rule, and in order to reflect the most up-to-date data, this reference has been changed to FY 2003 throughout the final rule.

The proposed rule stated that for services that VA did not have occasion to pay for in Alaska in FY 2002, and for services represented by CPT codes established after FY 2002, VA will take the Centers for Medicare and Medicaid Services' rate for each unpaid code and multiply it times the average percentage paid by VA in Alaska for Centers for Medicare and Medicaid Services-like codes. Applying this rule only to services that VA had no occasion to pay during the previous Fiscal Year was unnecessarily narrow and would limit VA's ability to accurately gauge a reasonable payment. It is also inconsistent with other provisions of this rule, which require a minimum of eight occurrences. Therefore, the final rule has been revised to apply this rule to services that VA provided *less than eight times* in Alaska during the previous Fiscal Year. Clarification was also made that this rule would be applicable to unit-based codes as the VA moved from a single payment per code irrespective of units to unit-based payment in FY 2004, and development of a fee schedule that is not unit-based would be inconsistent and inaccurate.

The proposed rule stated that VA would increase the amounts on the VA Fee Schedule for Alaska annually in accordance with annual inflation rate adjustments published by CMS. The VA will use the national Medicare Economic Index (MEI) for that purpose. The MEI measures inflation in physician practice cost and general wage levels. The VA will not make modifications to the MEI based on regional factors because doing so would not achieve the dual goal of ensuring that the amounts paid to health care providers represent the local cost to furnish a service, while continuing to achieve program cost reductions.

Administrative Procedure Act

The modifications in this final rule are logical and reasonable outgrowths of the proposed changes set forth in the proposed rule and are intended to clarify the intent of the proposed rule. Based on the rationales set forth in the proposed rule and those contained in this document, we are adopting the provisions of the proposed rule as a final rule with the modifications described above.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, in 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 final 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 final rule 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 through 612. The final rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), the final rule 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 are 64.009, 64.010 and 64.011.

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, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 20, 2004.

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. Section 17.56 is amended by:

■ a. Revising the section heading.
■ b. In paragraph (a), removing “Except for anesthesia services,” and adding, in its place, “Except for anesthesia services, and services provided in the State of Alaska under paragraph (d) of this section,”; removing “Department of Health & Human Services, Health Care Financing Administration (HCFA) under Medicare’s participating” and adding, in its place, “Centers for Medicare and Medicaid Services’ (CMS) participating”; removing “calculated under Medicare’s participating” and adding, in its place, “calculated under Centers for Medicare and Medicaid Services’ participating”; and removing all references to “non-VA physician services” and adding, in their place, “non-VA health care professional services”.

■ c. In paragraph (b), removing “Medicare’s participating” and adding, in its place, “Centers for Medicare and Medicaid Services’ participating”; and removing “calculating the Medicare fee” and adding, in its place, “calculating the Centers for Medicare and Medicaid Services’ fee”.

■ d. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.

■ e. Adding a new paragraph (d).

■ f. In redesignated paragraph (f), removing the phrase “paragraphs (a) through (d)” and adding, in its place, “paragraphs (a) through (e)”.

The revision and addition read as follows:

§ 17.56 Payment for non-VA physician and other health care professional services.

* * * * *

(d) For services rendered in Alaska, VA will pay for services in accordance with a fee schedule that uses the Health Insurance Portability and Accountability Act mandated national standard coding sets. VA will pay a specific amount for each service for which there is a corresponding code. Under the VA Alaska Fee Schedule the amount paid in Alaska for each code will be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2003. For

services that VA provided less than eight times in Alaska in FY 2003, for services represented by codes established after FY 2003, and for unit-based codes prior to FY 2004, VA will take the Centers for Medicare and Medicaid Services’ rate for each code and multiply it times the average percentage paid by VA in Alaska for Centers for Medicare and Medicaid Services-like codes. VA will increase the amounts on the VA Alaska Fee Schedule annually beginning in 2005 in accordance with the published national Medicare Economic Index (MEI). For those years where the annual average is a negative percentage, the fee schedule will remain the same as the previous year. Payment for non-VA health care professional services in Alaska shall be the lesser of the amount billed, or the amount calculated under this subpart.

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(Authority: 38 U.S.C. 513, 1703, 1728)

[FR Doc. 05–2107 Filed 2–3–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–KY–0001–200425(w); FRL–7868–8]

Approval and Promulgation of Implementation Plans for Kentucky: 1-Hour Ozone Maintenance Plan Update for Edmonson Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comment, EPA is withdrawing the direct final rule published December 17, 2004, (69 FR 75473) approving revisions to the Edmonson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky on August 24, 2004. The submittal provides the 10-year update to the original 1-hour ozone maintenance plans for three 1-hour ozone maintenance areas, including the Edmonson County Maintenance Area, and also provides revised 2004 motor vehicle emission budgets (MVEBs) and establishes 2015 MVEBs. EPA stated in the direct final rule that if EPA received adverse comment by January 18, 2005, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment in a subsequent final action based upon the proposed action also