

(b) When we have completed this review, we will notify you of the decision. We may ask for additional information before deciding whether or not to approve your event.

(c) NARA reserves the right to review, reject, or require changes in any material, activity, or caterer you intend to use for the event.

Dated: June 23, 2008.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. E8-14706 Filed 6-27-08; 8:45 am]

BILLING CODE 7515-01-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 17 and 70

RIN 2900-AM02

#### Beneficiary Travel Under 38 U.S.C. 111 Within the United States

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the beneficiary travel regulations of the Department of Veterans Affairs (VA) that provide a mechanism for payment of travel expenses within the United States under 38 U.S.C. 111 to help veterans and other persons obtain care and services from VA's Veterans Health Administration (VHA). The amended regulations more fully implement the statutory provisions governing such payments.

**DATES:** *Effective Date:* This final rule is effective July 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Tony Guagliardo, Chief Business Office (16), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 254-0406. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This document revises the beneficiary travel regulations that were previously captioned "Transportation of Claimants and Beneficiaries." The revised regulations, set forth at 38 CFR part 70, provide a mechanism for payment of travel expenses within the United States under 38 U.S.C. 111 to help veterans and other persons obtain care and services from VHA, a subunit within VA.

This final rule adopts, with changes discussed below, the provisions of the corresponding proposed rule published in the **Federal Register** on July 23, 2007 (72 FR 40096), based on the rationale set forth in the proposed rule and this document.

The proposed rule provided for a 60-day comment period which ended September 21, 2007. We received comments from one commenter. We discuss below issues raised by the commenter.

The commenter asserted that the revised regulations should cover those aspects of beneficiary travel administered by the Veterans Benefit Administration (VBA), one of the Administrations within VA, and that we should add a definition of VBA. We made no changes based on these comments. These regulations properly concern, insofar as they apply to the VBA programs discussed in this comment, the beneficiary travel program administered by VHA under 38 U.S.C. 111 for eligible beneficiaries traveling to and from a Department facility in connection with vocational rehabilitation or incident to a scheduled Compensation and Pension examination. Additional transportation benefits available to vocational rehabilitation participants are, however, administered by VBA in accordance with chapter 31 of title 38, United States Code. As such, they are beyond the travel benefits authorized by section 111 and are properly administered pursuant to separate regulations (see, e.g., 38 CFR 21.154).

The commenter asserted that we should add a definition of "beneficiary" to read: "Beneficiary means a person determined eligible for VHA benefits and who, subject to these regulations, is engaged in official business for the Government and authorized to travel at Government expense." We made no changes based on this comment. Such a definition would not be correct. A covered beneficiary's travel must be for the limited purpose of obtaining a specific VA benefit or another purpose that qualifies under this rule. Such travel is not undertaken in connection with the conduct of official business on behalf of the Government.

The commenter asserted that we should amend the regulations to provide that any recipient of benefits under 38 U.S.C. chapter 18 who travels to or from a VA facility or VA-authorized health care facility for care or services is eligible to receive beneficiary travel benefits under section 111. We made no changes based on this comment. For purposes of chapter 18, the definition of "health care" includes, among other things, direct transportation costs to and from approved sources of health care. The authority for travel benefits under chapter 18 is 38 U.S.C. 1803(c) and 1813(c), not section 111. These travel benefits are administered separately by

VA's Health Administration Center, pursuant to 38 CFR 17.900 *et seq.*

The proposed rule explained that beneficiaries of the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) had previously been included in error among the groups eligible for beneficiary travel benefits under section 111. The commenter responded that this change should enable VA to have more funds available for those who are in fact eligible for beneficiary travel benefits, permitting VA to increase its reimbursement rates. However, funds allocated for the payment of beneficiary travel benefits under 38 U.S.C. 111 have not been used to pay for CHAMPVA beneficiaries' travel claims. Instead, those claims have been paid with funds allocated to the Health Administration Center, which administers the CHAMPVA program. Consequently, the amendment does not adjust the funding amounts available for the beneficiary travel program and is for clarification only.

Under the provisions of § 70.30(a)(1) as proposed, the Secretary would be authorized to establish a per mile rate for travel by a privately owned vehicle. Further, proposed § 70.30(a)(1)(iv) explained how VA would comply with the statutory provisions of 38 U.S.C. 111(g)(1), which require the Secretary, in consultation with the Administrator of General Services, the Secretary of Transportation, the Comptroller General of the United States, and representatives of veterans' service organizations, to conduct periodic investigations and other investigations required by that section on the actual cost of travel incurred by VA beneficiaries traveling to and from a Department facility for a covered purpose. Those provisions further explained how VA would provide notification of current mileage reimbursement rates. The commenter responded that the Secretary should be bound by the costs identified during such investigations, when determining VA's reimbursement rates. The commenter further stated that any rate that is less than that prescribed for Federal employee travel should be required to be fully justified in the **Federal Register**. We made no changes based on these comments.

Although the Secretary, when conducting investigations and determining rates under section 111, is required to take into consideration the actual cost of travel, along with other factors specified in the law, it is vital that the Secretary also be able to take into consideration the ramifications of diverting funds from direct medical care for the purpose of increasing mileage

reimbursement rates for the few categories of veterans eligible for beneficiary travel benefits. Indeed, in our view, by not tying the rates payable under section 111 to any other Federal travel program or otherwise mandating the reimbursement level, Congress implicitly recognized the need for this flexibility. Since the process and public notice provided for in § 70.31(a)(1) are appropriate under the applicable statutory provisions, we believe that there is no need for change based on the commenter's suggestions.

As we discuss below, this final rule makes a number of changes from the proposed rule in § 70.31, Deductibles. The proposed rule provided that VA will publish a notice of any change in the rates in the **Federal Register** and make current rates available on the Internet. In this final rule, we provide the correct Internet address for the rates in § 70.31(a)(2).

Proposed § 70.31(a) had stated, concerning reimbursement for travel to and from VA or VA-authorized health care, that VA shall deduct an amount established by the Secretary for each one-way trip from the amount otherwise payable under part 70 for such one-way trip except in limited circumstances, and had referred in parentheses to the then-current deductible. This final rule removes that parenthetical, which no longer is accurate, and provides a means for access to what the actual deductibles are. The Secretary raised the mileage reimbursement rate for travel under 38 U.S.C. 111 from 11 cents per mile to 28.5 cents per mile effective February 1, 2008, for the reasons stated in a Notice published in the **Federal Register** on February 1, 2008 (73 FR 6291), which referred to the authority in 38 U.S.C. 111 and the provision in the 2008 Appropriations Act funding an increase in the beneficiary travel mileage reimbursement rate to 28.5 cents per mile. The law requires that whenever the mileage reimbursement rates are increased, there must be a proportionate increase in the deductible amount. Accordingly, that notice announced an increase in the deductible, which for a one-way trip is \$7.77. This final rule reflects in § 70.31(a) a Web site and offices at which the public can obtain this and any future change to the deductible amounts.

The Secretary is authorized to waive the deductible requirements when the imposition of the deductible would cause the beneficiary severe financial hardship. Proposed § 70.31(c) concerned implementation of this waiver authority. We are aware that, in general, deductibles and other similar cost sharing requirements constitute a barrier

to access to care for those with limited income. Given the significant increase in the deductible and increasing fuel costs, many veterans will now experience financial hardship in meeting the increased deductible requirement. Therefore, the Secretary, acting within his discretionary authority, has concluded it is necessary to expand the categories of beneficiaries who are exempt from the deductible requirement to ensure their continued access to VA health care.

Thus, § 70.31 provides that the following three circumstances will constitute evidence of severe financial hardship for purposes of this section: (1) The beneficiary is in receipt of a VA pension; (2) the beneficiary has income for the year prior to the year of application made pursuant to § 70.20 that does not exceed the household income threshold determined under 38 U.S.C. 1722(a); or (3) the beneficiary's projected income for the year of application does not exceed the household income threshold determined under 38 U.S.C. 1722(a).

In addition, we have added in the final rule a provision to clarify the length of time for which a waiver granted under this section will be valid and effective. While implicit in both the current provisions in 38 CFR part 17 and in the proposed rule, we believe it preferable from a notice perspective to include this in the actual text of the regulation. Under the provisions of § 70.31(d) in this final rule, waivers granted under § 70.31(c) will be in effect: (1) To the end of the calendar year of the application; or (2) until there is a change in the beneficiary's household income status during the calendar year of application that results in the beneficiary no longer meeting the provisions of § 70.31(c) concerning severe financial hardship.

We have also changed § 70.31 by adding paragraph (e), which requires beneficiaries granted a waiver to promptly inform VA of any household income changes during the waiver period that result in their no longer meeting the severe financial hardship provisions of § 70.31(c). This is intended to ensure that those beneficiaries receiving a waiver of the deductible requirement meet eligibility criteria for it.

We are, where applicable, making changes in the final rule to display the approved information collection control numbers that have been assigned by the Office of Management and Budget (OMB). This final rule also makes changes from the proposed rule by making a number of minor clarifications and punctuation corrections.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change, except as stated above.

#### **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 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 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 the principles set forth in the Executive Order and/or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

#### **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, and 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, and tribal governments, or on the private sector.

**Paperwork Reduction Act of 1995**

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). OMB has approved those collections under control numbers 2900–0080 and 2900–0091. (We determined that it was not necessary to obtain OMB approval for the proposed information collection that was inadvertently described in the preamble of the proposed rule as requiring OMB approval. We did not receive any comments concerning that proposed information collection.) We display the control number under the applicable sections of the regulations in this final rule. OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Regulatory Flexibility Act**

VA hereby certifies that the provisions of the rule will 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. 601–602. This rule primarily affects individuals and any effects on small businesses would be inconsequential. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers and titles are 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

**List of Subjects in 38 CFR Parts 17 and 70**

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: March 31, 2008.

**James B. Peake,**

*Secretary of Veterans Affairs.*

■ For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR chapter I as follows:

**PART 17—MEDICAL**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as stated in specific sections.

**§ 17.38 [Amended]**

■ 2. In § 17.38, revise paragraph (a)(1)(xii) to read as follows:

**§ 17.38 Medical benefits package.**

(a) \* \* \*

(1) \* \* \*

(xii) Payment of beneficiary travel as authorized under 38 CFR part 70.

\* \* \* \* \*

**§§ 17.143 through 17.145 [Removed]**

■ 3. Remove §§ 17.143 through 17.145 and the undesignated center heading “TRANSPORTATION OF CLAIMANTS AND BENEFICIARIES”.

■ 4. Add a new part 70 to read as follows:

**PART 70—VHA BENEFICIARY TRAVEL UNDER 38 U.S.C. 111**

Sec.

- 70.1 Purpose and scope.
- 70.2 Definitions.
- 70.3 Determination of Secretary.
- 70.4 Criteria for approval.
- 70.10 Eligible persons.
- 70.20 Application.
- 70.21 Where to apply.
- 70.30 Payment principles.
- 70.31 Deductibles.
- 70.32 Reimbursement or prior payment.
- 70.40 Administrative procedures.
- 70.41 Recovery of payments.
- 70.42 False statements.
- 70.50 Reduced fare requests.

**Authority:** 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302.

**§ 70.1 Purpose and scope.**

(a) This part provides a mechanism under 38 U.S.C. 111 for the Veterans Health Administration (VHA) to make payments for travel expenses incurred in the United States to help veterans and other persons obtain care or services from VHA.

(b) This part does not cover payment for emergency transportation of veterans for non-service-connected conditions in non-VA facilities when the payment for

transportation is covered by §§ 17.1000 through 17.1008 of this chapter, as authorized by 38 U.S.C. 1725.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

**§ 70.2 Definitions.**

For purposes of this part:

*Attendant* means an individual traveling with a beneficiary who is eligible for beneficiary travel and requires the aid and/or physical assistance of another person.

*Beneficiary* means a person determined eligible for VHA benefits.

*Claimant* means a veteran who received services (or his/her guardian) or the hospital, clinic, or community resource that provided the services, or the person other than the veteran who paid for the services.

*Clinician* means a Physician, Physician Assistant (PA), Nurse Practitioner (NP), Psychologist, or other independent licensed practitioner.

*Emergency treatment* means treatment for a condition of such a nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health (this standard would be met if there were an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part).

*Irregular discharge* means the release of a competent patient from a VA or VA-authorized hospital, nursing home, or domiciliary care due to: refusal, neglect or obstruction of examination or treatment; leaving without the approval of the treating health care clinician; or disorderly conduct and discharge is the appropriate disciplinary action.

*Special mode of transportation* means an ambulance, ambulette, air ambulance, wheelchair van, or other mode of transportation specially designed to transport disabled persons (this would not include a mode of transportation not specifically designed to transport disabled persons, such as a bus, subway, taxi, train, or airplane). A modified, privately-owned vehicle, with special adaptive equipment and/or capable of transporting disabled persons is not a special mode of transportation for the purposes of this part.

*United States* means each of the several States, Territories, and

possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

VA means the Department of Veterans Affairs.

VA-authorized health care facility means a non-VA health care facility where VA has approved care for an eligible beneficiary at VA expense.

VA facility means VA Medical Center (VAMC), VA Outpatient Clinic (OPC), or VA Community Based Outpatient Clinic (CBOC).

VHA means the Veterans Health Administration, a principal unit within VA.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.3 Determination of Secretary.

For each fiscal year, the Secretary of Veterans Affairs will determine whether funds are available for paying expenses of VHA beneficiary travel under 38 U.S.C. 111. If the Secretary determines that funds are available for such purpose, VA will make payment for expenses of such travel in accordance with the provisions of this part.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.4 Criteria for approval.

(a) VA will approve payment for beneficiary travel under this part if:

(1) The travel was made to obtain care or services for a person who is eligible for beneficiary travel payments under § 70.10,

(2) The travel was in connection with care or services for which such person was eligible under the laws administered by VA,

(3) Application was made in accordance with § 70.20,

(4) All of the requirements of this part for payment are met, and

(5) Any failure to obtain the care or services was due to actions by officials of VA or persons acting on behalf of VA.

(b) When a claimant requests payment for beneficiary travel after the provision of care or services and the travel did not include a special mode of transportation, VA will approve round-trip payment under this part only if the travel was:

(1) In connection with care or services that were scheduled with VHA prior to arrival at the VHA-designated facility, or

(2) For emergency treatment.

(c) When a claimant requests payment for beneficiary travel for care or services that were not scheduled with VHA prior to arrival at the facility and were not emergency treatment and the travel did not include a special mode of transportation, VA will not approve round-trip payment under this part but

will approve payment for the return trip if VHA actually provided care or services.

(d) Except as provided in § 70.32 concerning reimbursement or prior payment, when payment for beneficiary travel is requested for travel that includes a special mode of transportation, VA will approve payment under this part if:

(1) The travel is medically required,

(2) The beneficiary is unable to defray the cost of such transportation, and

(3) VHA approved the travel prior to travel in the special mode of transportation or the travel was undertaken in connection with a medical emergency.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.10 Eligible persons.

(a) The following listed persons are eligible for beneficiary travel payments under this part:

(1) A veteran who travels to or from a VA facility or VA-authorized health care facility in connection with treatment or care for a service-connected disability (regardless of percent of disability).

(2) A veteran with a service-connected disability rated at 30 percent or more who travels to or from a VA facility or VA-authorized health care facility for examination, treatment, or care for any condition.

(3) A veteran who travels to a VA facility or VA-authorized health care facility for a scheduled compensation and pension examination.

(4) A veteran receiving pension under 38 U.S.C. 1521, who travels to or from a VA facility or VA-authorized health care facility for examination, treatment, or care.

(5) A veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of pension that the veteran would receive under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the veteran was eligible for pension and travels to or from a VA facility or VA-authorized health care facility for examination, treatment, or care.

(6) A veteran who travels to or from a VA facility or VA-authorized health care facility for examination, treatment, or care, and who is unable to defray the expenses of that travel as defined in paragraph (c) of this section.

(7) A member of a veteran's immediate family, a veteran's legal guardian, or a person in whose household the veteran certifies an intention to live, if such person is traveling for consultation, professional counseling, training, or mental health

services concerning a veteran who is receiving care for a service-connected disability; or a member of a veteran's immediate family, if such person is traveling for bereavement counseling relating to the death of such veteran in the active military, naval, or air service in the line of duty and under circumstances not due to the veteran's own misconduct.

(8) An attendant other than a VA employee, who is accompanying and assisting a beneficiary eligible for beneficiary travel payments under this section, when such beneficiary is medically determined to require the presence of the attendant because of a physical or mental condition.

(9) Beneficiaries of other Federal agencies, incident to medical services rendered upon requests of those agencies, subject to reimbursement agreement by those agencies.

(10) Allied beneficiaries as defined by 38 U.S.C. 109 subject to reimbursement agreement by the government concerned.

(b) For purposes of this section, the term "examination, treatment, or care" means the care services provided under the Medical Benefits Package in § 17.38 of this chapter.

(c) For purposes of this section, a beneficiary shall be considered unable to defray the expenses of travel if the beneficiary:

(1) Has an income for the year (as defined under 38 U.S.C. 1503) immediately preceding the application for beneficiary travel that does not exceed the maximum annual rate of pension that the beneficiary would receive under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the beneficiary were eligible for pension during that year; or

(2) Is able to demonstrate that due to circumstances such as loss of employment, or incurrence of a disability, his or her income in the year of travel will not exceed the maximum annual rate of pension that the beneficiary would receive under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the beneficiary were eligible for pension; or

(3) Has a service-connected disability rated at least 30 percent; or

(4) Is traveling in connection with treatment of a service-connected disability.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.20 Application.

(a) A claimant may apply for beneficiary travel orally or in writing but must provide VA the receipt for each expense other than for mileage.

(b) A claimant must apply for payment of beneficiary travel within 30 calendar days after completing beneficiary travel that does not include a special mode of transportation.

(c) For beneficiary travel that includes a special mode of transportation, a claimant must apply for payment of beneficiary travel and obtain approval from VA prior to the travel; however, if the travel included a special mode of transportation and the claimant without prior approval applies for payment of the beneficiary travel within 30 calendar days after the travel is completed, the application will be considered timely submitted if the travel was for emergency treatment.

(d) Notwithstanding other provisions of this section, for travel that includes meals and/or lodging, a claimant must apply for and receive approval prior to obtaining the meals and/or lodging in order to receive payment in accordance with § 70.30(a)(3) for the meals and/or lodging.

(e) If VA determines that additional information is needed to make a determination concerning an application under this part, VA will notify the claimant in writing of the deficiency and request additional information. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the 1-year submission period required by 38 U.S.C. 5103(b)(1) based on all the information contained in the file, including any information it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information within 1 year of the date of the request, VA must readjudicate the claim.

(f) Notwithstanding other provisions of this section, if a person becomes eligible for payment of beneficiary travel after the travel takes place, payment may be made if the person applies for travel benefits within 30 days of the date when the person became eligible for travel benefits.

(g) The date of an application for beneficiary travel is the postmark date, if mailed; or the date of submission if hand delivered, provided by electronic means, or provided orally.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0080.)

#### § 70.21 Where to apply.

Claimants for beneficiary travel must submit the information required in § 70.20 to the Chief of the Business

Office or other designee at the VA medical facility responsible for the medical care or services being provided and for which travel is required.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.30 Payment principles.

(a) Subject to the other provisions of this section and subject to the deductibles required under § 70.31, VA will pay the following for beneficiary travel by an eligible beneficiary when travel expenses are actually incurred:

(1) The per mile rate established by the Secretary for the period of travel for use of privately owned vehicle or the actual cost for use of the most economical common carrier (bus, train, taxi, airplane, etc.), for travel to and from VA or VA-authorized health care subject to the following:

(i) Travel by a privately owned vehicle for a compensation and pension examination that is solely for the convenience of the Government (e.g., repeat a laboratory test, redo a poor quality x-ray) may have a different per mile rate if deemed appropriate by the Secretary.

(ii) Per mile payment for use of privately owned vehicle may not exceed the cost of such travel by public transportation (even if it is for the convenience of the government) unless determined to be medically necessary.

(iii) Payment for a common carrier may not exceed the amount allowed for a privately owned vehicle unless travel by a privately owned vehicle is not reasonably accessible or travel by a common carrier is determined to be medically necessary.

(iv) As required by law, each time the Federal government makes a change in mileage rates payable under 5 U.S.C. 5702 and 5704 for Federal employee travel by privately owned vehicle, but not less frequently than annually, the Secretary shall conduct an investigation of the actual costs of travel, including lodging and subsistence. In conducting the investigation, the Secretary shall consult with the Administrator of the General Services Administration, the Secretary of Transportation, the Comptroller General of the United States, and veterans' service organizations. As part of the investigation, the Secretary shall review and consider various factors including vehicle depreciation, State and Federal vehicle taxes and the costs of gasoline, oil, maintenance, accessories, parts, tires, and insurance. However, to the extent that the Administrator of General Services has, within a reasonable period of time, conducted an investigation of travel costs that included the factors

described in this paragraph, the Secretary may consider that investigation in lieu of conducting a separate investigation with respect to the findings of those individual factors. The Secretary is not obligated to accept or rely on any conclusions of the Administrator's investigation. Based on the investigation required by this subsection, VA shall determine whether there is a need to change the mileage rates payable under paragraph (a) of this section. If a determination is made that a change is warranted the notice rate(s) will be published in the notices section of the **Federal Register**. Current rate(s) can be found at <http://www.va.gov/healtheligibility/Library/pubs/BeneficiaryTravel/BeneficiaryTravel.pdf> or by contacting the Beneficiary Travel office at the closest VA health care facility.

(2) The actual cost of ferry fares, bridge tolls, road tolls, and tunnel tolls (supported by receipts for such expenses as required by § 70.20(a)).

(3) The actual cost for meals, lodging, or both, not to exceed 50 percent of the amount allowed for government employees under 5 U.S.C. 5702, when VA determines that an overnight stay is required. Factors VA may consider in making that determination include, but are not limited to the following:

(i) The distance the veteran must travel.

(ii) The time of day when VA scheduled the veteran's appointment.

(iii) The weather conditions or congestion conditions affecting the travel.

(iv) The veteran's medical condition and its impact on the ability to travel.

(4) The actual cost of a special mode of transportation.

(b) Payments under this section are subject to the following:

(1) Except as otherwise allowed under this section, payment is limited to travel from the beneficiary's residence to the nearest VA facility where the care or services could be provided and from such VA facility to the beneficiary's residence.

(2) Payment may be made for travel from the beneficiary's residence to the nearest non-VA facility where the care or services could be provided and from such facility to the beneficiary's residence if VA determines that it is necessary to obtain the care or services at a non-VA facility.

(3) Payment may be made for travel from or to a place where the beneficiary is staying (if the beneficiary is not staying at the beneficiary's residence) but the payment may not exceed the amount that would be payable for travel

under paragraph (b)(1) or (b)(2) of this section, as applicable.

(4) If the beneficiary's residence changed while receiving care or services, payment for the return trip will be for travel to the new residence, except that payment may not exceed the amount that would be allowed from the facility where the care or services could have been provided that is nearest to the new residence (for example, if during a period of care or services in Baltimore, a beneficiary changed his or her address from Baltimore to Detroit, payment for the return trip would be limited to that allowed for traveling to the new residence from the nearest facility to the new residence in Detroit where the care or services could have been provided).

(5) If the beneficiary is in a terminal condition at a VA facility or other facility under VA auspices and travels to a non-VA medical facility for the purpose of being nearer to his or her residence, payment may be made for travel to the medical facility receiving the beneficiary for such purpose.

(6) Payment may be made for travel from a non-VA health care facility where the beneficiary is receiving care or services to the nearest VA facility where the appropriate care or services could be provided.

(7) Payment will not be made for return travel for a beneficiary receiving an irregular discharge.

(8) On a case-by-case basis, payment for travel may be paid for any distance if it is financially favorable to the government (for example, payment for travel could be allowed to a more distant nursing home when admission to that nursing home is a prerequisite to qualify for community assistance that would more than offset the additional travel payment).

(c) Payment for travel of an attendant under this section will be calculated on the same basis as for the beneficiary.

(d) For shared travel in a privately-owned vehicle, payments are limited to the amount for one beneficiary (for example, if a beneficiary and an attendant travel in the same automobile or if two beneficiaries travel in the same automobile, the amount for mileage will be limited to the amount for one beneficiary).

(e) Beneficiary travel will not be paid under the following circumstances:

(1) The payment of the travel allowance would be counterproductive to the therapy being provided and such determination is recorded in the patient's medical records, and

(2) The chief of the service or a designee reviewed and approved the determination by signature in the patient's medical record.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.31 Deductibles.

(a) VA shall deduct an amount established by the Secretary for each one-way trip from the amount otherwise payable under this part for such one-way trip, except that:

(1) VA shall not deduct any amounts in a calendar month after the completion of six one-way trips for which deductions were made in such calendar month, and

(2) Whenever the Secretary adjusts the mileage rates as a result of the investigation described in § 70.30(a)(1)(iv), the Secretary shall, effective on the date such mileage rate change should occur, adjust proportionally the deductible amount in effect at the time of the adjustment. If a determination is made that a change is warranted, the new deductible(s) will be published in the notice section of the **Federal Register**. Current deductible(s) can be found at <http://www.va.gov/healtheligibility/Library/pubs/BeneficiaryTravel/BeneficiaryTravel.pdf> or by contacting the Beneficiary Travel office at the closest VA health care facility.

(b) The provisions under this section for making deductions shall not apply to:

(1) Travel that includes travel by a special mode of transportation,

(2) Travel to a VA facility for a scheduled compensation and pension examination, and

(3) Travel by a non-veteran.

(c) VA shall waive the deductible under this section when it would cause the beneficiary severe financial hardship. For purposes of this section, severe financial hardship occurs if the beneficiary:

(1) Is in receipt of a VA pension;

(2) Has income for the year prior to the year in which application is made pursuant to § 70.20 that does not exceed the household income threshold determined under 38 U.S.C. 1722(a) (the current income thresholds can be found at <http://www.va.gov/healtheligibility/Library/pubs/VAINcomeThresholds/VAINcomeThresholds.pdf>); or

(3) Has circumstances in the year the application is made pursuant to § 70.20 that cause his or her projected income not to exceed the household income threshold determined under 38 U.S.C. 1722(a).

(d) Waivers granted under this section are valid:

(1) Through the end of the calendar year of the application made pursuant to § 70.20; or

(2) Until there is a change in the beneficiary's household income during

the calendar year of the application made pursuant to § 70.20 that results in the beneficiary no longer meeting the terms of paragraph (c) of this section.

(e) A beneficiary granted a waiver under this section must promptly inform VA of any household income status change during the waiver period that results in the beneficiary no longer meeting the terms of paragraph (c) of this section.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0091.)

#### § 70.32 Reimbursement or prior payment.

(a) Payment will be made on a reimbursement basis after the travel has occurred, except that:

(1) Upon completion of examination, treatment, or care, payment may be made before the return travel has occurred, and

(2) In the case of travel by a person to or from a VA facility by special mode of transportation, VA may provide payment for beneficiary travel to the provider of the transportation before determining eligibility of such person for such payment if VA determines that the travel is for emergency treatment and the beneficiary or other person made a claim that the beneficiary is eligible for payment for the travel.

(b) Payment under this part will be made to the beneficiary, except that VA may make a beneficiary travel payment under this part to a person or organization other than the beneficiary upon satisfactory evidence that the person or organization actually provided or paid for the travel.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.40 Administrative procedures.

Upon denial of an initial claim for beneficiary travel, VA will provide the claimant written notice of the decision and advise the claimant of reconsideration and appeal rights. A claimant who disagrees with the initial decision denying the claim for beneficiary travel, in whole or in part, may obtain reconsideration under § 17.133 of this chapter and may file an appeal to the Board of Veterans' Appeals under parts 19 and 20 of this chapter. An appeal may be made directly to the Board of Veterans' Appeals without requesting reconsideration.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

**§ 70.41 Recovery of payments.**

Payments for beneficiary travel made to persons ineligible for such payment are subject to recapture under applicable law, including the provisions of §§ 1.900 through 1.953 of this chapter.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

**§ 70.42 False statements.**

A person who makes a false statement for the purpose of obtaining payments for beneficiary travel may be prosecuted under applicable laws, including 18 U.S.C. 1001.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

**§ 70.50 Reduced fare requests.**

Printed reduced-fare requests for use by eligible beneficiaries and their attendants when traveling at their own expense to or from any VA facility or VA-authorized facility for authorized VA health care are available from any VA medical facility. Beneficiaries may use these request forms to ask transportation providers, such as bus companies, for a reduced fare. Whether to grant a reduced fare is determined by the transportation provider.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

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**ENVIRONMENTAL PROTECTION AGENCY**
**40 CFR Part 52**

[EPA-R03-OAR-2008-0183; FRL-8685-5]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Warren County Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Warren County Area.

EPA is approving the maintenance plan and the 2002 base-year inventory for the Warren County Area as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on July 30, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2008-0183. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On May 1, 2008 (73 FR 23998), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision that establishes a maintenance plan for the Warren County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after designation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 17, 2007. Other specific requirements of Pennsylvania's SIP revision and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

**II. Final Action**

EPA is approving the maintenance plan and the 2002 base-year inventory for the Warren County Area, submitted on December 17, 2007, as revisions to

the Pennsylvania SIP. EPA is approving the maintenance plan and 2002 base-year inventory for the Warren County Area because it meets the requirements of section 110(a)(1) of the CAA.

**III. Statutory and Executive Order Reviews****A. General Requirements**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).