

customer and noncustomer positions in accounts carried by the FCM, subject to the following.

\* \* \* \* \*

(9) *Cleared over the counter derivative positions* means “over the counter derivative instrument” (as defined in 12 U.S.C. 4421) positions of any person in accounts carried on the books of the futures commission merchant and cleared by any organization permitted to clear such instruments under the laws of the relevant jurisdiction.

(10) *Cleared over the counter customer* means any person that is not a proprietary person as defined in § 1.3(y) and for whom the futures commission merchant carries on its books one or more accounts for the over the counter-cleared derivative positions of such person.

(c) \* \* \*

(5) \* \* \*

(x) In the case of open futures contracts or cleared OTC derivative positions and granted (sold) commodity options held in proprietary accounts carried by the applicant or registrant which are not covered by a position held by the applicant or registrant or which are not the result of a “changer trade” made in accordance with the rules of a contract market:

\* \* \* \* \*

Issued in Washington, DC, on December 24, 2009, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9-31058 Filed 12-30-09; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

#### RIN 2900-AN50

#### Copayments for Medications

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is taking action to amend its medical regulations concerning the copayment required for certain medications. Under current regulations, the copayment amount must be increased based on the prescription drug component of the Medical Consumer Price Index, and the maximum annual copayment amount must be increased when the copayment is increased. Under the amendments in this document, we will freeze copayments at the current rate for the next 6 months, and thereafter resume

increasing copayments in accordance with any change in the prescription drug component of the Medical Consumer Price Index.

**DATES:** This rule is effective on December 31, 2009. Comments must be received on or before February 1, 2010.

**ADDRESSES:** Written comments may be submitted by e-mail through <http://www.regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AN50 Copayments for Medications.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Roscoe Butler, Acting Director, Business Policy, Chief Business Office, 810 Vermont Ave., Washington, DC 20420, 202-461-1586. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1722A(a), VA must require veterans to pay a \$2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a nonservice-connected disability or condition. Under 38 U.S.C. 1722A(b), VA “may” by regulation increase that copayment and establish a maximum annual copayment (a “cap”). We interpret section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under current 38 CFR 17.110(b)(1), veterans are “obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment).” The regulation ties any increase in that copayment amount to the prescription drug component of the Medical Consumer Price Index (CPI-P).

The current regulation includes an escalator provision for the copayment amount. The regulation states that the copayment amount for each calendar year after 2002 is established using the CPI-P as follows: For each calendar year beginning after December 31, 2002, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of \$7. The copayment amount for the new year will be this result, rounded down to the whole dollar amount.

Current § 17.110(b)(2), also includes a cap on the total amount of copayments in a calendar year for a veteran enrolled in one of the priority categories 2 through 6. The amount of the cap was \$840 for the year 2002. The current regulation also requires that “[i]f the copayment amount increases \* \* \* the cap of \$840 shall be increased by \$120 for each \$1 increase in the copayment amount.” 38 CFR 17.110(b)(2).

In January 2006, based on this regulation, the copayment amount increased to \$8 and the cap on priority categories 2 through 6 increased to \$960. This change was announced in 70 FR 72329 (December 2, 2005). These are the current copayment requirements. Based on our analysis of the average rate of growth of the CPI-P, the current regulatory methodology, calculated according to the CPI-P as of September 30, 2009, would automatically escalate the copayment amount from \$8 to \$9 in January 2010. Current § 17.110(b) does not afford the Secretary any discretion on increasing the copayment amount as calculated by the CPI-P.

Although we continue to believe that the CPI-P is a relevant indicator of the costs of prescriptions nationwide, we need time to determine whether an increase might pose a significant financial hardship for certain veterans and if so, what alternative approach would provide appropriate relief for these veterans. In light of this anticipated review, we are delaying implementation of the \$1 increase in the copayment amount (and the corresponding \$120 increase in the cap) until the completion of our review. Maintaining the current copayment and cap amounts will give us time to determine whether the current methodology for establishing copayment amounts, consistent with our responsibility under 38 U.S.C. 1722A to require a copayment in order to control health-care costs, is appropriate for all veterans.

Therefore, we are, for the next 6 months (*i.e.*, through June 30, 2010), freezing the copayment amount at the

current rate (\$8) in order to complete the analysis regarding veterans for whom the copayment increase might pose a significant financial hardship. We are also freezing the cap at the current level (\$960).

This rule maintains the current escalator clause. Depending on the results of the analysis described above, the Secretary may initiate new rulemaking on this subject rather than continue to rely on the CPI-P escalator provision to determine the copayment amount. Any change in the copayment amount and cap, along with the associated calculations explaining the basis for the increase, would be published in a **Federal Register** notice.

At the end of June 30, 2010, unless additional rulemaking is initiated, VA would once again utilize the CPI-P methodology in § 17.110(b)(1) to determine whether to increase copayments and calculate any mandated increase in the copayment amount. At that time the CPI-P as of June 30, 2010, would be divided by the index as of September 30, 2001. The ratio would then be multiplied by the original copayment amount of \$7. The copayment amount of the new calendar year would be rounded down to the whole dollar amount. As mandated by the § 17.110(b)(2), the annual cap would be calculated by increasing the cap by \$120 for each \$1 increase in the copayment amount. Any change in the copayment amount and cap, along with the associated calculations explaining the basis for the increase, would be published in a **Federal Register** notice. Thus, the intended effect of this rule is to temporarily freeze copayments and the copayment cap, following which copayments and the copayment cap would increase as prescribed in § 17.110(b).

The current regulation includes a note to paragraph (b)(1) that provides an example of how the CPI-P calculation is made. We are updating this note to provide a recent example of how these amounts are calculated. This example reflects the calculation that was made on December 2, 2005, when VA published notice of the increase in copayments from \$7 to \$8. This note reflects the last calculation made under this regulation.

We are also adding a new paragraph (b)(3), which informs the public where it can find information on the current copayment and cap amounts.

#### **Administrative Procedure Act**

In accordance with 5 U.S.C. 553(b)(3)(B) and (d)(3), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity

for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. As stated above, this rule freezes at current rates the prescription drug copayment that VA charges veterans. The Secretary finds that it is impracticable and contrary to the public interest to delay this regulation for the purpose of soliciting advance public comment, or to have a delayed effective date, because increasing the copayment on January 1, 2010, might cause significant financial hardship on certain veterans.

For these reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary of Veterans Affairs will consider and address comments that are received within 30 days of the date this interim final rule is published in the **Federal Register**.

#### **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 an 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**

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

#### **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 regulatory action as a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a 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 not to be a significant regulatory action under Executive Order 12866.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. The rule affects individuals and has no impact on any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

#### **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.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich approved this document for publication on December 28, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons set forth in the preamble, VA amends 38 CFR part 17 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 noted in specific sections.

■ 2. In § 17.110, paragraph (b) is revised to read as follows:

**§ 17.110 Copayments for medication.**

\* \* \* \* \*

(b) *Copayments*—(1) *Copayment amount.* Unless exempted under paragraph (c) of this section, a veteran is obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). For the period from January 1, 2010 through June 30, 2010, the copayment amount is \$8. Thereafter, the copayment amount for each calendar year or other period as determined by the Secretary will be established by using the prescription drug component of the Medical Consumer Price Index as follows: The Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of \$7. The new copayment amount will be this result, rounded down to the whole dollar amount.

**Note to paragraph (b)(1):** Example for determining copayment amount.

The ratio of the prescription drug component of the Medical Consumer Price Index for September 30, 2005, to the corresponding Index for September 30, 2001, was 1.1542. This ratio, when multiplied by the original copayment amount of \$7 equals \$8.08, and the copayment amount beginning in calendar year 2006, rounded down to the whole dollar amount, was set at \$8.

(2) The total amount of copayments in a calendar year for a veteran enrolled in

one of the priority categories 2 through 6 of VA’s health care system (see § 17.36) shall not exceed the cap established for the calendar year. During the period from January 1, 2010 through June 30, 2010, the cap will be \$960. If the copayment amount increases after June 30, 2010, the cap of \$960 shall be increased by \$120 for each \$1 increase in the copayment amount.

(3) *Information on copayment/cap amounts.* Current copayment and cap amounts are available at any VA Medical Center and on our Web site, <http://www.va.gov>. Notice of any increases to the copayment and corresponding increases to annual cap amount will be published in the **Federal Register**.

\* \* \* \* \*

[FR Doc. E9-31124 Filed 12-30-09; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[FCC 09-113]

**Implementation of Section 1003(b) of the Department of Defense Appropriations Act, 2010**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document establishes a new sunset date for certain Commission’s rules applicable to retransmission consent in accordance with Section 1003(b) of the Department of Defense Appropriations Act, 2010, Public Law No. 111-118.

**DATES:** Effective December 31, 2009.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact David Konczal, [David.Konczal@fcc.gov](mailto:David.Konczal@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Order*, FCC 09-113, adopted and released on December 28, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available

electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Summary of the Order**

*I. Introduction*

1. In this *Order*, we amend §§ 76.64(l) and 76.65(f) of the Commission’s rules in accordance with Section 1003(b) of the Department of Defense Appropriations Act, 2010, Public Law No. 111-118, Sec. 1003(b) (2009), which was enacted on December 19, 2009. Section 325(b)(3)(C)(ii) of the Communications Act of 1934, as amended (the “Act”), required the Commission to adopt regulations that, until January 1, 2010, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith. 47 U.S.C. 325(b)(3)(C)(ii). Section 325(b)(3)(C)(iii) required the Commission to adopt regulations that, until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent. 47 U.S.C. 325(b)(3)(C)(iii). The Commission has previously adopted rules to implement these provisions, including §§ 76.64(l) and 76.65(f) to reflect the sunset date of January 1, 2010. *See* 47 CFR 76.64(l) (“Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2009.”); 47 CFR 76.65(f) (“Termination of rules. This section shall terminate at midnight on December 31, 2009.”).

2. In Section 1003(b) of the Department of Defense Appropriations Act, 2010, Congress amended Sections 325(b)(3)(C)(ii) and (iii) to replace the previous sunset date of January 1, 2010 with a new sunset date of March 1, 2010. *See* Department of Defense Appropriations Act, 2010, Public Law No. 111-118, Sec. 1003(b). Accordingly, we are amending our rules to reflect the