

Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### 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 create 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 relationship 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 that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves a limited-in-duration safety zone intended to protect life and property on the navigable waterways of the Delaware River. An environmental analysis checklist and a categorical exclusion determination will be made available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T05-0728 to read as follows:

#### § 165.T05-0728 Safety Zone; Red Bull Flugtag, Delaware River, Camden, NJ

(a) *Location.* The safety zone includes all waters inside a boundary described as originating from the shoreline then west to 39°56'54" N, 075°07'59" W then north to 39°56'56" N, 075°07'58" W then north to 39°56'58" N, 075°07'58" W then east to 39°56'58" N, 075°07'56" W then east to the shoreline.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned,

warrant, or petty officer of the Coast Guard who has been designated by the COTP, Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by COTP, Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign as well as any assisting local law enforcement vessels.

(c) *Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Effective Period.* The safety zone will be in effect from 10 a.m. to 5 p.m. on September 4, 2010.

Dated: July 29, 2010.

**R.T. Gatlin,**

*Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.*

[FR Doc. 2010-22032 Filed 9-2-10; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AN52

### Technical Revisions To Conform With the Veterans' Mental Health Care Act of 2008 and Other Laws

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Veterans Affairs (VA) medical regulations to make the language of several provisions conform to changes in law made by the Homeless Veterans Comprehensive Assistance Act of 2001; the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003; and the Veterans' Mental Health and Other Care Improvements Act of 2008.

**DATES:** *Effective Date:* October 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Roscoe Butler, Deputy Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1586. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** This document amends sections of 38 CFR part 17 to conform with changes made

by certain sections of the Veterans' Mental Health and Other Care Improvements Act of 2008 ("the 2008 Act"), Public Law 110-387, and by section 101 of the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003 ("the 2003 Act"), Public Law 108-170. It also makes a technical change in order to improve data management and evaluation of a dental care program authorized by section 2062 of the Homeless Veterans Comprehensive Assistance Act of 2001 ("the 2001 Act"), Public Law 107-95.

Section 801 of the 2008 Act eliminated a sunset provision that had applied to the inclusion of noninstitutional extended care in the statutory definition of medical services. In light of the removal of this sunset provision, we have included "noninstitutional extended care" in the regulations that define medical services and the medical benefits package, at §§ 17.30(a)(1) and 17.38(a)(1)(xi)(B) respectively. We note that § 17.38(a)(1)(xi)(B) already lists several specific types of noninstitutional extended care, but including this term in the regulatory definition of the medical benefits package will eliminate any confusion as to whether other types of noninstitutional extended care are included.

Section 301(a) of the 2008 Act amended 38 U.S.C. 1701(5)(B) and 1782(a) by inserting "marriage and family counseling" after "professional counseling." We have made corresponding changes to 38 CFR 17.30(a)(2) and 17.38(a)(1)(vii).

Section 301(a)(1)(B) of the 2008 Act further amended 38 U.S.C. 1701(5)(B) by striking "as may be essential to" and inserting "as the Secretary considers appropriate for," authorizing VA to exercise discretion to provide certain mental health services, counseling, and training for members of a hospitalized veteran's household or family. Section 301(a)(2)(B) amended 38 U.S.C. 1782(b) by removing limitations in section 1782(b)(1) and (2) on providing counseling for family members of non-service-connected veterans. We are revising 38 CFR 17.30(a)(2) and 17.38(a)(1)(vii) to reflect these changes in law. These revisions include removing paragraphs (a)(2)(i) and (ii) of § 17.30 because they codified statutory provisions that been repealed. To the extent that § 17.30(a)(2)(ii) references § 17.84(c), it is inaccurate because this provision has been deleted and the reference is outdated. Instead, these provisions will be more properly addressed in future regulations regarding the Civilian Health and

Medical Program of the Department of Veterans Affairs, which provides health benefits for dependents and survivors of veterans who are service connected, permanently and totally disabled, or died of a service-connected condition. In the meantime, VA will continue to implement its authority as written in the last sentence of 38 U.S.C. 1781(b).

Section 409 of the 2008 Act amended 38 U.S.C. 1710 so that hospice care is not subject to copayment requirements for inpatient hospital care or outpatient medical care. We are amending § 17.108(e) accordingly.

Section 101(b) of the 2003 Act amended 38 U.S.C. 1722A(a)(3) to exempt former prisoners of war from the pharmacy copayment requirement. We are amending 38 CFR 17.110(c) accordingly, by adding medication for this class as an exception to the copayment requirement.

Section 101(a) of the 2003 Act amended 38 U.S.C. 1712(a)(1)(F) to remove the prerequisite of a detainment or internment period of at least 90 days to establish eligibility for outpatient dental care for a former prisoner of war. As a result, there is no longer a need to distinguish between class II(b) and class II(c) in VA's regulations. To implement this change, we are removing the phrase "for 90 days or more" in § 17.161(e), which will now authorize dental treatment for all prisoners of war as subclass II(c).

Section 3 of the 2001 Act declared it "to be a national goal to end chronic homelessness among veterans within a decade." Section 2062 of the 2001 Act provides authority for the Homeless Veterans Dental Care Program, a one-time course of dental care for certain homeless veterans and other enrolled veterans. This rulemaking assigns subclass II(b) to veterans eligible for outpatient dental care through the program because it is useful for data management purposes and to clarify the dental services available to this group of veterans.

We also note, for the benefit of the public, that several sections of the 2008 Act that require rulemaking have already been proposed or will be proposed in separate rulemakings. Section 401, concerning VA's beneficiary travel program, and section 402, concerning emergency treatment, require VA to make certain policy decisions, which will be reflected in rulemakings that will require public notice and comment. Section 408 liberalized VA's authority to provide care to certain children of veterans who are born with spina bifida. Rules implementing this section were proposed in "Herbicide Exposure and

Veterans with Covered Service in Korea," RIN 2900-AN27. See 74 FR 36640 (July 24, 2009). Finally, section 604 authorized VA to provide financial assistance to help very low-income veteran families find or keep permanent housing. This section established a new grant program, which VA proposed to implement in a separate rulemaking. See 75 FR 24514 (May 5, 2010).

#### Administrative Procedure Act

The changes made by this final rule are interpretive rules, nonsubstantive changes to rules, or restatements of statutory requirements. These changes are exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553(b) and (d).

#### 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 final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### 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**

The final rule does not contain any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

**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- 612. This 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), this 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 program that this rule affects has the following Catalog of Federal Domestic Assistance numbers and titles: 64.009 Veterans Medical Care Benefits, 64.010 Veterans Nursing Home Care and 64.011 Veterans Dental Care.

**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, Chief of Staff, Department of Veterans Affairs, approved this document on August 30, 2010 for publication.

**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, Veterans.

Dated: August 31, 2010.

**Robert C. McFetridge,**  
*Director, Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

■ For the reasons stated in the preamble, the Department of Veterans Affairs 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. Section 17.30 is amended by:

- a. In paragraph (a)(1), adding “noninstitutional extended care,” after “38 U.S.C. 1762;”;
- b. Revising paragraph (a)(2) to read as follows:

**§ 17.30. Definitions.**

\* \* \* \* \*

(a) \* \* \*

(2) Consultation, professional counseling, marriage and family counseling, training, and mental health services for the members of the immediate family or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, as necessary in connection with the veteran’s treatment.

\* \* \* \* \*

■ 3. Section 17.38 is amended by:

- a. Revising paragraph (a)(1)(vii).
- b. In paragraph (a)(1)(xi)(B), removing “Noninstitutional geriatric” and adding, in its place, “Noninstitutional extended care services, including but not limited to noninstitutional geriatric”.
- c. Revising the authority citation at the end of the section.

The revisions read as follows:

**§ 17.38. Medical benefits package.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(vii) Consultation, professional counseling, marriage and family counseling, training, and mental health services for the members of the immediate family or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, as necessary and appropriate, in connection with the veteran’s treatment.

\* \* \* \* \*

(Authority 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782)

■ 4. Section 17.108 is amended by:

- a. In paragraph (e)(13), removing “; and” and adding, in its place, a semi-colon.
- b. In paragraph (e)(14), removing the period at the end of the paragraph and adding, in its place, “; and”.
- c. Adding paragraph (e)(15) to read as follows:

**§ 17.108 Co-payments for inpatient hospital care and outpatient medical care.**

\* \* \* \* \*

(e) \* \* \*

(15) Hospice care.

\* \* \* \* \*

■ 5. Section 17.110 is amended by:

- a. In paragraph (c)(6), removing “; and” and adding, in its place, a semi-colon.
- b. In paragraph (c)(7), removing the period at the end of the paragraph and adding, in its place, “; and”.
- c. Adding paragraph (c)(8) to read as follows:

**§ 17.110 Copayments for medication.**

\* \* \* \* \*

(c) \* \* \*

(8) Medication for a veteran who is a former prisoner of war.

\* \* \* \* \*

■ 6. Section 17.161 is amended by:

- a. Adding an authority citation at the end of paragraph (c).
  - b. Revising paragraphs (d) and (e).
- The addition and revisions read as follows:

**§ 17.161 Authorization of outpatient dental treatment.**

\* \* \* \* \*

(c) \* \* \*

(Authority: 38 U.S.C. 501; 1712(a)(1)(C))

(d) *Class II(b)*. Certain homeless and other enrolled veterans eligible for a one-time course of dental care under 38 U.S.C. 2062.

(Authority: 38 U.S.C. 2062; 38 U.S.C. 1712(a)(1)(H))

(e) *Class II(c)*. Those who were prisoners of war, as determined by the concerned military service department, may be authorized any needed outpatient dental treatment.

(Authority: Pub. L. 100–322; Pub. L. 108–170; 38 U.S.C. 1712(b)(1)(F))

\* \* \* \* \*

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