DEPARTMENT OF VETERANS AFFAIRS
38 CFR Part 17
RIN 2900–AN65

Copayments for Medications After June 30, 2010

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms as final an interim final rule that froze until January 1, 2012, the copayment required for certain medications. Under those amendments, the copayment amount for veterans in the Department of Veterans Affairs (VA) health care system, enrollment priority categories 2 through 6, will remain at $8 and the copayment amount for veterans in enrollment priority categories 7 and 8 will remain at $9.

DATES: Effective February 22, 2011.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION: Correction


K.A. Sinniger,
Chief, Office of Regulations and Administrative Law.

[FR Doc. 2011–3867 Filed 2–18–11; 8:45 am]
BILLING CODE 9110–05–P

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DATES: Effective Date: This rule is effective on February 22, 2011.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Acting Director, Business Policy, Chief Business Office, 810 Vermont Avenue, 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.

On June 9, 2010, we published a final rule that affirmed as final an interim final rule that amended §17.110 to “freeze” at $8 the copayment required for prescription medications through June 30, 2010. 75 FR 32668. Also on June 9, 2010, we published an interim final rule amending §17.110 such that the copayment amounts are fixed at $8 for veterans in enrollment priority categories 2 through 6 of VA’s health care system, and at $9 for veterans in priority categories 7 and 8 through December 31, 2011. 75 FR 32670. Any changes to these copayment amounts that would take effect after December 31, 2011, would be based on changes to the CPI–P, as described in §17.110(b)(1)(iv).

In addition, §17.110(b)(2) includes a cap on the total amount of copayments in a calendar year for a veteran enrolled in one of VA’s health care enrollment system priority categories 2 through 6. The amount of the cap for the period from January 1, 2010, through December 31, 2011 is fixed at $960. Also under paragraph (b)(2), the “cap of $960 shall be increased by $120 for each $1 increase in the copayment amount.”

In the June 9, 2010, interim final rule, we cited the previous interim final rule published on December 31, 2009 (adopted without change as a final rule on June 9, 2010 (75 FR 32668)), in which we stated that we had concerns about increasing copayments under the methodology in current 38 CFR 17.110(b)(1)(iv). 75 FR 32670. We stated that we needed “time to determine whether an increase [in copayments]...
might pose a significant hardship for certain veterans and if so, what alternative approach would provide appropriate relief for these veterans,” and therefore issued an interim final rule intended “to temporarily freeze copayments and the copayment cap, following which copayments and the copayment cap would increase as prescribed in § 17.110(b).” We then stated in the June 9, 2010 interim final rule that “[a]lthough we continue to believe that the CPI–P is a relevant indicator of the costs of prescriptions nationwide, we need additional time to ascertain whether there might be better indicators upon which we can base our copayment amounts.” Thus, we further delayed implementation of any increases for veterans in categories 2 through 6 based on the CPI–P until January 1, 2012. We stated that we would study this issue and, depending on the results of such study, may initiate a new rulemaking on this subject rather than continue to rely on the CPI–P escalator provision to determine the copayment amount. This study is ongoing. We did not delay increases for veterans in priority categories 7 and 8 in light of our statutory responsibility to control costs under 38 U.S.C. 1722A. Also, these veterans would be less affected by an increase in copayments than veterans in priority categories 2 through 6, who likely have a greater need for medical care due to their disabilities or conditions of service. Therefore, the copayment amount for veterans in priority categories 7 and 8 increased to $9.

We received one public comment on the interim final rule that extended the delay for veterans in priority categories 2 through 6. The commenter suggested that VA consider an alternative system for copayments, which would base the copayments on the actual costs of each medication rather than utilize a standard copayment rate. As noted above, we are currently considering copayment options; however, our study remains incomplete and we are not at this time ready to discuss the merits of any specific option. The commenter noted that increased copayment rates have been found in at least one study to decrease the patient’s use of medical care. We are aware of this issue, and it is part of our ongoing study.

The commenter also noted that the $960 cap on copayments may be too high, and that some veterans may not have “sufficient income to support that cost.” This issue is beyond the scope of the interim final rule, which delayed increases in copayments for veterans in enrollment priority categories 2 through 6. We will carefully consider the commenter’s suggestion that copayments may be too high in the context of our ongoing study. Depending on the results of the study we may choose to address this issue in a future rulemaking and will address the commenter’s suggestion at that time. We also note that preventing the $1 increase in copayments for veterans in priority categories 2 through 6, which would have occurred absent this rule, also prevents an associated increase in the annual copayment cap to $1080 for those veterans. Lastly, for those veterans who may have difficulty paying copayments, VA offers repayment plans and waivers as assistance.

Accordingly, we adopt without change, the amendments made in the interim final rule.

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 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. 601–612. This rule will temporarily 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 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 number and title 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 Medical Care Benefits; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Domiciliary 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.

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 February 8, 2011, for publication.
POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2011–9, et al.]

Product List Update

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the postal product lists. This action reflects the disposition of recent dockets, as reflected in Commission orders, and a publication policy adopted in a recent Commission order. The referenced policy applies periodic updates. The updates are identified in the body of this document. The product lists, which are re-published in their entirety, include these updates.

DATES: Effective Date: February 22, 2011.


FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION: This document identifies recent updates to the product lists, which appear as 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule.1 Publication of updated product lists in the Federal Register is consistent with the Postal Accountability and Enhancement Act (PAEA) of 2006. Authorization. The Commission process for periodic publication of updates was established in Order No. 445, April 22, 2010. Changes. Since publication of the product lists in the Federal Register on January 10, 2011 (76 FR 1357), the following changes to the competitive product list have been made:

1. Priority Mail Contract 30 (MC2011–9 and CP2011–44), added January 4, 2011 (Order No. 638);
2. Priority Mail Contract 31 (MC2011–10 and CP2011–46), added January 4, 2011 (Order No. 637);
3. Priority Mail Contract 32 (MC2011–11 and CP2011–47), added January 5, 2011 (Order No. 639);
4. Express Mail Contract 5 (MC2011–12 and CP2011–48), added January 6, 2011 (Order No. 640);
5. Priority Mail Contract 33 (MC2011–13 and CP2011–49), added January 6, 2011 (Order No. 641);
7. Priority Mail Contract 34 (MC2011–17 and CP2011–56), added January 21, 2011 (Order No. 655);
8. Priority Mail Contract 35 (MC2011–18 and CP2011–57), added January 21, 2011 (Order No. 656);
9. Priority Mail—Non-Published Rates, added February 3, 2011 (Order No. 661); and

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.


By the Commission.

Ruth Ann Abrams,
Acting Secretary

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
Single-Piece Letters/Postcards
Bulk Letters/Postcards
Flats
Parcels
Outbound Single-Piece First-Class Mail
International
Inbound Single-Piece First-Class Mail
International
Standard Mail (Regular and Nonprofit)
High Density and Saturation Letters
High Density and Saturation Flats/Parcels
Carrier Route
Letters
Flats
Not Flat-Machinables (NFMs)/Parcels
Periodicals
Within County Periodicals
Outside County Periodicals

Package Services
Single-Piece Parcel Post
Inbound Surface Parcel Post (at UPU rates)
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail

Special Services
Ancillary Services
International Ancillary Services
Address Management Services
Caller Service
Change-of-Address Credit Card Authentication
Confirm
Customized Postage
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Stamp Fulfillment Services

Negotiated Service Agreements
HSBC North America Holdings Inc.
Negotiated Service Agreement
Bookspan Negotiated Service Agreement
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Inbound International
Canada Post—United States Postal Service
Contractual Bilateral Agreement for