

§ 17.277

38 CFR Ch. I (7–1–23 Edition)

resulting in late filing along with all available supporting documentation. Each request for an exception to the claim filing deadline will be reviewed individually and considered on its own merit. VA may grant exceptions to the requirements in paragraph (a) of this section if it determines that there was good cause for missing the filing deadline. For example, when dual coverage exists, CHAMPVA payment, if any, cannot be determined until after the primary insurance carrier has adjudicated the claim. In such circumstances an exception may be granted provided that the delay on the part of the primary insurance carrier is not attributable to the beneficiary. Delays due to provider billing procedures do not constitute a valid basis for an exception.

(c) Claims for CHAMPVA-covered services and supplies provided before the date of the event that qualifies an individual under §17.271 are not reimbursable.

(d) CHAMPVA is the last payer to OHI, as that term is defined in §17.270(b). CHAMPVA benefits will generally not be paid until the claim has been filed with the OHI and the OHI has issued a final payment determination or explanation of benefits. CHAMPVA is secondary payer to Medicare per the terms of §17.271(b).

[63 FR 48102, Sept. 9, 1998, as amended at 73 FR 65553, Nov. 4, 2008. Redesignated and amended at 87 FR 41602, 41603, July 13, 2022]

§ 17.277 Appeals.

(a) This section applies only to legacy claims.

(b) Notice of the initial determination regarding payment of CHAMPVA benefits will be provided to the CHAMPVA beneficiary on a CHAMPVA Explanation of Benefits (EOB) form. The EOB form is generated by the CHAMPVA automated payment processing system. If a CHAMPVA beneficiary or provider disagrees with the determination concerning CHAMPVA-covered services and supplies or calculation of benefits, he or she may request reconsideration. Such requests must be submitted to VA in writing within one year of the date of the initial determination. The request must state why the CHAMPVA claimant be-

lieves the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the claimant without further consideration. After reviewing the claim and any relevant supporting documentation, VA will issue a written determination to the claimant that affirms, reverses, or modifies the previous decision. If the claimant is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by VA. After reviewing the claim and any relevant supporting documentation, VA will issue a written determination to the claimant that affirms, reverses, or modifies the previous decision. The decision of VA with respect to benefit coverage and computation of benefits is final. When a CHAMPVA beneficiary has other health insurance (OHI), an appeal must first be filed with the OHI, and a determination made, before submitting the appeal to CHAMPVA with limited exceptions such as if the OHI deems the issue non-appealable. Denial of CHAMPVA benefits based on legal eligibility requirements may be appealed to the Board of Veterans' Appeals in accordance with 38 CFR part 20. Medical determinations are not appealable to the Board. 38 CFR 20.101.

[87 FR 41603, July 13, 2022]

§ 17.278 Medical care cost recovery.

VA will actively pursue medical care cost recovery in accordance with applicable law.

[87 FR 41603, July 13, 2022]

§ 17.279 Confidentiality of records.

Confidentiality of records will be maintained in accordance with 38 CFR 1.460 through 1.582.

[63 FR 48102, Sept. 9, 1998. Redesignated and amended at 87 FR 41602, 41603, July 13, 2022]

IN VITRO FERTILIZATION AND REIMBURSEMENT OF ADOPTION EXPENSES

§ 17.380 In vitro fertilization treatment.

(a)(1) In vitro fertilization may be provided when clinically appropriate to—

(i) A veteran who has a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment; and,

(ii) The spouse of such veteran, as provided in §17.412.

(2) For the purposes of this section, “a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment” means, for a male veteran, a service-connected injury or illness that prevents the successful delivery of sperm to an egg; and, for a female veteran with ovarian function and a patent uterine cavity, a service-connected injury or illness that prevents the egg from being successfully fertilized by sperm.

(3) In vitro fertilization treatment will be provided under this section when clinically appropriate and to the same extent such treatment is provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in the April 3, 2012, memorandum issued by the Assistant Secretary of Defense for Health Affairs on the subject of “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued by the Department of Defense to implement such policy, including any limitations on the amount of such benefits available to such a member.

(b) The time periods regarding embryo cryopreservation and storage set forth in part III(G) and in part IV(H) of the memorandum referenced in paragraph (a)(3) of this section do not apply. Embryo cryopreservation and storage may be provided to an individual described in paragraph (a)(1) of this section without limitation on the duration of such cryopreservation and storage.

[82 FR 6275, Jan. 19, 2017, as amended at 82 FR 11153, Feb. 21, 2017; 84 FR 8257, Mar. 7, 2019]

§ 17.390 Reimbursement for qualifying adoption expenses incurred by certain veterans.

(a) *General.* A covered veteran may request reimbursement for qualifying

adoption expenses incurred by the veteran in the adoption of a child under 18 years of age.

(1) An adoption for which expenses may be reimbursed under this section includes an adoption by a married or single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(2) Reimbursement for qualifying adoption expenses may be requested only for an adoption that became final after September 29, 2016, and must be requested:

(i) No later than 2 years after the adoption is final; or,

(ii) In the case of adoption of a foreign child, no later than 2 years from the date the certificate of United States citizenship is issued.

(3) In the case of adoption of a foreign child, reimbursement for qualifying adoption expenses may be requested only after United States citizenship has been granted to the adopted child.

(4) Reimbursement for qualifying adoption expenses may not be made under this section for any expense paid to or for a covered veteran under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(b) *Limitations.* (1) Reimbursement per adopted child. No more than \$2,000 may be reimbursed under this section to a covered veteran, or to two covered veterans who are spouses of each other, for expenses incurred in the adoption of a child. In the case of two married covered veterans, only one spouse may claim reimbursement for any one adoption.

(2) Maximum reimbursement in any calendar year. No more than \$5,000 may be paid under this section to a covered veteran in any calendar year. In the case of two married covered veterans, the couple is limited to a maximum of \$5,000 per calendar year.

(c) *Definitions.* For the purposes of this section:

(1) “Covered veteran” means a veteran with a service-connected disability that results in the inability of