

## § 17.4100

(b) For purposes of calculating average driving time from the veteran's residence in paragraph (a) of this section, VA will use geographic information system software.

### VETERANS CARE AGREEMENTS

SOURCE: Sections 17.4100 through 17.4135 appear at 84 FR 21678, May 14, 2019, unless otherwise noted.

#### § 17.4100 Definitions.

For the purposes of §§ 17.4100 through 17.4135, the following definitions apply:

*Contract* is any of the following: Federal procurement agreements regulated by the Federal Acquisition Regulation; common law contracts; other transactions; or any other instrument. Veterans Care Agreements are excluded from this definition.

*Covered individual* is an individual who is eligible to receive hospital care, medical services, or extended care services from a non-VA provider under title 38 U.S.C. and title 38 CFR.

*Extended care services* are the services described in 38 U.S.C. 1710B(a).

*Hospital care* is defined in 38 U.S.C. 1701(5).

*Medical services* is defined in 38 U.S.C. 1701(6).

*Sharing agreement* is an agreement, under statutory authority other than 38 U.S.C. 1703A, by which VA can obtain hospital care, medical services, or extended care services for a covered individual.

*VA facility* is a point of VA care where covered individuals can receive hospital care, medical services, or extended care services, to include a VA medical center, a VA community-based outpatient clinic, a VA health care center, a VA community living center, a VA independent outpatient clinic, and other VA outpatient services sites.

*Veterans Care Agreement* is an agreement authorized under 38 U.S.C. 1703A for the furnishing of hospital care, medical services, or extended care services to covered individuals.

#### § 17.4105 Purpose and Scope.

(a) *Purpose.* Sections 17.4100 through 17.4135 implement 38 U.S.C. 1703A, as required under section 1703A(j). Section 1703A authorizes VA to enter into and

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utilize Veterans Care Agreements to furnish hospital care, medical services, and extended care services to a covered individual when such individual is eligible for and requires such care or services that are not feasibly available to the covered individual through a VA facility, a contract, or a sharing agreement.

(b) *Scope.* Sections 17.4100 through 17.4135 contain procedures, requirements, obligations, and limitations for: The process of certifying entities or providers under 38 U.S.C. 1703A; entering into, administering, furnishing care or services pursuant to, and discontinuing Veterans Care Agreements; and all disputes arising under or related to Veterans Care Agreements. Sections 17.4100 through 17.4135 apply to all entities and providers, where applicable, that are parties to a Veterans Care Agreement, participate in the certification process, or furnish hospital care, medical services, or extended care services pursuant to a Veterans Care Agreement.

#### § 17.4110 Entity or provider certification.

(a) *General.* To be eligible to enter into a Veterans Care Agreement, an entity or provider must be certified by VA in accordance with the process and criteria established in paragraph (b) of this section. Additionally, an entity or provider must be actively certified while furnishing hospital care, medical services, or extended care services pursuant to a Veterans Care Agreement that the entity or provider has entered into with VA.

(b) *Process and criteria—(1) Application for certification.* An entity or provider must apply for certification by submitting the following information and documentation to VA:

(i) Documentation of applicable medical licenses; and

(ii) All other information and documentation required by VA. This information and documentation may include, but is not limited to, provider first and last names, legal business names, National Provider Identifier (NPI), NPI type, provider identifier type (*e.g.*, individual or group practice), tax identification number, specialty

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(taxonomy code), business address, billing address, phone number, and care site address.

### (2) *Approval or denial of certification.*

(i) VA will review all information obtained by VA, including through applicable federal and state records systems and as submitted by the applicant, and will determine eligibility for certification.

(ii) An applicant must submit all information required under paragraph (b)(1) of this section.

(iii) VA will deny an application for certification if VA determines that the entity or provider is excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f)) under section 1128 or 1128A of such Act (42 U.S.C. 1320a-7 and 1320a-7a) or is identified as an excluded source on the System for Award Management Exclusions list described in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations.

(iv) VA will deny an application for certification if VA determines that the applicant is already barred from furnishing hospital care, medical services, and extended care services under chapter 17 of title 38, U.S.C., because VA has previously determined the applicant submitted to VA a fraudulent claim, as that term is defined in 38 U.S.C. 1703D(i)(4), for payment for hospital care, medical services, or extended care services.

(v) VA may deny an application for certification if VA determines that based on programmatic considerations, VA is unlikely to seek to enter into a Veterans Care Agreement with the applicant.

(vi) VA will issue a decision approving or denying an application for certification within 120 calendar days of receipt of such application, if practicable. Notices of approval will set forth the effective date and duration of the certification. Notices of denial will set forth the specific grounds for denial and supporting evidence. A denial constitutes VA's final decision on the application.

(3) *Duration of certification and application for recertification.* (i) An entity or provider's certification under this sec-

tion lasts for a three-year period, unless VA revokes certification during that three-year period pursuant to paragraph (b)(4) of this section.

(ii) A certified entity or provider must maintain its eligibility throughout the period in which it is certified and must inform VA of any changes or events that would affect its eligibility within 30 calendar days of the change or event.

(iii) A certified entity or provider seeking certification after the end of its current three-year certification must apply for recertification at least 60 calendar days prior to the expiration of its current certification; otherwise, the procedures set forth in paragraph (b)(3)(iv) of this section will apply. Upon application for recertification by the entity or provider, including submitting any new or updated information within the scope of paragraph (b)(1) of this section that VA requests in conjunction with such application for recertification, VA will reassess the entity or provider under the criteria in paragraph (b)(2) of this section. VA will issue a decision approving or denying the application for recertification within 60 calendar days of receiving the application, if practicable. Notice of the decision will be furnished to the applicant in writing. Notices of recertification will set forth the effective date and duration of the certification. Notices of denial will set forth the specific grounds for denial and supporting evidence. A denial constitutes VA's final decision on the application for recertification.

(iv) If a certified entity or provider applies for recertification after the deadline in paragraph (b)(3)(iii) of this section, such application will constitute a new application for certification and will be processed in accordance with paragraphs (b)(1) and (2) of this section.

(4) *Revocation of certification—(i) Standard for revocation.* VA may revoke an entity's or provider's certification in accordance with paragraphs (b)(2)(ii) through (v) of this section.

(ii) *Notice of proposed revocation.* When VA determines revocation is appropriate, VA will notify the entity or

provider in writing of the proposed revocation. The notice of proposed revocation will set forth the specific grounds for the action and will notify the entity or provider that it has 30 calendar days from the date of issuance to submit a written response addressing either of the following:

(A) Documenting compliance and proving any grounds false, or

(B) Providing information and documentation that demonstrates the entity or provider has, subsequent to the notice of proposed revocation, achieved compliance with all criteria for certification set forth in paragraph (b)(2) of this section.

(iii) *Decision to revoke.* Following the 30-day response period, VA will consider any information and documentation submitted by the entity or provider and will, within 30 calendar days, determine whether revocation is warranted. If VA determines that revocation is not warranted, VA will notify the entity or provider of that determination in writing. If VA determines that revocation is warranted, the entity or provider will immediately lose certified status, and VA will issue a notice of revocation to the entity or provider. Notices of revocation will set forth the specific facts and grounds for, and the effective date of, such revocation. A notice of revocation constitutes VA's final decision.

(iv) *Effect of revocation.* Revocation of certification results in such status being rendered void, and the provider or entity may not furnish services or care to a covered individual under a Veterans Care Agreement prior to applying for and obtaining certified VCA status.

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[84 FR 21678, May 14, 2019, as amended at 86 FR 50861, Sept. 13, 2021]

#### § 17.4115 VA use of Veterans Care Agreements.

(a) *Criteria for using.* VA may furnish hospital care, medical services, or extended care services through a Veterans Care Agreement only if:

(1) Such care or services are furnished to a covered individual who is eligible for such care or services under

38 U.S.C. chapter 17 and requires such care or services; and

(2) Such care or services are not feasibly available to that covered individual through a VA facility, contract, or sharing agreement. For purposes of this subparagraph, hospital care, medical services, or extended care services are not feasibly available through a VA facility, contract, or sharing agreement when VA determines that the medical condition of the covered individual, the travel involved, the nature of the care or services, or a combination of these factors make the use of a VA facility, contract, or sharing agreement impracticable or inadvisable.

(b) *Standards of conduct and improper business practices—(1) General.* (i) Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. The conduct of Government personnel must be such that they would have no reluctance to make a full public disclosure of their actions.

(ii) VA officials and employees are reminded that there are other statutes and regulations that deal with prohibited conduct, including:

(A) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353, and 5 CFR part 2635;

(B)(i) Certain financial conflicts of interest are prohibited by 18 U.S.C. 208 and regulations at 5 CFR part 2635.

(2) Contacts with an entity or provider that is seeking or receives certification under section 17.4110 of this part or is seeking, enters into, and/or furnishes services or care under a Veterans Care Agreement may constitute “seeking employment,” (see Subpart F of 5 CFR part 2635). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally