

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations governing payment of the proceeds of checks which are returned and canceled following the death of the payee. This amendment is necessary to implement a statutory amendment that deleted the requirement for settlement by the General Accounting Office prior to payment of these proceeds to an estate. This document also makes nonsubstantive changes for purposes of clarity.

**DATES:** *Effective Date:* October 19, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Warren Jones, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7167.

**SUPPLEMENTARY INFORMATION:** Section 5122 of title 38, United States Code, governs payment of the proceeds of VA benefit check(s) received by a payee but not negotiated before his or her death. VA has implemented section 5122 at 38 CFR 3.1003.

Under section 5122, VA shall upon return and cancellation of an original benefit check pay the amount represented by the check in the same manner as it pays accrued benefits under 38 U.S.C. 5121. Section 5121 requires VA to pay accrued benefits to the first living person(s) in the following order: (A) veteran's spouse; (B) veteran's children (in equal shares); and (C) veteran's dependent parents (in equal shares). Section 5121(a)(5) also provides that, "[i]n all other cases," accrued benefits may be paid only as necessary to reimburse the person who bore the expenses of the payee's last sickness and burial. Section 5122 further provides that any amount not paid in this manner shall be paid to the estate of the deceased payee, unless the estate will escheat, i.e., revert to the state because there is no one eligible to inherit it.

Prior to October 19, 1996, section 5122 required settlement by the General Accounting Office (GAO) before payment could be made to an estate. However, section 202(t) of the General Accounting Office Act of 1996, Public Law 104-316, effective October 19, 1996, amended section 5122 to delete reference to settlement by GAO. VA's Office of the General Counsel has advised that under section 5122, VA is now authorized to pay amounts due to the estates of deceased payees without reference to any other agency. We are, therefore, amending 38 CFR 3.1003(b) to bring VA's regulation into conformity

with the amended statute by removing reference to settlement by GAO.

We also are amending § 3.1003(b) to replace the legal term "escheat" with the words "revert to the state because there is no one eligible to inherit it." We believe that many will not understand the term "escheat" and have, therefore, chosen to replace it with words that express the same legal meaning but are easier for the general public to understand.

The effective date of this amendment is October 19, 1996, the effective date of section 202(t) of Public Law 104-316.

This final rule reflects statutory amendments and makes nonsubstantive changes. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.102, 64.104, 64.105, 64.109, and 64.110.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: September 14, 1999.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

**PART 3—ADJUDICATION**

**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

**§ 3.1003 [Amended]**

2. In § 3.1003, paragraph (b) is amended by removing "upon settlement by the General Accounting Office"; and by removing "escheat" and adding, in its place, "revert to the state because there is no one eligible to inherit it".

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

**RIN 2900-AJ18**

**Enrollment—Provision of Hospital and Outpatient Care to Veterans**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends VA's medical regulations. The Veterans' Health Care Eligibility Reform Act of 1996 mandates that VA implement a national enrollment system to manage the delivery of healthcare services. Accordingly, the medical regulations are amended to establish provisions consistent with this mandate. Starting October 1, 1998, most veterans were required to be enrolled in the VA healthcare system as a condition of receiving VA hospital and outpatient care. Veterans will be allowed to apply to be enrolled at any time. They will be eligible to be enrolled based on funding availability and their priority status. In accordance with statutory provisions, the final rule also states that some categories of veterans are eligible for VA hospital and outpatient care even if not enrolled. This document further establishes a "medical benefits package" setting forth, with certain exceptions, the hospital and outpatient care that will be provided to enrolled veterans and certain other veterans.

Moreover, this document announces that VA will enroll all 7 priority categories of veterans for the period October 1, 1999 through September 30, 2000, unless it is necessary to change this determination by a subsequent rulemaking document.

**DATES:** *Effective Date:* November 5, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Roscoe Butler, Health Administration Service, (10C3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8302. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on July 10, 1998 (63 FR 37299), we proposed to amend the medical regulations at 38 CFR part 17. Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, mandates that VA implement a national enrollment system to manage the delivery of healthcare services. Public Law 104-262 also contains priority categories for determining eligibility for enrollment. Accordingly, we proposed

to amend the medical regulations to establish provisions consistent with these statutory provisions. Starting October 1, 1998, most veterans were required to be enrolled in the VA healthcare system as a condition for receiving VA hospital and outpatient care. The proposal also stated that these veterans would be allowed to apply to be enrolled at any time. In accordance with statutory provisions, the proposal further stated that some categories of veterans would be eligible for VA hospital and outpatient care even if not enrolled. In addition, we proposed to establish a "medical benefits package" setting forth, with certain exceptions, the hospital and outpatient care that would be provided to enrolled veterans and certain other veterans.

We received comments from 10 sources. The comments are discussed below. Based on the rationale set forth in the proposed rule and in this document, the provisions of the proposed rule are adopted as a final rule with certain changes explained below.

#### **Catastrophically Disabled**

The priority listing for enrollment in proposed § 17.36 provided for certain catastrophically disabled veterans to be enrolled in priority category 4 and for certain other catastrophically disabled veterans to be enrolled in priority category 7. The proposed provisions were based on an attempt to reconcile the provisions of 38 U.S.C. 1705 and 1710(a). The provisions of 38 U.S.C. 1705 include in priority category 4 "veterans who are catastrophically disabled." The provisions of 38 U.S.C. 1710(a) set forth a preference scheme for providing VA care first to "mandatory veterans" and then to "discretionary veterans." This preference scheme, if controlling, would place some catastrophically disabled veterans in a lower priority category than priority category 4. Several commenters asserted that the provisions of 38 U.S.C. 1705 must be interpreted to require that all catastrophically disabled veterans be enrolled in priority category 4. Upon further consideration, we have concluded that the statutory provisions in question are irreconcilable and that the rules of statutory construction require that deference be given to the more specific provisions in 38 U.S.C. 1705. Accordingly, except as discussed below, the final rule includes all catastrophically disabled veterans in priority category 4.

Some veterans who are catastrophically disabled must agree to make the applicable co-payment as a condition of being included in priority category 4. This is because 38 U.S.C.

1710 imposes co-payments on certain veterans, including some veterans who are catastrophically disabled.

Accordingly, we amended § 17.36(b)(4) to reflect the co-payment requirement. We also made corresponding changes to § 17.36(d)(1) with respect to information to be included in the application for enrollment in the VA healthcare system.

In § 17.36(e), the definition of the term "catastrophically disabled" includes the requirement that the condition be "permanent." Some commenters opposed the inclusion of this requirement. Although we have retained the requirement that the condition be "permanent," we have made clarifying changes.

We believe that a condition causing an individual to be catastrophically disabled must be a "permanent" condition. Under the provisions of 38 U.S.C. 1705, priority category 4 consists of "Veterans who are in receipt of increased pension based on a need of regular aid and attendance or by reason of being permanently housebound and other veterans who are catastrophically disabled." The words "other veterans who are catastrophically disabled" indicate that all veterans in priority category 4 are "catastrophically disabled" and are disabled to a similar extent. To be in receipt of increased pension based on a need of regular aid and attendance or by reason of being permanently housebound, a veteran must be permanently disabled (see 38 U.S.C. 1502 and 1521). We have thus construed this statutory priority category to include only veterans with permanent conditions. Our interpretation is consistent with other provisions of Pub. L. 104-262, which, as noted above, includes the mandate that VA implement a national enrollment system. In this regard, the four examples used to describe the term "disabled" in 38 U.S.C. 1706 are permanent conditions, *i.e.*, spinal cord dysfunction, blindness, amputations, and serious mental illness. Moreover, the legislative history of Pub. L. 104-262 refers to a permanent condition, spinal cord injury, to describe the type of disabilities intended to be covered by the term "catastrophically disabled" (House Report No. 690, 104th Cong., 2d Sess. 7 (1996)) and the Joint Explanatory Statement for H.R. 3118, The Proposed Veterans' Health Care Eligibility Reform Act of 1996 (142 Cong. Rec. S11642, S11646 (daily ed. Sept. 28, 1996)).

We have, however, clarified the criteria for determining when a condition is permanent. In this regard, we have revised the second sentence in § 17.36(e) to read as follows: "This definition is met if an individual has

been found by the Chief of Staff (or equivalent clinical official) at the VA facility where the individual was examined to have a permanent condition specified in paragraph (e)(1) of this section; to meet permanently one of the conditions specified in paragraph (e)(2) of this section by a clinical evaluation of the patient's medical records that documents that the patient previously met the permanent criteria and continues to meet such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment; or to meet permanently one of the conditions specified in paragraph (e)(2) of this section by a current medical examination that documents that the patient meets the permanent criteria and will continue to meet such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment." This clarifies that a veteran who previously met the criteria in § 17.36(e)(2) for establishing a permanent condition would continue to meet the criteria even if the condition has improved because of ongoing treatment. In our view, on-going treatment does not change the finding that the condition is permanent.

In § 17.36, paragraph (e) defines the term "catastrophically disabled" and includes provisions stating that the definition is met if certain conditions are met. One commenter argued that in order to be determined to be "catastrophically disabled" a veteran should be required to meet the definition or the conditions, but not both. No changes are made based on this comment. Both the definition and the specific conditions or the functional disability levels that meet the definition are necessary to ensure that the term "catastrophically disabled" is uniformly applied.

Under the provisions of § 17.36(b)(4), a veteran may be determined to be catastrophically disabled and thereby included in priority category 4 only if determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where the veteran was examined. One commenter suggested that VA include in the regulations additional information concerning examinations for determining whether veterans are catastrophically disabled, *i.e.*, how a first-time applicant could obtain catastrophically disabled status, how the examination would be conducted, and whether records of previous treatment and examination could be substituted for a current examination. No changes are made

based on this comment. We will consider a subsequent amendment to this final rule to include additional procedures as warranted. Currently, examinations could be provided based on the request of a veteran or VA. Also, the Chief of Staff (or equivalent clinical official) at the VA facility where the individual was examined would make decisions based on the criteria in the final rule for determining whether a veteran is catastrophically disabled and could use any available records in making the decision. Further, the decisionmaker could make a decision without requiring a new examination if the records are sufficient.

One commenter asserted that the determination by the Chief of Staff (or equivalent clinical official) constitutes an appeal and that the final rule should include appeal procedures and time limits for this decision. No changes are made based on this comment. The decision by the Chief of Staff (or equivalent clinical official) constitutes the initial decision. It is that decision that could be appealed.

In the proposal, the conditions for determining whether a veteran is catastrophically disabled included a finding that the veteran is "[d]ependent in 4 or more Activities of Daily Living (eating, dressing, bathing, toileting, transferring, incontinence of bowel and/or bladder), with at least 4 of the dependencies being permanent, using the Katz scale." Commenters argued that the reference to 4 should be lowered in both places to 3. We have compared the conditions with the definition of catastrophically disabled and have concluded that the definition would still be met if the number were changed to 3 in both places. Accordingly, we have made these changes in the final rule.

In the proposal, the conditions for determining whether a veteran is catastrophically disabled include a finding that the veteran scored 30 or lower using the Global Assessment of Functioning. Commenters asserted that the score for the Global Assessment of Functioning should be raised to 40. No changes are made based on these comments. Patients above 30 are in a range described as severe but less than catastrophic in that they do not require personal or mechanical assistance to leave home or bed or require constant supervision to avoid physical harm to self or others. Accordingly, they would not meet the definition of catastrophically disabled.

Commenters recommended that the list of conditions in § 17.36(e) that would establish that a veteran is "catastrophically disabled" should be

expanded to include chronic and severe mental illnesses, Amyotrophic Lateral Sclerosis, Multiple Sclerosis, a score of 5 or higher on the Kurtzke Expanded Disability Status Scale for Multiple Sclerosis, and possibly other things. No changes are made based on these comments. Conditions not specifically mentioned, including those mentioned by the commenters, would be covered when the criteria in § 17.36(e) are met. It is impractical to attempt to list all of the specific conditions that would be covered by the criteria.

The list of conditions for establishing that a veteran is catastrophically disabled includes a condition resulting from two of the specified procedures in § 17.36(e)(1) provided the two procedures were not on the same limb. The proposed procedures included "Amputation of toe (only if accompanied by V49.71 code for amputated great toe) (procedure code 84.11)." These provisions are clarified to reflect more clearly that the toe amputated must be the great toe.

The proposed list of conditions for establishing that a veteran is catastrophically disabled included permanent "unspecified hemiplegia." This is deleted. The final rule provides that a veteran is catastrophically disabled upon a finding of a score of 2 or lower on at least 4 of the 13 motor items using the Functional Independence Measure. This finding necessarily could be made if a veteran had hemiplegia that would be catastrophically disabling. This Functional Independence Measure is a more appropriate method of determining whether hemiplegia constitutes a catastrophic disability.

The proposed list of conditions for establishing that a veteran is catastrophically disabled included a score of 14 or higher on the Activities of Daily Living (ADL) Index using Resource Utilizations Group (RUG) III. This condition is deleted. The ADL section is one part of a complex multidimensional assessment tool known as the Minimum Data Set (MDS). All sections in the MDS contribute to the construction of 44 RUGs (RUG III). Therefore isolating one section and attempting to calculate a numerical score invalidates the purpose for which the instrument was designed.

Moreover, this should not have any negative effects on veterans. The category of veterans intended to meet the definition of catastrophically disabled based on the ADL criteria necessarily would also meet the definition of catastrophically disabled based on the criteria in §§ 17.36(e)(2)(i) or (iii) *i.e.*, dependent in 3 or more

Activities of Daily Living (eating, dressing, bathing, toileting, transferring, incontinence of bowel and/or bladder), with at least 3 of the dependencies being permanent, using the Katz scale; or a score of 2 or lower on at least 4 of the 13 motor items using the Functional Independence Measure. In the ADL provision, "dependent" was intended to mean fully dependent. Being fully dependent is represented by a rating of 1 on the Katz scale. We have clarified the rule accordingly.

One commenter questioned how the definition and conditions were established for determining when an individual is "catastrophically disabled". In this regard, we note that the definition and conditions were formulated by knowledgeable VA clinical experts.

One commenter asserted that VA form 10-10 EZ should be amended to specifically ask whether a veteran is requesting an examination to determine whether the veteran is catastrophically disabled. No changes are made based on this comment. The issue of whether an individual should be examined is a complex matter (see § 17.36(e)) that does not lend itself readily to the form. Further, before a veteran would be removed from the list of enrollees based on a priority status lower than priority category 4, the veteran first would be provided a letter advising of the opportunity to request that action be taken (including an examination, if needed) to determine whether the veteran is catastrophically disabled and thereby eligible for inclusion in priority category 4.

#### Additional Enrollment Issues

One commenter opposed any enrollment system that could exclude any categories of veterans from access to medical care. No changes are made based on this comment. The Veterans' Health Care Eligibility Reform Act requires that we establish a system for the management of hospital and outpatient care based on priorities and available funding.

One commenter asserted that nonservice-connected Purple Heart recipients should be included in priority category 3. No changes are made based on this comment. The priority categories are established by statute, and there is no authority to include this category of veterans in priority category 3.

One commenter asserted that within priority category 7, military retirees should be given a subpriority based on the further assertion that military retirement benefits are inadequate. No changes are made based on this

comment. This final rule is not an appropriate forum for addressing military retirement benefits.

One commenter asserted that enrollment status decisions should be transferable among VA medical facilities. In response, we have added a note to § 17.36 to clarify that a veteran's enrollment status will be honored by all VA medical facilities in the United States (care abroad is covered by 38 U.S.C. 1724).

One commenter asserted that veterans should be given a presumption of entitlement to medical services when they initially apply or reapply for enrollment and should receive medical services until an appeal is decided. No changes are made based on this comment. We have no authority to include such provisions in the final rule.

One commenter asserted that enrollment should guarantee a veteran access to the "medical benefits package" for a certain period of time, e.g. until the end of the fiscal year. Commenters also asserted that after a number of years of receiving VA medical services an enrollee's right to receive medical services should become permanent. No changes are made based on these comments. It is our intent under the provisions of § 17.36 to try to predict accurately for the whole fiscal year how many priority categories will be funded. However, the regulations must include provisions for amending the determination at any time because VA can only provide services insofar as there are available funds to cover the services. Further, we have no authority to make permanent an enrollee's right to receive medical services.

Under the provisions of § 17.36(d)(4)(iii), a veteran who had been enrolled based on inclusion in priority category 5 will be disenrolled if the veteran does not return to VA a completed form VA Form 10-10EZ. One commenter asserted that this provision could cause some of the most vulnerable veterans to lose their medical benefits. No changes are made based on this comment. This will not disadvantage veterans who are disenrolled merely because they did not return the form. Under the provisions of § 17.36 such a veteran may reapply to be enrolled at any time and thereby supply the information necessary to determine their enrollment priority category.

One commenter opposed the provisions in § 17.36(d)(4)(i) which state that a veteran will be removed from the list of enrollees if the veteran submits to a VA medical center a signed document stating that the veteran no longer wishes to be enrolled. No changes are made

based on this comment. If a veteran no longer intends to obtain VA care we would like to be informed so that we can better predict the demand for VA care. However, this will not disadvantage those who wish to restore their enrollment status since, as noted above, a veteran may reapply to be enrolled at any time.

Commenters asserted that the letter that VA sends veterans concerning their enrollment status should indicate which priority group the veteran was placed in and all co-payment information. We intend to provide this information to enrolled veterans as soon as possible.

Under the provisions of Pub. L. 105-368, a veteran enrolled based on an illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, is included in priority category 6 and is eligible for VA hospital and outpatient care provided in the medical benefits package for the illness. The final rule is amended to reflect this statutory change.

#### **Hospital and Outpatient Care to Veterans Who are not Enrolled in the VA Healthcare System**

Consistent with the provisions of Pub. L. 104-262, § 17.37 specifies when VA may provide hospital and outpatient care to veterans who are not enrolled in the VA healthcare system. One commenter asserted that this should include a statement that a veteran who is not enrolled in the VA healthcare system may receive an examination to determine whether the veteran is eligible for inclusion in priority category 4 based on a finding that the veteran is catastrophically disabled. We agree and have amended § 17.37 accordingly.

#### **Medical Benefits Package**

One commenter argued that the final rule should concern only a national enrollment system and, accordingly, should not include a medical benefits package. Although the commenter concluded that VA has inherent authority to establish a medical benefits package, the commenter asserted that the proposed rule purportedly was designed solely "to implement the Veterans' Health Care Eligibility Reform Act of 1996" and that the "medical benefits package" went beyond this statutory authority. The commenter also asserted that the statutory provisions at 38 U.S.C. 1701 and the regulations at 38 CFR 17.30 are adequate for determining what care will be provided to enrolled veterans. The commenter further asserted that we did not provide sufficient rationale or justification for the establishment of a "medical benefits

package." No changes are made based on these comments. Although the Veterans' Health Care Eligibility Reform Act of 1996 did not direct VA to create a medical benefits package, we believe that it is necessary under the requirements of the Administrative Procedure Act to inform affected individuals concerning the care that would or would not be provided to veterans enrolled in the VA healthcare system. The definitions of terms in 38 U.S.C. 1701 and 38 CFR 17.30 are not adequate by themselves to allow individuals to make such determinations. Further, the following statement in the preamble portion of the proposed rule provided the rational basis for the medical benefits package: "The Secretary has authority to provide healthcare as determined to be medically needed. In our view, medically needed constitutes care that is determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice. The care included in the proposed 'medical benefits package' is intended to meet these criteria."

Commenters asserted that infertility services, pregnancy and delivery, surgical implantation of penile prostheses, and membership in spas and health clubs should be included in the medical benefits package. As noted above, the medical benefits package would include "care that is determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice." Upon reconsideration, we conclude that pregnancy and delivery services (to the extent we have legal authority to provide such services) meet these criteria and should be included in the medical benefits package. We also conclude that membership in spas and health clubs does not meet these criteria and should not be included. Further, under these criteria, we have determined that reproductive sterilization, surgery to reverse voluntary sterilization, infertility services (other than in vitro fertilization), and surgical implantation of penile prostheses should not be excluded. Appropriate changes are made to the medical benefits package to reflect these determinations.

Commenters asserted that the "medical benefits package" should cover all emergency care for all enrolled veterans. No changes are made based on these comments. The final rule includes in the "medical benefits package" all of

the emergency care that VA is authorized to provide to enrolled veterans (see 38 U.S.C. 1703, 1728).

Priority category 6 includes veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e). One commenter asserted that these veterans should be eligible to receive the full "medical benefits package" because of such disorders. No changes are made based on this comment. The restrictions for this category are required by 38 U.S.C. 1710(e).

One commenter asserted that the final rule should include provision for "long-term care services." No changes are made based on this comment. The medical benefits package includes non-institutional long-term care services, such as home health care. The statutory framework for the enrollment system does not cover nursing home care.

The medical benefits package includes prescription drugs available under the VA national formulary system. Commenters argued that this is inadequate based on the assertion that this would limit drugs only to those listed and exclude any opportunity for using non-listed drugs. No changes are made based on these comments. The national formulary system includes a mechanism for the provision of drugs and medicines not listed in the formulary.

Commenters recommend that the "medical benefits package" include a statement that VA will maintain its capacity to treat disabled veterans in accordance with the provisions of 38 U.S.C. 1706. No changes are made based on these comments. The statutory provisions are adequate by themselves to provide notice of this requirement.

Commenters asserted that a determination regarding care received under the "medical benefits package" should only be made by a physician in the appropriate medical specialty and that a veteran should have direct access to the medical specialist of choice. No changes are made based on these comments. Consistent with the trends in industry practice, we believe that generally veterans should first meet with primary care healthcare professionals and then be referred to medical specialists, if necessary.

Commenters asserted that the letter that VA sends veterans concerning their enrollment status should specify what services are available to enrollees. No changes are made based on these comments. The enrollment status letter

will provide an overview of the services available and will include a toll-free telephone number for veterans to call for further information.

We also have made a clarifying change to the medical benefits package to state that it includes the completion of certain forms (e.g., Family Medical Leave forms, life insurance applications, Department of Education forms for loan repayment exemptions based on disability, non-VA disability program forms) by healthcare professionals based on an examination or knowledge of the veteran's condition, but not including the completion of forms for examinations where payment for such examinations cannot be paid to VA but can be paid to other health care practitioners. This is a medical service that generally is provided under customary medical practice.

#### **Notice of Priority Categories Eligible for Enrollment**

The proposed rule provided for the Secretary to publish notices in the notice section of the **Federal Register** announcing which categories of veterans are eligible to be enrolled. One commenter asserted that the determinations made must be published as rules and that such rules can be made only after prior notice and comment. In response, we have changed the provisions of the final rule to provide for inclusion of the announcements by the Secretary in the regulatory material at § 17.36. Determinations regarding notice and comment will be made in accordance with the provisions of the Administrative Procedure Act.

Also, the criteria in § 17.36 for determining which categories of veterans are eligible to be enrolled are clarified to more accurately reflect the elements necessary for making the determination.

#### **Appeals**

Commenters asserted that the proposed rule did not contain sufficient notice of appeal rights for enrollment determinations. In response, we have added information to § 17.36(d)(5) stating that the letter providing notification of enrollment status (enrollment or disenrollment) will include an effective date for any changes and will include a statement regarding appeal rights.

As stated in the proposal, veterans may appeal VA decisions regarding enrollment and disenrollment to the Board of Veterans' Appeals and the Court of Veterans Appeals. Commenters asserted that actions on appeals to the Board take too long and that special intermediate appeal procedures must be

established to protect veterans' access to healthcare. Most of the enrollment determinations will be based on the ministerial application of determinations made by the VA's Veterans Benefits Administration. There is already a process for obtaining reconsideration of these VBA determinations at the Regional Office level. It would be inappropriate for VA's Veterans Health Administration (VHA) which administers the National Enrollment System to provide appellate rights for these VBA issues. Further, although we are not required to do so, we are in the process of formulating voluntary intermediate reconsideration procedures for VHA decisions (63 FR 9990). In this regard, we are considering whether to apply such voluntary intermediate appeal procedures to certain VHA enrollment issues, such as decisions concerning catastrophic disabilities and means testing.

One commenter asserted that a veteran should not lose benefits for at least 90 days or until the completion of an appeal. No changes are made based on this comment. We have no authority to establish such a rule.

Commenters asserted that the Presidential Memorandum on Federal Agency Compliance with the Patient Bill of Rights requires appeal procedures for enrollment issues. No changes are made based on these comments. This Memorandum was intended to ensure additional process for medical determinations not subject to the appellate jurisdiction of the Board of Veterans Appeals, such as the need for and appropriateness of specific types of medical care and treatment for an individual. Further, as noted above, we are taking steps to establish intermediate appeal procedures as appropriate.

Commenters asserted that the final rule should specifically state that the Board of Veterans Appeals has appellate jurisdiction of VHA determinations concerning whether a veteran is catastrophically disabled. No changes are made based on these comments. We agree that under 38 CFR 20.101(b) the Board has jurisdiction over these determinations. Further, we do not believe that there is a need to include specific provisions in the final rule regarding this matter.

#### **Miscellaneous**

Non-substantive changes have been made for purposes of clarification.

#### **Announcement Regarding Enrollment of Priority Categories**

VA will enroll all 7 priority categories of veterans for the period October 1,

1999 through September 30, 2000, unless changed by a subsequent rulemaking document.

#### OMB

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### Paperwork Reduction Act

The collection of information contained in the notice of the proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). The information collection subject to this rulemaking concerns:

(1) *Initial Application for Health Benefits*. Under the provisions of § 17.36(d)(1), a veteran who wishes to be enrolled must apply by submitting a VA Form 10-10EZ to a VA medical facility. Veterans applying based on inclusion in categories 1, 2, 3, 6, and 7 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 must complete all or a portion of VA Form 10-10EZ as set forth in § 17.36(d)(1). Veterans applying based on inclusion in priority category 5 must complete the entire form. VA Form 10-10EZ is set forth in full at § 17.36(f). This information is needed to determine whether a veteran is eligible to be enrolled in the VA healthcare system and, consequently, whether the veteran is eligible for VA hospital and outpatient care;

(2) *Yearly Re-application for Health Benefits*. Under the provisions of § 17.36(d)(4)(iii), veterans enrolled based on inclusion in priority category 5 will be mailed a Form 10-10EZ on a yearly basis. They will be requested to complete the form and return the form to the address on the return envelope. VA Form 10-10EZ is set forth in full at § 17.36(f). This information is needed to determine whether a veteran is eligible to continue to be enrolled in the VA healthcare system, and, consequently, whether the veteran is eligible to continue to receive VA hospital and outpatient care;

(3) *Voluntary disenrollment*. Under the provisions of § 17.36(d)(4)(i), a veteran wishing to disenroll and forgo VA hospital and outpatient care must submit to a VA medical center a signed document stating that the veteran no longer wishes to be enrolled. This information is needed to determine the identity of those veterans wishing to disenroll and forgo VA hospital and outpatient care. This will help VA determine how to allocate available funding for hospital and outpatient care.

Interested parties were invited to submit comments on the collection of information. However, no comments were received. OMB has approved this information collection under control number 2900-0091.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule 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 proposed rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal domestic assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

#### 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.

Approved: July 16, 1999.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

#### PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, unless otherwise noted.

##### § 17.34 [Amended]

2. The first sentence of § 17.34 is amended by removing “When an application” and adding, in its place, “Subject to the provisions of §§ 17.36 through 17.38, when an application”.

3. An undesignated center heading, § 17.36, and a parenthetical at the end of the section are added to read as follows:

#### Enrollment Provisions and Medical Benefits Package

##### § 17.36 Enrollment—provision of hospital and outpatient care to veterans.

(a) *Enrollment requirement for veterans*. (1) Except as otherwise provided in § 17.37, a veteran must be enrolled in the VA healthcare system as a condition for receiving VA hospital and outpatient care.

**Note to paragraph (a)(1):** A veteran may apply to be enrolled at any time. (See § 17.36(d)(1).)

(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section is eligible for VA hospital and outpatient care as provided in the “medical benefits package” set forth in § 17.38.

**Note to paragraph (a)(2):** A veteran’s enrollment status will be recognized throughout the United States.

(3) A veteran enrolled based on having a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, or any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e), is eligible for VA hospital and outpatient care provided in the “medical benefits package” set forth in § 17.38 for the disorder.

(b) *Categories of veterans eligible to be enrolled*. The Secretary will determine which categories of veterans are eligible to be enrolled based on the following order of priority:

(1) Veterans with a singular or combined rating of 50 percent or greater based on one or more service-connected disabilities or unemployability.

(2) Veterans with a singular or combined rating of 30 percent or 40 percent based on one or more service-connected disabilities.

(3) Veterans who are former prisoners of war; veterans with a singular or combined rating of 10 percent or 20 percent based on one or more service-connected disabilities; veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty; veterans who receive disability compensation under 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent

that such veterans' continuing eligibility for hospital and outpatient care is provided for in the judgment or settlement described in 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the 10 percent rating level based on multiple noncompensable service-connected disabilities that clearly interfere with normal employability.

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined; except that a veteran who is catastrophically disabled and who must agree under 38 U.S.C. 1710 to pay to the United States a co-payment as condition of receiving VA care, must agree to pay to the United States the applicable co-payment to be enrolled in priority category 4.

(5) Veterans not covered by paragraphs (b)(1) through (b)(4) of this section who are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(6) Veterans of the Mexican border period or of World War I; veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, or for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 U.S.C. 1710(e); and veterans with 0 percent service-connected disabilities who are nevertheless compensated, including veterans receiving compensation for inactive tuberculosis.

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

- (i) Noncompensable zero percent service-connected veterans; and
- (ii) All other priority category 7 veterans.

(c) *Federal Register notification of eligible enrollees.* (1) It is anticipated that on or before August 1 of each year the Secretary will announce in paragraph (c)(2) of this section which categories of veterans are eligible to be enrolled. As necessary, the Secretary at any time may revise this determination by further amending paragraph (c)(2) of

this section. The preamble to a **Federal Register** document announcing which priority categories are eligible to be enrolled must specify the projected number of fiscal year applicants for enrollment in each priority category, projected healthcare utilization and expenditures for veterans in each priority category, appropriated funds and other revenue projected to be available for fiscal year enrollees, and results—projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, e.g., economic changes, changes in medical practices, and waiting times to obtain an appointment for care. Consistent with these criteria, the Secretary will determine which categories of veterans are eligible to be enrolled based on the order of priority specified in paragraph (b) of this section.

(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll all priority categories of veterans set forth in § 17.36(b) for the period from October 1, 1999 through September 30, 2000.

(d) *Enrollment and disenrollment process*—(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10-10EZ to a VA medical facility. Veterans applying based on inclusion in priority categories 1, 2, 3, 6, and 7 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because of their need for regular aid and attendance or by being permanently housebound need not complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because they are catastrophically disabled need not complete section II, but must complete the rest of the form, if: they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g); they are a veteran of the Mexican border period or of World War I or a veteran with a 0 percent service-connected disability who is nevertheless compensated; their catastrophic disability is a disorder associated with exposure to a toxic substance or radiation, or with service in the Southwest Asia theater of operations during the Gulf War as provided in 38 U.S.C. 1710(e); or their catastrophic disability is an illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11,

1998, as provided in 38 U.S.C. 1710(e). All other veterans applying based on inclusion in priority category 4 because they are catastrophically disabled must complete the entire form. Veterans applying based on inclusion in priority category 5 must complete the entire form. VA Form 10-10EZ is set forth in paragraph (f) of this section and is available from VA medical facilities.

**Note to paragraph (d)(1):** To remain enrolled based on inclusion in priority category 5, a veteran annually must return information to VA on a VA Form 10-10EZ as provided in paragraph (d)(4)(iii) of this section and otherwise meet the requirements for enrollment.

(2) *Action on application.* Upon receipt of a completed VA Form 10-10EZ, a VA network or facility director, or the Chief Network Officer, will accept a veteran as an enrollee upon determining that the veteran is in a priority category eligible to be enrolled as set forth in § 17.36(c)(2). Upon determining that a veteran is not in a priority category eligible to be enrolled, the VA network or facility director, or the Chief Network Officer, will inform the applicant that the applicant is ineligible to be enrolled.

(3) *Automatic enrollment.* Notwithstanding other provisions of this section, veterans who were notified by VA letter that they were enrolled in the VA healthcare system under the trial VA enrollment program prior to October 1, 1998, automatically will be enrolled in the VA healthcare system under this section if determined by a VA network or facility director, or the Chief Network Officer, that the veteran is in a priority category eligible to be enrolled as set forth in § 17.36(c)(2). Upon determining that a veteran is not in a priority category eligible to be enrolled, the VA network or facility director, or the Chief Network Officer, will inform the veteran that the veteran is ineligible to be enrolled.

(4) *Disenrollment.* A veteran enrolled under paragraph (d)(2) or (d)(3) of this section will be disenrolled only if:

- (i) The veteran submits to a VA medical center a signed document stating that the veteran no longer wishes to be enrolled;
- (ii) A VA network or facility director, or the Chief Network Officer, determines that the veteran is no longer in a priority category eligible to be enrolled, as set forth in § 17.36(c)(2); or
- (iii) A VA network or facility director, or the Chief Network Officer, determines that the veteran has been enrolled based on inclusion in priority category 5; determines that the veteran was sent by mail a VA Form 10-10EZ; and determines that the veteran failed to



return the completed form to the address on the return envelope within 60 days from receipt of the form. VA Form 10-10EZ is set forth in paragraph (f) of this section.

(5) *Notification of enrollment status.* Notice of a decision by a VA network or facility director, or the Chief Network Officer, regarding enrollment status will be provided to the affected veteran by letter and will contain the reasons for the decision. The letter will include an effective date for any changes and a statement regarding appeal rights. The decision will be based on all information available to the decisionmaker, including the information contained in VA Form 10-10EZ.

(e) *Catastrophically disabled.* For purposes of this section, catastrophically disabled means to have a permanent severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the individual requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others. This definition is met if an individual has been found by the Chief of Staff (or equivalent clinical official) at the VA facility where the individual was examined to have a permanent condition specified in paragraph (e)(1) of this section; to meet permanently one of the conditions specified in paragraph (e)(2) of this section by a clinical evaluation of the patient's medical records that documents that the patient previously met the permanent criteria and continues to meet such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment; or to meet permanently one

of the conditions specified in paragraph (e)(2) of this section by a current medical examination that documents that the patient meets the permanent criteria and will continue to meet such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment.

(1) Quadriplegia and paraparesis (ICD-9-CM Code 344.0x: 344.00, 344.01, 344.02, 344.03, 344.04, 3.44.09), paraplegia (ICD-9-CM Code 344.1), blindness (ICD-9-CM Code 369.4), persistent vegetative state (ICD-9-CM Code 780.03), or a condition resulting from two of the following procedures (ICD-9-CM Code 84.x or associated V Codes when available or Current Procedural Terminology (CPT) Codes) provided the two procedures were not on the same limb:

(i) Amputation through hand (ICD-9-CM Code 84.03 or V Code V49.63 or CPT Code 25927);

(ii) Disarticulation of wrist (ICD-9-CM Code 84.04 or V Code V49.64 or CPT Code 25920);

(iii) Amputation through forearm (ICD-9-CM Code 84.05 or V Code V49.65 or CPT Codes 25900, 25905);

(iv) Disarticulation of forearm (ICD-9-CM Code 84.05 or V Code V49.66 or CPT Codes 25900, 25905);

(v) Amputation or disarticulation through elbow. (ICD-9-CM Code 84.06 or V Code V49.66 or CPT 24999);

(vi) Amputation through humerus (ICD-9-CM Code 84.07 or V Code V49.66 or CPT Codes 24900, 24920);

(vii) Shoulder disarticulation (ICD-9-CM Code 84.08 or V Code V49.67 or CPT Code 23920);

(viii) Forequarter amputation (ICD-9-CM Code 84.09 or CPT Code 23900);

(ix) Lower limb amputation not otherwise specified (ICD-9-CM Code

84.10 or V Code V49.70 or CPT Codes 27880, 27882);

(x) Amputation of great toe (ICD-9-CM Code 84.11 or V Code V49.71 or CPT Codes 28810, 28820);

(xi) Amputation through foot (ICD-9-CM Code 84.12 or V Code V49.73 or CPT Codes 28800, 28805);

(xii) Disarticulation of ankle (ICD-9-CM Code 84.13 or V Code V49.74 or CPT 27889);

(xiii) Amputation through malleoli (ICD-9-CM Code 84.14 or V Code V49.75 or CPT Code 27888);

(xiv) Other amputation below knee (ICD-9-CM Code 84.15 or V Code V49.75 or CPT Codes 27880, 27882);

(xv) Disarticulation of knee (ICD-9-CM Code 84.16 or V Code V49.76 or CPT Code 27598);

(xvi) Above knee amputation (ICD-9-CM Code 84.17 or V Code V49.76 or CPT Code 27598);

(xvii) Disarticulation of hip (ICD-9-CM Code 84.18 or V Code V49.77 or CPT Code 27295); and

(xviii) Hindquarter amputation (ICD-9-CM Code 84.19 or CPT Code 27290).

(2)(i) Dependent in 3 or more Activities of Daily Living (eating, dressing, bathing, toileting, transferring, incontinence of bowel and/or bladder), with at least 3 of the dependencies being permanent with a rating of 1, using the Katz scale.

(ii) A score of 10 or lower using the Folstein Mini-Mental State Examination.

(iii) A score of 2 or lower on at least 4 of the 13 motor items using the Functional Independence Measure.

(iv) A score of 30 or lower using the Global Assessment of Functioning.

(f) *VA Form 10-10EZ.* [insert actual photocopy of VA Form 10-10EZ]

BILLING CODE 8320-01-P



OMB Approved No. 2900-0091  
Estimated Burden Avg. 20 min.

Department of Veterans Affairs

## APPLICATION FOR HEALTH BENEFITS

## SECTION I - GENERAL INFORMATION

1A. TYPE OF BENEFIT(S) APPLIED FOR (You may check more than one)				
<input type="checkbox"/> HEALTH SERVICES	<input type="checkbox"/> NURSING HOME	<input type="checkbox"/> DOMICILIARY	<input type="checkbox"/> DENTAL	<input type="checkbox"/> ENROLLMENT
1B. IF APPLYING FOR HEALTH SERVICES, WHICH VA MEDICAL CENTER OR OUTPATIENT CLINIC DO YOU PREFER				
2. VETERAN'S NAME (Last, First, MI)		3. OTHER NAMES USED		4. GENDER (Check one) <input type="checkbox"/> M <input type="checkbox"/> F
5. SOCIAL SECURITY NUMBER	6. CLAIM NUMBER	7. DATE OF BIRTH (mm/dd/yyyy)	8. RELIGION	
9A. CURRENT MAILING ADDRESS (Street)		9B. CITY	9C. STATE	9D. ZIP
9E. COUNTY		10. HOME TELEPHONE NUMBER ( ) ( ) ( )	11. WORK TELEPHONE NUMBER ( ) ( ) ( )	
12. CURRENT MARITAL STATUS (Check one) <input type="checkbox"/> MARRIED <input type="checkbox"/> NEVER MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> WIDOWED <input type="checkbox"/> DIVORCED <input type="checkbox"/> UNKNOWN				
13A. LAST BRANCH OF SERVICE	13B. LAST ENTRY DATE	13C. LAST DISCHARGE DATE	13D. DISCHARGE TYPE	13E. MILITARY SERVICE NUMBER
14. CIRCLE YES OR NO				
A. ARE YOU A FORMER PRISONER OF WAR		YES NO	H. DO YOU HAVE A MILITARY DENTAL INJURY	
B. DO YOU HAVE A VA SERVICE-CONNECTED RATING		YES NO	I. DO YOU HAVE A SPINAL CORD INJURY	
B1. IF YES, WHAT IS YOUR RATED PERCENTAGE		%	J. ARE YOU ELIGIBLE FOR MEDICAID	
C. ARE YOU RECEIVING A VA PENSION		YES NO	K. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A	
D. ARE YOU RETIRED FROM THE MILITARY		YES NO	K1. EFFECTIVE DATE	
D1. WAS YOUR RETIREMENT THE RESULT OF A DISABILITY		YES NO	L. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART B	
D2. WERE YOU REGULARLY RETIRED - (20+ yrs.)		YES NO	L1. EFFECTIVE DATE	
E. WERE YOU EXPOSED TO TOXINS IN THE GULF WAR		YES NO	M. MEDICARE CLAIM NUMBER	
F. WERE YOU EXPOSED TO AGENT ORANGE		YES NO	N. NAME EXACTLY AS IT APPEARS ON YOUR MEDICARE CARD	
G. WERE YOU EXPOSED TO RADIATION		YES NO		
15A. VETERAN'S EMPLOYMENT STATUS (check one) If employed or retired, complete item 15B <input type="checkbox"/> NOT EMPLOYED <input type="checkbox"/> EMPLOYED <input type="checkbox"/> RETIRED Date of retirement / /		15B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER		
16A. SPOUSE'S EMPLOYMENT STATUS (check one) If employed or retired, complete item 16B <input type="checkbox"/> NOT EMPLOYED <input type="checkbox"/> EMPLOYED <input type="checkbox"/> RETIRED Date of retirement / /		16B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER		
17A. VETERAN'S HEALTH INSURANCE COMPANY		18A. SPOUSE'S HEALTH INSURANCE COMPANY		
17B. NAME OF POLICY HOLDER		18B. NAME OF POLICY HOLDER		
17C. POLICY NUMBER	17D. GROUP CODE	18C. POLICY NUMBER	18D. GROUP CODE	
19A. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN		19B. NEXT OF KIN'S HOME TELEPHONE NUMBER ( ) ( ) ( )		
		19C. NEXT OF KIN'S WORK TELEPHONE NUMBER ( ) ( ) ( )		
20A. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT		20B. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER ( ) ( ) ( )		
		20C. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER ( ) ( ) ( )		
21. I DESIGNATE THE FOLLOWING INDIVIDUAL TO RECEIVE POSSESSION OF ALL MY PERSONAL PROPERTY LEFT ON PREMISES UNDER VA CONTROL AFTER MY DEPARTURE OR AT THE TIME OF MY DEATH. (Check one) (This does not constitute a will or transfer of title.) <input type="checkbox"/> EMERGENCY CONTACT <input type="checkbox"/> NEXT OF KIN				
22A. IS NEED FOR CARE DUE TO ON THE JOB INJURY (Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO		22B. IS NEED FOR CARE DUE TO ACCIDENT (Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO		

<b>APPLICATION FOR HEALTH BENEFITS, Continued</b>		VETERAN'S NAME		SOCIAL SECURITY NUMBER
<b>SECTION II - FINANCIAL ASSESSMENT</b>				
<b>IIA - DEPENDENT INFORMATION (Use a separate sheet for additional dependents)</b>				
1. SPOUSE'S NAME (Last, First, MI)		2. CHILD'S NAME (Last, First, MI)		
3. SPOUSE'S SOCIAL SECURITY NUMBER	4. SPOUSE'S DATE OF BIRTH (mm/dd/yyyy)		5. CHILD'S DATE OF BIRTH (mm/dd/yyyy)	
6. SPOUSE'S ADDRESS (Street, City, State, ZIP)		7. CHILD'S SOCIAL SECURITY NUMBER		
8. SPOUSE'S TELEPHONE NUMBER		9. CHILD'S RELATIONSHIP TO YOU (Circle one) Son      Daughter      Stepson      Stepdaughter		
10. DATE OF MARRIAGE (mm/dd/yyyy)		11. DATE CHILD BECAME YOUR DEPENDENT		
12. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR, ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT SPOUSE \$      CHILD \$		13. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING (tuition, books, materials, etc.) \$		
14. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18? <input type="checkbox"/> YES <input type="checkbox"/> NO		15. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR? <input type="checkbox"/> YES <input type="checkbox"/> NO		
<b>IIB - FINANCIAL DISCLOSURE</b>				
<p>You are not required to provide the financial information in this Section. However, current law may require VA to consider your household financial situation to determine your eligibility for enrollment and/or cost-free care of your nonservice-connected (NSC) conditions. If you are 0% SC noncompensable or NSC (and are not an Ex-POW, WWI veteran or VA pensioner) and your annual household income (or combined income and net worth) exceeds the established threshold, you must agree to pay VA co-payments for care of your NSC conditions to be eligible for enrollment. See Section III - Consent and Signature.</p> <p><input type="checkbox"/> <b>YES</b>, I WILL PROVIDE SPECIFIC INCOME AND/OR ASSET INFORMATION TO HAVE ELIGIBILITY FOR CARE DETERMINED. Complete all sections below that apply to you with last calendar year's information. Sign and date the application.</p> <p><input type="checkbox"/> <b>NO</b>, I DO NOT WISH TO PROVIDE MY DETAILED FINANCIAL INFORMATION. I understand I will be assigned the appropriate enrollment priority based on nondisclosure of my financial information. By checking NO and signing below, I am agreeing to pay the applicable VA co-payment. Sign and date the application.</p>				
<b>IIC - PREVIOUS CALENDAR YEAR GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN</b>				
	<b>VETERAN</b>	<b>SPOUSE</b>	<b>CHILDREN</b>	
1. WHAT WAS YOUR GROSS ANNUAL INCOME FROM EMPLOYMENT (wages, bonuses, tips, etc.), AS WELL AS INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	\$	\$	\$	
2. LIST OTHER INCOME AMOUNTS (Social Security, compensation, pension, interest, dividends) Exclude welfare.	\$	\$	\$	
3. WAS INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS (If yes, refer to page 2, Section IIC of the instructions.) <input type="checkbox"/> YES <input type="checkbox"/> NO				
<b>IID - DEDUCTIBLE EXPENSES</b>				
1. NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE (payments for doctors, dentists, drugs, Medicare, health insurance, hospital and nursing home)			\$	
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD (Also enter spouse or child's information in Section IIA)			\$	
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES (tuition, books, fees, materials, etc.) DO NOT LIST YOUR DEPENDENTS' EDUCATIONAL EXPENSES.			\$	
<b>IIE - NET WORTH</b>				
	<b>VETERAN</b>		<b>SPOUSE</b>	
1. CASH, AMOUNT IN BANK ACCOUNTS (Checking and savings accounts, certificates of deposit, individual retirement accounts, etc.)	\$		\$	
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. Do not count your primary home. Include value of farm, ranch, or business assets.	\$		\$	
3. STOCKS AND BONDS AND VALUE OF OTHER PROPERTY OR ASSETS (art, rare coins, etc.) MINUS THE AMOUNT YOU OWE ON THESE ITEMS. Exclude household effects and family vehicles.	\$		\$	
<b>SECTION III - CONSENT AND SIGNATURE</b>				
<p><b>CO-PAYMENT NOTICE:</b> If you are a 0% service-connected noncompensable or a nonservice-connected veteran (and are not an Ex-POW, WWI veteran or VA pensioner) and your household income (or combined income and net worth) exceeds the established threshold, you may be eligible for enrollment only if you agree to pay VA co-payments for treatment of your NSC conditions. By signing this application you are agreeing to pay the applicable VA co-payment if required by law.</p>				
I CERTIFY THE FOREGOING STATEMENT(S) ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND ABILITY.				DATE (mm/dd/yyyy)
SIGN HERE  (Signature of applicant or applicant's representative)				
<b>THE LAW PROVIDES SEVERE PENALTIES FOR WILLFUL SUBMISSION OF FALSE INFORMATION.</b>				

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0091.)

**Authority:** 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722.

4. A new § 17.37 is added to read as follows:

**§ 17.37 Enrollment not required—provision of hospital and outpatient care to veterans.**

Even if not enrolled in the VA healthcare system:

(a) A veteran rated for service-connected disabilities at 50 percent or greater will receive VA hospital and outpatient care provided for in the "medical benefits package" set forth in § 17.38.

(b) A veteran who has a service-connected disability will receive VA hospital and outpatient care provided for in the "medical benefits package" set forth in § 17.38 for that service-connected disability.

(c) A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty will receive VA hospital and outpatient care provided for in the "medical benefits package" set forth in § 17.38 for that disability for the 12-month period following discharge or release.

(d) When there is a compelling medical need to complete a course of VA treatment started when the veteran was enrolled in the VA healthcare system, a veteran will receive that treatment.

(e) Subject to the provisions of § 21.240, a veteran participating in VA's vocational rehabilitation program described in §§ 21.1 through 21.430 will receive VA hospital and outpatient care provided for in the "medical benefits package" set forth in § 17.38.

(f) A veteran may receive VA hospital and outpatient care based on factors other than veteran status (e.g., a veteran who is a private-hospital patient and is referred to VA for a diagnostic test by that hospital under a sharing contract; a veteran who is a VA employee and is examined to determine physical or mental fitness to perform official duties; a Department of Defense retiree under a sharing agreement).

(g) For care not provided within a State, a veteran may receive VA hospital and outpatient care provided for in the "medical benefits package" set forth in § 17.38 if authorized under the provisions of 38 U.S.C. 1724 and 38 CFR 17.35.

(h) Commonwealth Army veterans and new Philippine Scouts may receive hospital and outpatient care provided

for in the "medical benefits package" set forth in § 17.38 if authorized under the provisions of 38 U.S.C. 1724 and 38 CFR 17.35.

(i) A veteran may receive certain types of VA hospital and outpatient care not included in the "medical benefits package" set forth in § 17.38 if authorized by statute or other sections of 38 CFR (e.g., humanitarian emergency care for which the individual will be billed, compensation and pension examinations, dental care, domiciliary care, nursing home care, readjustment counseling, care as part of a VA-approved research project, seeing-eye or guide dogs, sexual trauma counseling and treatment, special registry examinations).

(j) A veteran may receive an examination to determine whether the veteran is catastrophically disabled and therefore eligible for inclusion in priority category 4.

**Authority:** 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722.

5. A new § 17.38 is added to read as follows:

**§ 17.38 Medical benefits package.**

(a) Subject to paragraphs (b) and (c) of this section, the following hospital and outpatient care constitutes the "medical benefits package" (basic care and preventive care):

(1) Basic care.

(i) Outpatient medical, surgical, and mental healthcare, including care for substance abuse.

(ii) Inpatient hospital, medical, surgical, and mental healthcare, including care for substance abuse.

(iii) Prescription drugs, including over-the-counter drugs and medical and surgical supplies available under the VA national formulary system.

(iv) Emergency care in VA facilities; and emergency care in non-VA facilities in accordance with sharing contracts or if authorized by §§ 17.52(a)(3), 17.53, 17.54, 17.120-132.

(v) Bereavement counseling as authorized in § 17.98.

(vi) Comprehensive rehabilitative services other than vocational services provided under 38 U.S.C. chapter 31.

(vii) Consultation, professional 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, if needed to treat:

(A) The service-connected disability of a veteran; or

(B) The nonservice-connected disability of a veteran where these services were first given during the

veteran's hospitalization and continuing them is essential to permit the veteran's release from inpatient care.

(viii) Durable medical equipment and prosthetic and orthotic devices, including eyeglasses and hearing aids as authorized under § 17.149.

(ix) Home health services authorized under 38 U.S.C. 1717 and 1720C.

(x) Reconstructive (plastic) surgery required as a result of disease or trauma, but not including cosmetic surgery that is not medically necessary.

(xi) Respite, hospice, and palliative care.

(xii) Payment of travel and travel expenses for veterans eligible under § 17.143 if authorized by that section.

(xiii) Pregnancy and delivery services, to the extent authorized by law.

(xiv) Completion of forms (e.g., Family Medical Leave forms, life insurance applications, Department of Education forms for loan repayment exemptions based on disability, non-VA disability program forms) by healthcare professionals based on an examination or knowledge of the veteran's condition, but not including the completion of forms for examinations if a third party customarily will pay health care practitioners for the examination but will not pay VA.

(2) Preventive care, as defined in 38 U.S.C. 1701(9), which includes:

(i) Periodic medical exams.

(ii) Health education, including nutrition education.

(iii) Maintenance of drug-use profiles, drug monitoring, and drug use education.

(iv) Mental health and substance abuse preventive services.

(v) Immunizations against infectious disease.

(vi) Prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature.

(vii) Genetic counseling concerning inheritance of genetically determined diseases.

(viii) Routine vision testing and eye-care services.

(ix) Periodic reexamination of members of high-risk groups for selected diseases and for functional decline of sensory organs, and the services to treat these diseases and functional declines.

(b) *Provision of the "medical benefits package".* Care referred to in the "medical benefits package" will be provided to individuals only if it is determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.

(1) *Promote health.* Care is deemed to promote health if the care will enhance the quality of life or daily functional level of the veteran, identify a predisposition for development of a condition or early onset of disease which can be partly or totally ameliorated by monitoring or early diagnosis and treatment, and prevent future disease.

(2) *Preserve health.* Care is deemed to preserve health if the care will maintain the current quality of life or daily functional level of the veteran, prevent the progression of disease, cure disease, or extend life span.

(3) *Restoring health.* Care is deemed to restore health if the care will restore the quality of life or daily functional level that has been lost due to illness or injury.

(c) In addition to the care specifically excluded from the "medical benefits package" under paragraphs (a) and (b) of this section, the "medical benefits package" does not include the following:

(1) Abortions and abortion counseling.

(2) In vitro fertilization.

(3) Drugs, biologicals, and medical devices not approved by the Food and Drug Administration unless the treating medical facility is conducting formal clinical trials under an Investigational Device Exemption (IDE) or an Investigational New Drug (IND) application, or the drugs, biologicals, or medical devices are prescribed under a compassionate use exemption.

(4) Gender alterations.

(5) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services.

(6) Membership in spas and health clubs.

**Authority:** 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722.

#### § 17.43 [Amended]

6. In § 17.43, paragraph (a) is removed and paragraphs (b) through (e) are redesignated as paragraphs (a) through (d), respectively.

#### § 17.47 [Amended]

7. In § 17.47, paragraph (h) is removed; paragraphs (i) through (l) are redesignated as paragraphs (h) through (k), respectively; and newly redesignated paragraph (h) is amended by removing "hospital or" and by removing "or hospital care in a Federal hospital under agreement,".

#### § 17.93 [Amended]

8. In § 17.93, paragraph (a)(2) is amended by removing "Medical

services" and adding, in its place, "Subject to the provisions of §§ 17.36 through 17.38, medical services".

#### § 17.99 [Removed]

9. Section 17.99 is removed.

#### § 17.100 [Amended]

10. In § 17.100, the third sentence is amended by removing "a new application is filed, and".

[FR Doc. 99-25871 Filed 10-5-99; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300927; FRL-6382-3]

RIN 2070-AB78

### Imazapic-Ammonium; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of imazapic-ammonium, (+)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid, applied as its ammonium salt and its metabolite (+)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-hydromethyl-3-pyridinecarboxylic acid both free and conjugated in or on grass forage at 30 ppm; grass hay at 15 ppm; milk, fat, meat, meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep at 0.10 ppm; kidney of cattle, goats, hogs, horses, and sheep at 1 ppm. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pasture/rangeland and land in the Conservation Reserve Program. This regulation establishes a maximum permissible level for residues of imazapic-ammonium and its metabolite in these food commodities. The tolerances will expire and are revoked on December 31, 2001.

**DATES:** This regulation is effective October 6, 1999. Objections and requests for hearings, identified by docket control number OPP-300927, must be received by EPA on or before December 6, 1999.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each

method as provided in Unit VII. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-300927 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703 308-9364; and e-mail address: pemberton.libby@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

##### B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to