

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 17

RIN 2900-AL68

**Medication Prescribed by Non-VA
Physicians**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends and adopts an interim final rule that governs the provision of medications to veterans when medication is prescribed by physicians who are not employees of nor are they providing care under contract with the Department of Veterans Affairs (VA). In a document published in the **Federal Register** on July 25, 2003, VA issued an interim final rule establishing a temporary program while also maintaining the program that it had in place before the interim final rule. Because the need cited in the interim final rule has abated and because the provisions added by the interim final rule were self-limiting in time and scope, we are removing these provisions which established the now obsolete temporary program.

DATES: *Effective Date:* August 28, 2009.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy, Office of Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, 202-461-6759. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 25, 2003 (68 FR 43927), VA issued an interim final rule that amended 38 CFR 17.96, a regulation allowing VA to fill certain prescriptions ordered by non-VA physicians.

When the interim final rule was published, VA was experiencing increases in enrollment and demand for health care services. The increased demand was caused, at least in part, by veterans enrolling in the VA health care system to obtain pharmacy benefits at no cost or at a reasonable cost. Consistent with the primary purpose of VHA, which is to provide integrated comprehensive health care for veterans, and not simply to act as a conduit for providing prescription medications, VA usually provides only medications prescribed by VA physicians or VA contractors retained for that purpose. When a veteran first enrolls in the VA health care system and requests an appointment for care, VA schedules an initial appointment with a primary care physician. Among other things, during

that first appointment the physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for medication, and writes prescriptions for any needed medication.

Due to the increased demand for health care services, VA was unable to provide some initial primary care visits in a timely manner. In certain locations, veterans were placed on a wait list for an initial primary care visit. Many of those veterans had existing prescriptions, written by non-VA physicians, that VA primary care physicians could confirm and renew when the veterans were able to have initial primary care visits. The interim final rule, in paragraphs (a) through (h), set forth rules that established a temporary program to fill prescriptions ordered by non-VA physicians prior to the veteran's initial primary care visit. The temporary program was limited to veterans who were enrolled in the VA health care system prior to July 25, 2003 and who requested an initial primary care appointment prior to July 25, 2003 with the next available appointment date more than 30 days from the date of the request. By 2004, VA had virtually eliminated the primary care wait list so there was no longer a need for the temporary program. In addition, no veterans remain eligible for the temporary program in any event.

Paragraph (i) of the interim final rule restated verbatim what had been § 17.96 before the publication of the interim final rule. These original and continuing provisions apply to the filling of prescriptions by non-VA physicians for veterans receiving increased compensation or pension, without regard to whether the veteran has had an initial primary care visit.

We received one comment during the interim final rule's comment period, which ended on September 8, 2003. The commenter, the National Association of Chain Drug Stores, stressed the importance of pharmacy medication reviews as well as the need to ensure complete and accurate information is obtained regarding a patient's prescription and medical history. VA shares this view and has policies and procedures in place to coordinate care and ensure patient safety. It is unnecessary to further amend the regulation to reflect existing policies.

This final rule removes paragraphs (a) through (h) of the interim final rule, thus returning the law to the state that it was in before the interim final rule was promulgated. We are also making non-substantive changes to restore the original organization of § 17.96.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found for this rule that notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Because this rule merely removes provisions rendered obsolete by their own terms and continues provisions in effect prior to the promulgation of the interim final rule, this rulemaking is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or interfere with an action planned or taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it does not constitute a significant regulatory action under the Executive Order.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The interim final rule contained collections of information which were approved by OMB under the following OMB control number: 2900–0646 (Medication Prescribed by Non-VA Physicians). VHA allowed OMB control number 2900–0646 to expire in August 2006 because the temporary program had been discontinued.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule would not affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation, Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

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: August 7, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

§ 17.96 [Amended]

■ 2. Amend § 17.96 by:

■ a. Removing paragraphs (a) through (h);

■ b. Redesignating paragraphs (i) introductory text, (i)(1), (i)(1)(i), (i)(1)(ii) and (i)(2) as the introductory text to the section and paragraphs (a) introductory text, (a)(1), (a)(2), and (b) respectively; and

■ c. In newly designated introductory text to the section, removing the heading “Medications for veterans receiving increased compensation or pension.”

[FR Doc. E9–20792 Filed 8–27–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0385; FRL–8948–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving these local rules that address changes for clarity and consistency.

DATES: This rule is effective on October 27, 2009 without further notice, unless EPA receives adverse comments by

September 28, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0385, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, allen.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

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A. What rules did the State submit?