

provisions on travel. As discussed above, a substantive change to travel benefits is beyond the scope of this rulemaking.

A comment was received from the Spina Bifida Association of America requesting that the regulations be changed to reflect VA as a primary payer rather than the exclusive payer for covered services. The commenter asserted that as an unintended consequence of the "exclusive payer" language (in the current 38 CFR 17.900 and in the proposed rule in § 17.901), health care providers are sometimes unwilling to provide care covered by the regulations because coordination of benefits with other health insurers (and resulting additional payments to the providers for their services) is not allowed. Because the requested change is significant and substantive in nature, it is beyond the scope of this rulemaking. However, the Department is considering the need for such a change.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except that we are making nonsubstantive changes for purposes of clarity and we are adding a statement following each of the sections in the rule with information collection requirements to reflect the approval by the Office of Management and Budget (OMB) of the information collection requirements contained in those sections.

Administrative Procedure Act

This rule provides for new benefits and otherwise merely removes restrictions on benefits and makes nonsubstantive changes. To avoid delay in furnishing the new benefits, we find that there is good cause to make this final rule effective without a 30-day delay of its effective date. Accordingly, under 5 U.S.C. 553, there is no need for delay in this rule's effective date.

Applicability Dates

This rule is applicable retroactively to the statutory effective date of December 1, 2001, for benefits added by section 401 of Public Law 106-419. This rule is otherwise applicable on the rule's effective date, January 8, 2003, for the already existing program of health care furnished for Vietnam veterans' children determined under 38 CFR 3.814 to suffer from spina bifida.

Paperwork Reduction Act

Information collection requirements associated with this final rule (in 38 CFR 17.902 through 17.904) have been approved by OMB under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501-3521) and have been assigned OMB control number 2900-0578. The information collection requirements of § 17.902 concern requests for preauthorization for certain health care services or benefits. The information collection requirements of § 17.903 concern the submission of claims from approved health care providers for health care provided under §§ 17.900 through 17.905. The information collection requirements of § 17.904 concern the review and appeal process regarding provision of health care, or payment relating to provision of health care, under §§ 17.900 through 17.905.

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 currently valid OMB control number.

Executive Order 12866

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

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the rule will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. It is estimated that there are only a total of 1200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veterans' children who suffer from covered birth defects. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this document is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers

for the programs affected by this document.

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 record keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

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

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, the undesignated center heading immediately preceding § 17.900 and §§ 17.900 through 17.905 are revised to read as follows:

Health Care Benefits for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

§ 17.900 Definitions.

For purposes of §§ 17.900 through 17.905—

Approved health care provider means a health care provider currently approved by the Center for Medicare and Medicaid Services (CMS), Department of Defense TRICARE Program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or currently approved for providing health care under a license or certificate issued by a governmental entity with jurisdiction. An entity or individual will be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child for purposes of spina bifida means the same as *individual* as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as *individual* as defined at § 3.815(c)(2) of this title.

Covered birth defect means the same as defined at § 3.815(c)(3) of this title and also includes complications or