

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AL57

Reasonable Charges for Medical Care or Services; 2003 Update

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

- For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
- For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
- For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations contain a methodology designed to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. This document amends the regulations to update databases and other provisions for the purpose of providing more current and more precise charges.

DATES: *Effective Date:* These amendments are effective April 29, 2003. Comments must be submitted by June 30, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL57." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: David Cleaver, Chief Business Office (161), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254-0361. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This document amends VA's medical regulations that are set forth in 38 CFR part 17. More specifically, we are amending the regulations that establish a methodology for determining "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

- (i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
- (ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
- (iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The methodology for establishing "reasonable charges" covers inpatient facility charges, skilled nursing facility/sub-acute inpatient facility charges, outpatient facility charges, physician charges, and other provider charges. The methodology for these charges is designed to replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. Charges for outpatient dental care and prescription drugs are based on a reasonable cost methodology, while charges for prosthetic devices and durable medical equipment are based on VA's actual cost.

Under the provisions of 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for such medical care and services from a third party to the extent that the veteran or a provider of the care or services would be eligible to receive payment therefore from that third party if the care or services had been furnished by a provider other than a department or agency of the United States. However, consistent with that statutory authority, a third-party payer liable for such medical care and services under a health plan contract has the option of paying, to the extent of its coverage,

either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area.

This document amends VA's reasonable charges regulations to provide charges for 2002 Current Procedural Terminology (CPT) codes, to provide charges for 2002 and 2003 Diagnosis Related Groups (DRGs), to update source databases to more recent versions, and to provide certain clarifications. These changes will not have a significant impact on any affected party, but will make VA's charge system more current and more precise.

Acute Inpatient Facility Charges

Previously, the regulations provided for "inpatient facility charges." We are changing the term "inpatient facility charges" to "acute inpatient facility charges." This change reflects that acute inpatient facility charges do not include sub-acute inpatient facility charges. Sub-acute inpatient facility charges are included in the charges for skilled nursing facility/sub-acute inpatient facility care.

Definitions—Additions and Clarifications

This document adds definitions for MDR (Medical Data Research) and MedPAR (Medicare Provider Analysis and Review file). We are amending the definition of CPT procedure code to identify the American Medical Association as the entity that defines CPT procedure codes, and we are amending the definition of geographic area to specify acute inpatient facility charges.

Updated Databases and Associated Changes

Our previous charges were implemented with an interim final rule and notice published in the **Federal Register** on May 8, 2001 (66 FR 23326). The acute inpatient facility charges in that update were based on the Medicare DRG grouper in effect in 2001. This document updates our charges to be based on the current Medicare DRG grouper. With this change, our acute inpatient facility charges will be based on current industry-standard DRGs.

In the formulas for acute inpatient facility charges, we have updated the Medicare MedPAR database from the 1999 release to the 2001 release, which allows us to readily calculate acute inpatient facility charges for the newest DRG grouper. We have also updated the MedStat claims database from 1997 data