

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 17**

RIN 2900-AL51

**Enrollment—Provision of Hospital and Outpatient Care to Veterans Subpriorities of Priority Categories 7 and 8 and Annual Enrollment Level Decision**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Interim final rule.

**SUMMARY:** As required by Pub. L. 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, the Secretary of Veterans Affairs must make an annual decision concerning enrollment in VA's health-care system in order to ensure that medical services provided are both timely and acceptable in quality. An enrollment system is necessary because the provision of VA health care is discretionary and can be provided only to the extent that appropriated resources are available for that purpose. In recognition of that fact, Congress has prioritized eligibility to enroll in the VA system by creating eight priority categories, with priority category 8 veterans (those who do not have compensable service-connected disabilities, and whose incomes exceed geographic-means tests) having the lowest priority for enrollment. The law recognizes the higher obligation owed to veterans requiring care for their service-connected disabilities, and to lower-income veterans. Since the implementation of the enrollment requirement in 1998, all veterans seeking VA care have been permitted to enroll. However, due to a tremendous growth in the number of veterans seeking VA health-care benefits in recent months, VA has been unable to provide all enrolled veterans with appointments within a reasonable time. Many VA facilities have either placed new enrollees on waiting lists or have scheduled appointments so far in the future that the services cannot be considered timely. This document announces the enrollment decision required by law. VA will continue to treat all veterans currently enrolled in any category, and will treat new enrollees in categories 1 through 7. However, to protect the quality and improve the timeliness of care provided to veterans in higher enrollment-priority categories, VA will suspend the enrollment of additional veterans who are in the lowest statutory enrollment category (priority category 8). It is emphasized that this decision will not affect veterans already enrolled in the

VA system, nor affect eligibility for treatment of service-connected disabilities which exists independently of enrollment requirements. This enrollment decision is effective January 17, 2003. To facilitate this decision, this document also amends existing regulations to establish additional subpriorities within priority category 8. Although the document takes no action that will affect the enrollment of veterans in priority category 7, the document will nevertheless also amend the existing regulations to establish the same additional subpriorities within priority category 7.

**DATES:** *Effective Date:* This interim final rule is effective January 17, 2003. Comments must be received by VA on or before March 18, 2003.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are submitted in response to "RIN 2900-AL51." 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:** Amy Hertz, Office of Policy and Planning (105D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-8934.

**SUPPLEMENTARY INFORMATION:** Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, required VA to establish a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care, within available appropriated resources. It directed that the enrollment system be managed in such a way as "to ensure that the provision of care to enrollees is timely and acceptable in quality," and authorized such subprioritization of the seven statutory enrollment categories "as the Secretary determines necessary." The law also provided that starting October 1, 1998, most veterans had to enroll in the VA health-care system as a condition for receiving VA hospital and outpatient care. Since that time, VA has enrolled all eligible veterans who sought enrollment in the VA system.

Subsequently on January 23, 2002, Congress enacted the Department of

Veterans Affairs Health Care Programs Enhancement Act of 2001, further amending the law governing enrollment. It altered the enrollment system by establishing, effective October 1, 2002, an additional priority category 8.

This document amends 38 CFR 17.36 to add two new subpriorities to both enrollment priority categories 7 and 8, for a total of four subpriorities in each category. It also announces that VA will suspend enrollments of additional veterans in priority category 8. Veterans who VA would not enroll would be those who have no compensable service-connected disability or other status making them eligible for placement in a higher priority category. All of these veterans have annual incomes above a statutory income threshold (geographic means test threshold) applicable to the location in which they reside. The suspension of new enrollments is necessary to prevent further erosion of VA's capacity to provide needed health-care services of high quality to veterans in a timely and medically appropriate manner.

**Projections for Increased Placement of Veterans on Wait Lists**

An existing regulation (38 CFR 17.36(c)) requires that the Secretary determine which categories of veterans are eligible to be enrolled and that the Secretary notify eligible enrollees of the determination by announcing it in the **Federal Register**. In making that determination, the Secretary must consider an array of factors including economic information such as available resources, projections of demand for enrollment, and the length of waiting times for appointments for care.

There has been an unprecedented surge in enrollments in the VA health-care system. Between October 1, 2001 and September 2002, VA enrolled an additional 830,237 veterans. Of these new enrollees, 425,000 had annual income and net worth above the statutory "means test" income threshold that required VA to place them in enrollment priority category 7. The majority of those enrollees now fall within the new priority category 8. As a result of this growth in enrollment, many VA facilities have been unable to provide timely access to needed care. Many VA facilities have informed enrolled veterans that they are being placed on a wait list for care and that they will be notified when an appointment for care is possible. Other facilities have scheduled appointments for enrollees far into the future.

As of December 2002, VA estimates that there were almost 236,000 veterans who have been unable to schedule an