

Conditions for Reimbursement or Payment for Emergency Services

One commenter requested clarification regarding when a facility will be considered to have held itself out as providing emergency care pursuant to § 17.1002(a). They believe that this language is unclear as currently written. No changes are made based on this comment. We believe that the current language is sufficiently descriptive to identify appropriate facilities that provide emergency services to the public without being unduly restrictive, especially in regard to facilities located in rural areas.

This commenter further stated agreement that veterans should be encouraged to seek care at the closest emergency department, regardless of whether it is a VA or other Federal facility, when they believe this is necessary. The commenter further stated that VA should also be aware that state and local Emergency Medical Services (EMS) regulations or ordinances may require that a patient always be taken to the closest emergency department, regardless of his or her status as a veteran. In such cases, they indicated that § 17.1002 (c) should be met. We concur with the comment, but no changes are made since, in our opinion, § 17.1002 (c) states that proposition and reasonably permits that interpretation under those facts.

Another commenter suggested that the inclusion of the parenthetical information in § 17.1002(d) may be redundant and therefore unnecessary. No change is made based on this comment. In our opinion, § 17.1002(d) appropriately interprets the legislative authority.

Another commenter suggested that VA clarify in § 17.1002(d) that the determination of a safe transfer is to be made solely by the attending emergency care physician provider. No change to § 17.1002 is made based on this comment. Section 17.1002(d) is concerned with review of claims for payment, not with clinical determinations concerning transfer of patients. Moreover, § 17.1006 already identifies the appropriate VA clinical officials who are responsible for making all needed medical determinations in connection with VA's review of a claim for reimbursement or payment of the costs of non-VA emergency treatment rendered to a veteran.

This commenter also suggested that VA clarify that payment or reimbursement may be made in situations where the veteran is discharged (as opposed to transfer). The commenter is concerned that

§ 17.1002(d) could be interpreted to preclude payment or reimbursement where the veteran was discharged after receiving emergency treatment. We agree and have incorporated that term as appropriate.

One commenter suggested that VA remove the 24-month requirement in § 17.1002(e) because otherwise VA may process numerous claims which will have to be denied due to the providers' inability to determine whether the veterans had received care during that time-period. Based on the comment, we believe modifying the certification requirement in § 17.1004(b) to exclude confirmation of enrollment status and receipt of VA care within the previous 24 months preceding the furnishing of the emergency care will clarify that the onus is not on the provider but, rather, on VA to certify this information. We believe this satisfies the commenter's concern.

Delegations of Authority

One commenter agrees that VA's physicians must make all clinical determinations required for purposes of § 17.1002. However, the commenter advises VA to instruct its physicians to apply a prudent lay person standard, not the higher standard of a medical professional, when making determinations under § 17.1002(b) and (c). No changes are made based on this comment. We believe the existing regulation adequately provides that the prudent lay person standard applies to both the initial evaluation and treatment of the emergent medical condition.

48-Hour Notice

One commenter stated that the 48-hour notice provision was too broad and should be amended to apply only to patients who are admitted to a facility for inpatient care. We concur and have changed that provision accordingly.

Claims

One commenter believes that the false claims notice in § 17.1004(b) should be eliminated since the current HCFA 1500 form includes a similar false claims notice. While we agree that the additional certification would not be necessary when the HCFA 1500 form is submitted, the rule allows for claims to be submitted on other standard medical billing forms, such as the UB92 form. Consequently, we have amended the rule to require the additional certification only when the form used does not contain a similar false claims notice.

Another commenter stated that requiring a separate written certification would preclude filing claims

electronically. This commenter suggests that provisions be made to accept claims centrally and electronically to limit claims filing and processing costs. No changes are made based on this comment. VA is currently exploring centralizing the payment process and utilizing industry standards, such as electronic claims processing, fraud detection, and claims scrubbing.

One commenter states that VA's regulations provide for detailed timeframes for filing claims, but that there are no corresponding provisions establishing prompt payment by VA to claimants. No changes are made based on this comment. VA is studying the feasibility of centralizing the payment process, which would take into account prompt payment requirements.

One commenter indicated that filing a claim within the time periods of § 17.1004(d) is unrealistic. In support of his position, the commenter explains that in many emergency conditions the patient is unable to communicate coverage information to the provider when presenting for emergency care services. The commenter therefore recommends adding a provision to § 17.1004(d) to allow for claims to be submitted within 90-days after the date the veteran provided evidence to the facility/provider of emergency treatment of the veteran's eligibility for coverage under this rule.

No changes are made based on this comment. Adding such a provision would be at cross-purposes with this rule, which was designed to help ensure that claims are decided in a reasonable period of time. We believe that the rule provides ample time for the veteran, the veteran's family, or the veteran's legal representative to provide the required information, as the 90-day periods do not generally begin until after seminal events, e.g., the veteran's discharge or death, by which time the veteran, the veteran's family, or the veteran's legal representative has been made aware of the veteran's personal liability for the non-VA emergency medical treatment rendered and the need to gather the veteran's insurance and other payment information.

Payment Limitations

Several commenters stated that § 17.1005(b) provides that reimbursement for payment for emergency treatment may be made only for the period from the beginning of the treatment until such time as the veteran could be transferred safely to a VA facility or other federal facility. They asked that we modify this statement by adding "initial evaluation and" before "treatment." We concur with these