

comments and have changed that provision accordingly.

Another commenter suggested that VA provide payment for emergency treatment sought by veterans under the prudent layperson standard in § 17.1002(b) from the beginning of treatment (including the evaluation) until the attending emergency physician provider determines the veteran is stabilized and may be safely transferred to a VA facility, other Federal facility, or discharged. No change to § 17.1002 is made based on this comment. Section 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 for the costs of non-VA emergency treatment rendered to a veteran.

Further, this commenter believes that "emergency treatment" should be clarified to include "evaluation" of the condition. No change is made based on this comment. This is covered by the prudent layperson standard.

Another commenter strongly believes that VA should periodically re-examine the reimbursement rate under § 17.1005(a). That provision currently provides that VA will pay the lesser of the amount for which the veteran is personally liable or 70% of the amount under the applicable Medicare fee schedule. No change is made based on this comment. Medicare rates are adjusted annually. Consequently, VA's 70% rule will effectively reflect annual adjustments made to applicable Medicare rates.

### Emergency Transportation

One commenter recommended that VA pay for emergency transportation services in cases where a "prudent lay person" would reasonably expect that the absence of such transport would result in placing the health of such individual in serious jeopardy. In the commenter's view, it would be unjust to hold the veteran liable for the cost of emergency transportation if they erroneously but reasonably believed those services were needed. No change is made based on this comment, which we interpret as essentially seeking to delete the limitations in § 17.1003. A claim for reimbursement for payment of emergency transport services under this section must, similar to other emergency medical services which are the subject of a claim under this rule, meet all the conditions of 38 U.S.C. 1725 to be reimbursable or payable at VA expense. We therefore do not make the recommended changes as the rule is consistent with statutory authority. We

also note that because emergency transportation is subject to the requirements of 38 U.S.C. 1725, this section already incorporates a prudent lay person standard.

### Paperwork Reduction Act

OMB has approved the information collections in §§ 17.004, 17.1007, and 17.1008 under control number 2900-0620. VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

### Compliance With the Congressional Review Act and E.O. 12866—Cost-Benefit Analysis

This rule is necessary to implement the provisions of section 111 of Public Law 106-117, The Veterans Millennium Health Care and Benefits Act. These provisions, which are set forth at 38 U.S.C. 1725, authorize VA to establish a mechanism for payment of or reimbursement for the reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment. This rule would directly impact these veterans positively by avoiding full recourse or payment responsibility for medical care and resulting potential debt collection repercussions. This rule implements a detailed statutory mandate, and we found no potentially effective and reasonably feasible alternatives.

We estimate that the five-year cost of this rule from appropriated funds would be \$2.1 billion in benefits costs and \$21 million in government operating expenses. Since it is likely that the adoption of the rule may have an annual effect on the economy of \$100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and an economically significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to the Congressional Review Act and Executive Order 12866.

### I. Benefits Costs

The estimated cost for implementation of the emergency care provisions of the Millennium Act are based on enrollment projections developed by a private actuarial firm and contained in the FY 2001 Enrollment Level Decision Analysis. This baseline population was adjusted, using a survey of enrollees and existing

enrollment databases, to calculate the projected number of veterans who had no private or public insurance and who had used VA care within the previous 24 months. These adjustments reflect the criteria contained in the Millennium Act.

Private sector ER-related health care utilization was adjusted to reflect veteran enrollee demographics and relative morbidity, as well as uninsured enrollee reliance on the VA health care system. These utilization estimates, along with Medicare allowable charge levels, were applied to the estimated 990,000 veteran enrollees affected by the emergency care provisions. This resulted in projected estimates for emergency room visits (\$93,480,145), ambulance use (\$34,108,803), and ER-related inpatient care (\$468,221,072). The total of \$595,810,019 was then multiplied by the 70 percent reimbursement rate VA will use to pay emergency care providers. This comes to \$417,067,014.

This total, however, reflects full implementation of the emergency care provisions. VA believes that it will take time before both providers and eligible veterans are aware of these new benefits and begin to submit acceptable bills to VA for reimbursement. Current experience shows that without widespread dissemination of information, there is limited use of these benefits. VA believes that with the publication of final regulations the submission of claims will increase significantly and could reach 50 percent of the full implementation costs in the first full year after the rule is in effect. Only experience will demonstrate the real demand for this new benefit.

### II. Administrative Costs

The administrative workload caused by this rule is expected to be 241,457 claims filed in 2001. Administrative workloads assume that not all claims would be granted; it is probable that non-VA related claims will be received from veterans who are not eligible. Medical Care costs are computed on the average cost of a GS4/5 @ \$12/hour × 30 minutes × 241,457 claims/60 which equals \$1,448,742.00. In addition, the clinical review costs are estimated at \$46/hour × 15 minutes × 241,457 claims/60 which equals \$2,776,755.00 for total Medical Care costs of \$4,225,497.

### OMB Review

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