

Dated: July 14, 2003.

**S.K. Moon,**

*Lieutenant Commander, Coast Guard, Acting Captain of the Port Detroit.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AL68

#### Medication Prescribed by Non-VA Physicians

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** This rule amends VA's medical regulations that govern the provision of medication to veterans when the medication is prescribed by non-VA physicians. The rule provides that, in limited circumstances, VA may provide medication prescribed by a non-VA physician to veterans enrolled in VA's health care system prior to July 25, 2003, if the veterans have requested an initial appointment for primary care in a VA health care facility before July 25, 2003, and were unable to obtain an initial appointment for primary care within 30 days. The rule establishes specific requirements that veterans must meet to receive such medications and it establishes limits on the types and quantities of medication VA may provide. VA's intent is to assist enrolled veterans who have requested primary care appointments but who have not been able to obtain one within 30 days.

**DATES:** *Effective Date:* This interim final rule is effective on July 25, 2003; except for 38 CFR 17.96(e) which is effective August 25, 2003.

*Comment Dates:* Comments on the rule must be received on or before September 8, 2003; except that comments on the request for emergency approval of the collection of information provisions must be received on or before August 25, 2003.

*Applicability Date:* Benefits may be provided commencing September 22, 2003.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273-9026; 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-AL68." All comments received will be

available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Kendra Drew, Chief Business Office (16), at (202) 254-0329 and Virginia Torrise, Pharmacy Benefits Management, Deputy Chief Consultant (119), at (202) 273-8426. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, located at 810 Vermont Avenue, NW., Washington, DC 20420.

**SUPPLEMENTARY INFORMATION:** Under existing law and regulations, a veteran desiring medical care from VA must enroll in VA's health care system, except for veterans whose service-connected disabilities are 50% or greater, or any veteran seeking treatment for a service-connected condition. When a veteran first enrolls in the VA system, and requests an appointment for care, VA schedules an appointment for a visit with a primary care physician. During that first appointment, a VA health care provider examines the veteran and determines what care the veteran needs. That primary care physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for medication, and writes prescriptions for any needed medication. Those prescriptions written by the VA physician are then filled by a VA pharmacy.

In recent years, VA has faced an extraordinary increase in demand for health care services. The increased demand has been caused, at least in part, by veterans enrolling in the VA health care system to obtain pharmacy benefits at no cost or at a reasonable cost. With dramatically increased enrollment, VA has been unable to provide all enrolled veterans with services in a timely manner. In many places that means veterans may wait a considerable length of time to receive an initial primary care visit. Many of those veterans have prescriptions, written by non-VA physicians, that VA primary care physicians may confirm and renew when the veterans are able to have initial primary care visits. In an effort to ease the financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits, VA will provide these veterans with medications prior to their initial primary care visits at VA if these veterans present valid prescriptions from their non-VA physicians. VA will fill prescriptions written by non-VA physicians only for the period of time

such veterans are awaiting a scheduled appointment with a VA health care provider. VA anticipates asking the veterans whether they want to have the next available appointment, or whether they want to postpone the initial appointment. VA will schedule the veterans' initial appointments within the period covered by the prescriptions written by their non-VA physicians. VA anticipates that some veterans will choose to postpone the initial appointment, shortening waiting lists and making appointment dates available to other veterans.

VA anticipates that in the near future, it will be able to provide all enrolled veterans with primary care in a timely manner. That would effectively eliminate the need for providing medications under this rule. However, it is important that VA have such regulations in place until such time as waiting periods can be reduced.

VA is undertaking this rulemaking pursuant to its authority under 38 U.S.C. 1710(a) to furnish needed medical services. As clarified in paragraph (a) of this rule, VA does not generally fill prescriptions for veterans that are written by non-VA physicians. Instead, VA usually provides only medications prescribed by VA physicians or VA contractors retained for that purpose. This is consistent with the primary purpose of the Veterans Health Administration, which is to provide integrated comprehensive health care for veterans, not simply act as a conduit for furnishing prescription medications.

In light of the backlog of veterans seeking VA care, however, the Secretary has determined that the filling of some prescriptions written by non-VA physicians is needed during the period of time such veterans are awaiting a scheduled appointment with a VA health care provider. As a result, paragraph (b) of this rule states that beginning September 22, 2003, VA may furnish medications for veterans enrolled in VA's health care system prior to July 25, 2003, if the veterans have requested an initial appointment for primary care in a VA health care facility before July 25, 2003, and the next available appointment date is scheduled more than 30 days after the veteran requests the appointment. VA chose the 30-day limitation because it is generally considered reasonable in the community at large to expect that one could obtain a first time primary care visit with a physician within 30 days. VA chose to limit the provision of medications in question to only those veterans enrolled prior to July 25, 2003, in order to specifically address the