

problems of currently enrolled veterans facing lengthy waits for initial primary care appointments in a cost-effective manner. (See 38 U.S.C. 1706(a) requiring VA to "design, establish and manage health care programs in such a manner as to promote cost-effective delivery of health care services"). Moreover, without these limitations, the very issuance of the new rule could invite an influx of new enrollments and requests for appointments, exacerbating the wait-time problem the rule is intended to address. This rule also should benefit those who enroll after the effective date or attempt to make appointments after that date. By allowing those presently enrolled and waiting more than 30 days to reschedule appointments at dates closer to expiration of presently held non-VA prescriptions, additional near term appointments should become available for those who are not entitled to this limited benefit. Thus, the out-of-pocket costs for prescriptions filled while waiting for VA appointments should also be reduced for those not specifically included in this rule because their waiting time should be reduced.

Paragraph (c) of this rule states that VA may furnish an amount of medication that will appropriately meet the treatment needs of veterans until the date of the veterans' initial appointment for primary care in a VA facility. If veterans choose to postpone their initial appointment date until they have used all of the medication prescribed by the non-VA provider, VA will furnish the amount prescribed, including refills. VA will furnish such medications consistent with long-standing pharmacy practices. The decision on the precise quantity of medication that would be needed is generally considered to be a medical determination and would be left to appropriate VA clinicians including pharmacists.

Paragraph (d) of this rule states that if VA reschedules an initial appointment for primary care in a VA health care facility for veterans eligible under this rule, or if veterans reschedule their appointments for good reasons, as determined by the local VA medical facility, VA may furnish the eligible veterans with a quantity of medication that is sufficient to meet the treatment needs of the veterans until the date of the veterans' rescheduled appointments for primary care in a VA health care facility. If VA reschedules veterans' initial primary care visits, it is reasonable that VA would provide additional medication to meet the veterans' needs until the date of their rescheduled appointments. VA also

understands that there are occasions when, for good cause, veterans might be forced to cancel appointments. For example, if the veteran had to reschedule an appointment because of inclement weather, or because of the illness or death of a family member, VA would not disqualify the veteran from continuing to receive the benefits of this remedial program. However, VA would not furnish medications to veterans who simply cancel or reschedule and extend their appointments without good reasons.

Paragraph (e) of this rule states that VA may furnish medications beginning on September 22, 2003, only if veterans provide VA with written current prescriptions for their medications signed by duly licensed physicians within the previous 90 days. To ensure the health and safety of veterans, VA will only fill prescriptions when veterans present VA with written prescriptions signed by licensed physicians. VA will not accept prescriptions called in by veterans' non-VA pharmacies or non-VA health care providers. VA lacks the resources to accept and manage those calls.

Paragraph (f) of this rule states that VA may furnish only medication under paragraph (b) that (1) must be dispensed by prescription, (2) is not an over-the-counter medication, (3) is not listed as a controlled substance under schedule I through V of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. 812, (4) is included on VA's National Formulary, unless VA determines a non-Formulary medication is medically necessary, and (5) is not an acute medication, intravenous medication, nor one required to be administered only by a medical professional. By providing only medications that must be dispensed by prescription, VA is not furnishing over-the-counter drugs. Veterans can easily purchase over-the-counter medications without regard to whether they are able to schedule visits with a physician. For patient health and safety reasons, VA will not furnish controlled substances without a VA physician first seeing the patient and ordering the medication. VA will furnish veterans with medications prescribed by non-VA physicians only if the medication is on VA's National Formulary, or approved in advance through a special approval process. If a veteran provides VA with a prescription for medications that are not on VA's formulary, VA will contact the physician who wrote the prescription to determine whether a medication on VA's formulary is appropriate, and if not, the medical reasons why it is not appropriate. If VA determines that a

medication is medically necessary, but is not on VA's formulary, VA will provide that medication. Finally, acute medications, intravenous medications, and medications required to be administered only by a medical professional will not be furnished because under this rule prescriptions will be filled only by mail.

Paragraph (g) of this rule provides that the existing copayment requirements applicable to VA furnishing medication will apply to medications furnished under this rule. Statutes (*e.g.*, 38 U.S.C. 1722A) require application of the copayment requirements.

Paragraph (h) of this rule provides that VA will furnish medications under this rule only by having the medication mailed to the veteran, typically by one of VA's Consolidated Mail Out-patient Pharmacies, or with VA contract pharmacies. Therefore, this benefit is not useful for veterans who require acute medications, intravenous medications, or medications to be administered only by a medical professional. VA pharmacies will not directly furnish medications or reimburse veterans for medications that they obtain from non-VA pharmacies.

Paragraph (i) of this rule restates, with no substantive change, longstanding regulatory provisions regarding prescriptions found in § 17.96.

#### **Administrative Procedure Act**

Pursuant to 5 U.S.C. 553, we have found for this rule that notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and that we have good cause to dispense with notice and comment on this rule and to dispense with a 30-day delay of its effective date. This is an effort to ease the financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits. Delaying implementation of this benefit would only exacerbate the problems veterans are experiencing while waiting for VA treatment.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.