

Comments should indicate that they are submitted in response to "RIN 2900-AK94." All comments received will be available for public inspection at the above address 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:** Rex Gilmore, Chief Business Office (16), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-0321. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The VA Healthcare System converted to a Centers for Medicare and Medicaid Services (CMS) Resource Based Relative Value System (RBRVS) payment schedule for outpatient care purchased from community providers in 1999. At that time, because of concerns regarding the high cost of care in the state of Alaska, the state was granted an exemption that kept payments for non-VA health care in that state under the previous system. That system created a fee schedule each year based upon the 75th percentile of at least eight billed amounts received in the previous year. This resulted in significant fee schedule changes each year, and a schedule that was not comprehensive.

Following an actuarial study completed in 2001 and subsequent meetings with VA Alaska officials and community providers, VA determined that special circumstances still exist in Alaska. If the standard payment methodology is implemented in Alaska, VA payments will be significantly less than the usual and customary charges for the state. As a result, community practitioners may be unwilling to accept VA patients. Since a large portion of VA health care provided in Alaska is obtained from non-VA sources, this may limit VA patient access to health care and negatively impact the quality of care provided veterans living in that state. Therefore, to ensure that amounts paid to physicians better represent the local cost to furnish a service, VA proposes to establish a special payment methodology for inpatient and outpatient non-VA care provided in Alaska. Under the proposed methodology, the VA Fee Schedule would include, in the new § 17.56(d), a payment system for non-VA care in Alaska that does not compromise access to care for veterans, is comprehensive for all Current Procedural Terminology (CPT) codes, and accounts for the

geographic and specialty care challenges of Alaska.

In Alaska, VA proposes to pay for services in accordance with a fee schedule that uses CPT codes utilized by CMS. VA would pay a specific amount for each service for which there is a corresponding CPT code. Under the VA Fee Schedule, the amount paid in Alaska for each CPT code would be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2002. For services that VA did not have occasion to pay for in Alaska in FY 2002, and for services represented by CPT codes established after FY 2002, VA would take the CMS rate for each unpaid code and multiply it times the average percentage paid by VA in Alaska for CMS like codes. VA would increase the amounts on the VA Fee Schedule for Alaska annually in accordance with annual inflation rate adjustments published by CMS.

Finally, this document would make non-substantive revisions in paragraphs (a) and (b) of § 17.56 to reflect the name change of the former Health Care Financing Administration to Centers for Medicare and Medicaid Services.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act requires, in 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 rule would have no consequential effect on State, local, or tribal governments, or the private sector.

#### **Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### **Executive Order 12866**

The Office of Management and Budget has reviewed this document under Executive Order 12866.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5

U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### **Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.010 and 64.011.

#### **List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 21, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

#### **PART 17—MEDICAL**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.56 is amended by:

A. In paragraph (a), first sentence, removing "Except for anesthesia services," and adding, in its place, "Except for anesthesia services, and services provided in the State of Alaska under paragraph (d) of this section,"; removing "Department of Health and Human Services, Health Care Financing Administration (HCFA) under Medicare's participating" and adding, in its place, "Centers for Medicare and Medicaid Services' participating"; and in the third sentence, removing "calculated under Medicare's participating" and adding, in its place, "calculated under Centers for Medicare and Medicaid Services' participating".

B. In paragraph (b), removing "Medicare's participating" and adding, in its place, "Centers for Medicare and Medicaid Services' participating"; and removing "calculating the Medicare fee" and adding, in its place, "calculating the Centers for Medicare and Medicaid Services' fee".

C. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f),