

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AL06

Reasonable Charges for Medical Care or Services; 2003 Methodology Changes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

- For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
- For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
- For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations contain methodologies designed to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. This document proposes to amend the regulations regarding VA's reasonable charges methodologies for the following purposes: to establish charges for medical care, procedures, services, durable medical equipment (DME), drugs, injectables, medical items, and supplies for which we currently do not have charges; to replace certain charges currently based on VA costs with charges based on community charges; to establish separate charges for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies whose charges are presently combined with other charges; to bring our charge structures and associated billing practices closer to industry standard charge structures and billing practices; and to provide certain clarifications.

DATES: Comments must be received on or before November 3, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director,

Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; or fax comments to (202) 273-9026; or e-mail comments to OGCRegulations@mail.va.gov.

Comments should indicate that they are submitted in response to "RIN 2900-AL06." All written comments received will be available for public inspection in the Office of Regulations 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:

David Cleaver, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 254-0361. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This document proposes to amend VA's medical regulations that are set forth in 38 CFR part 17. More specifically, we are proposing to amend the regulations that establish methodologies for determining reasonable charges for medical care or services provided or furnished by VA to a veteran:

- (i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
- (ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
- (iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

Under the provisions of 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for such medical care and services from a third party to the extent that the veteran or a provider of the care or services would be eligible to receive payment therefor from that third party if the care or services had been furnished by a provider other than a department or agency of the United States. However, consistent with that statutory authority, a third-party payer liable for such medical care and services under a health plan contract has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the

United States for the same care or services in the same geographic area.

The methodologies for establishing reasonable charges are designed to replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. An exception is that charges for prescription drugs are based on VA costs in accordance with the methodology set forth in § 17.102.

This document proposes to amend VA's reasonable charges regulations to make significant changes to our charge development methodologies and charge structures, to provide charges for 2003 Current Procedural Terminology (CPT) codes, and to provide certain clarifications. These proposed changes are described in more detail in the following paragraphs.

Data for Calculating Actual Charge Amounts

As we have done in the past, we are publishing data for calculating actual charge amounts based on the methodologies set forth in this proposed rule in an accompanying notice in this same edition of the **Federal Register**. However, this document proposes that in the future this information will either be published in a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office at <http://www.va.gov/revenue>, under "Charge Data." We are proposing this change because we believe posting this information on the Internet will make it more readily available to the public, while at the same time greatly reducing the volume of information and associated taxpayer expense of publishing it in the **Federal Register**.

Data Sources

Presently, the regulations identify data sources used to calculate charges by name and edition (for example, 2001 Medicare MedPAR file). In addition, the regulations give specific information on where various databases can be obtained (for example, the Internet site where the Medicare Clinical Diagnostic Laboratory Fee Schedule can be found). This document proposes that data sources will hereafter be identified in these regulations only by name, and that the editions used and information on where these data sources may be obtained will be presented along with the data for calculating actual charge amounts, either in notices in the **Federal Register** or on the Internet site of the Veterans Health Administration Chief Business Office at <http://www.va.gov/revenue>,