

care. For this purpose, we propose to use data from the outpatient facility component of the Medicare Standard Analytical File 5% Sample, trend the charges forward using the outpatient hospital services component of the CPI-U, and use the geographic area adjustment factors computed for outpatient facility charges. This change will result in VA charge structures and billing practices that more closely approximate industry standard charge structures and billing practices.

Ambulance and Other Emergency Transportation Charges

Ambulance and other emergency transportation services are identified by HCPCS Level II codes. Presently, we do not have charges for any HCPCS Level II codes. This document proposes to amend the regulations to provide a methodology for establishing charges for ambulance and other emergency transportation services by HCPCS Level II code. For this purpose, we propose to use data from the outpatient facility component of the Medicare Standard Analytical File 5% Sample, trend the charges forward using the outpatient hospital services component of the CPI-U, and use the geographic area adjustment factors computed for outpatient facility charges. We are proposing this change so that we will be able to bill and be reimbursed for these services when we provide or furnish them to our patients.

Charges for Durable Medical Equipment, Drugs, Injectables, and Other Medical Services, Items, and Supplies Identified By HCPCS Level II Codes

Presently, we do not have charges for any HCPCS Level II codes. This document proposes to amend the regulations to provide a methodology for establishing charges for DME, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II code. For this purpose, we propose to use the following data sources: Ingenix/St. Anthony's RBRVS; Medicare DME Fee Schedule; Medicare Parenteral and Enteral Nutrition Fee Schedule; Part B and DME components of the Medicare Standard Analytical File 5% Sample; MDR database; Milliman USA, Inc., Optimized HMO (Health Maintenance Organization) Data Sets; Milliman USA, Inc., Health Cost Guidelines; and a VA nationwide distribution of procedures, services, items, and supplies. We propose to trend these charges forward using the medical care commodities component of the CPI-U. We are proposing this change so that we will be able to bill

and be reimbursed for these services, items, and supplies when we provide or furnish them to our patients.

Responses to Comments

In response to our interim final rule published in the **Federal Register** on May 8, 2001 (66 FR 23326, RIN 2900-AK73), we received two comments, both from the same commenter, that we have not previously resolved.

The commenter stated that we should add charges for codes G0193 through G0201 (HCPCS Level II codes). In this document, we are proposing to add charges for nearly all HCPCS Level II codes, including codes G0193 through G0201.

The same commenter also stated that we have identified audiology services furnished in conjunction with a hearing aid, CPT codes 92590 through 92595, as physician services, when in fact these services are performed solely by audiologists and should not be designated as physician services.

With respect to our charge development methodology, our charge for a given service reflects the actual amounts billed by the providers of that service. Therefore, our charge for a service performed solely by audiologists will reflect the actual amounts billed by audiologists, not by physicians. However, we agree that including these and other services not performed by physicians under the general category of "physician charges" may be confusing. Therefore, in this document, we are proposing to change from the term "physician services" to the term "physician and other professional services" so as to allow for the fact that many professional medical services are performed by audiologists and other healthcare professionals instead of, or in addition to, physicians.

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 rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains provisions at 38 CFR 17.101(a)(4) constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521). The Office of Management and Budget (OMB) has approved the information collection requirements for

§ 17.101(a)(4) under OMB control number 2900-0606.

Executive Order 12866

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will 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. 601-612. This proposed rule would affect mainly large insurance companies, and where small entities are involved, they would not be impacted significantly since most of their business is not with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this 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 for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

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, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: August 8, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

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 17.101 is revised to read as follows: