

compute "available resources." So, for veterans who have been receiving extended care services for 180 days or less, we propose to determine their available resources by adding their income and the income of their spouse and then subtracting from that the sum of the veterans allowance, the spousal allowance, and expenses. For veterans who have been receiving extended care services for 181 days or more, we propose to determine their available resources by adding the value of their liquid assets, their fixed assets, and their income and the income of their spouse, minus the sum of the veterans allowance, the spousal allowance, the spousal resource protection amount, and (but only if the veteran is receiving noninstitutional care or the veteran has a spouse or a dependent residing in the community who is not institutionalized) expenses. We believe this will clarify what resources veterans have available for purposes of determining the appropriate copayment.

We also propose to clarify in the definition of "expenses" that expenses include (1) insurance premiums of the veteran and the veteran's spouse and dependents, and (2) personal property taxes, not just income taxes.

Further, in the definition of "liquid assets," we propose to exclude household and personal items such as furniture, clothing, and jewelry when the veteran's spouse or the veteran's dependents are living in the community or the veteran is receiving noninstitutional extended care services. Currently, household and personal items are included in liquid assets even if the veteran's spouse or dependents are living in the community or the veteran is receiving noninstitutional extended care services. This will further protect the veteran, spouse and dependents from financial hardship if they are living in the community.

VA Form 10-10EC, set forth in 38 CFR 17.111(g), currently requires including art, rare coins, stamp collections, and collectibles in liquid assets. We propose to refer to this requirement in the definition also.

Third, we propose to add at paragraph (d)(2)(vi) of § 17.111 a definition of "spousal resource protection amount" to permit a spouse to maintain some liquid assets while she lives in the community. This amount would equal the total value of the veteran and spouse's liquid assets up to \$89,280 if the spouse resides in the community (*i.e.*, is not institutionalized). We propose using this amount because at least 23 State Medicaid Programs use it to protect spouses' assets for Medicaid purposes. This amount would be

deducted from "available resources" if the veteran has been receiving extended care services for more than 180 days. This amount would not be deducted from "available resources" if the veteran has been receiving extended care services for 180 days or less because "liquid assets" are not included in "available resources" in that case.

Fourth, we propose to remove from the definition of "veterans allowance" the inclusion of expenses in certain situations because, as discussed above, we propose to include expenses in the computation of "available resources" contained in paragraph (d)(1) of § 17.111. We propose this change to simplify the methodology in determining "available resources."

Further, we propose to clarify in paragraph (d)(1) of § 17.111 that the income, assets, expenses and allowance of legally separated spouses are excluded from "available resources."

The current rule provides that, unless exempted, a veteran must report changes to the veteran or spouse's situation that would change the copayment obligation (*i.e.*, changes regarding fixed assets, liquid assets, expenses, income, or whether the veteran has a spouse or dependents residing in the community) to a VA medical facility within 10 days of the change. We propose to add a change in marital status to the list of items, which, if changed, would require the veteran to report to VA the change. A change in marital status might affect the copayment obligation and thus must be reported.

Paperwork Reduction Act

The Office of Management and Budget have approved the collections of information requirements related to this rulemaking proceeding under OMB control number 2900-0629.

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.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This amendment would not affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment 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 document 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: July 9, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 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. In § 17.111, paragraphs (d) through (g) and the authority citation at the end of the section are revised to read as follows:

§ 17.111 Copayments for extended care services.

* * * * *

(d) *Effect of the veteran's financial resources on obligation to pay copayment.* (1) A veteran is obligated to pay the copayment to the extent the veteran and the veteran's spouse have available resources. For veterans who have been receiving extended care services for 180 days or less, their