

(c) *Definitions.*—(1) *Vietnam veteran.* For the purposes of this section, the term “Vietnam veteran” means a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. *Service in the Republic of Vietnam* includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Child.* For the purposes of this section, the term “child” means a natural child of a Vietnam veteran, regardless of age or marital status, conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA shall require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a child is the natural child of a Vietnam veteran.

(3) *Spina bifida.* For the purposes of this section, the term “spina bifida” means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) VA shall determine the level of disability suffered by the child in accordance with the following criteria:

(i) *Level I.* The child is able to walk without braces or other external support (although gait may be impaired), has no sensory or motor impairment of upper extremities, has an IQ of 90 or higher, and is continent of urine and feces.

(ii) *Level II.* Provided that none of the child’s disabilities are severe enough to be evaluated at Level III, and the child: is ambulatory, but only with braces or other external support; or, has sensory or motor impairment of upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function.

(iii) *Level III.* The child is unable to ambulate; or, has sensory or motor impairment of upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, has complete urinary or fecal incontinence.

(2) Provided that they are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section, VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination. In the absence of such information, VA will schedule an examination for the

purpose of assessing the level of disability.

(3) Unless or until VA is able to obtain medical evidence adequate to assess the level of disability due to spina bifida, or to reassess the level of disability when required to do so under the provisions of paragraph (d)(4) or (5) of this section, VA will rate the disability of a person eligible for this monetary allowance at no higher than Level I.

(4) Children under the age of one year will be rated at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the child from ambulating; from grasping a pen, feeding him or herself, or performing self care; or from achieving urinary or fecal continence. If such a deficit is present, the child will be rated at Level III. In either case, VA will reassess the level of disability when the child reaches the age of one year.

(5) VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it will reassess the level of disability at intervals of not more than five years. Thereafter, it will reassess the level of disability only if evidence indicates there has been a material change in the level of disability or that the current rating may be incorrect.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0572.)

(Authority: 38 U.S.C. 501, 1805)

### PART 3—[AMENDED]

13. The Cross Reference following § 3.57 is amended by removing “§ 3.403(a)” and “§ 3.503(c)” and adding, in their places, “§ 3.403(a)(1)” and “§ 3.503(a)(3)”, respectively.

14. Each Cross Reference following §§ 3.659 and 3.703 is amended by removing “§ 3.503(g)” and adding, in its place, “§ 3.503(a)(7)”.

15. The Cross Reference following § 3.707 is amended by removing “§ 3.503(h)” and adding, in its place, “§ 3.503(a)(8)”.

16. The Cross Reference following § 3.807 is amended by removing “§ 3.503(h)” and adding, in its place, “§ 3.503(a)(8)”.

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900–A165

#### Provision of Health Care to Vietnam Veterans’ Children With Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

**SUMMARY:** This document establishes regulations regarding Vietnam veterans’ children with spina bifida. The regulations concern the provision of health care needed for the spina bifida or any disability that is associated with such condition. This action is necessary to establish a mechanism for providing health care to such children in accordance with recently enacted legislation.

**DATES:** *Effective Date:* October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert De Vesty, Health Systems Specialist, Office of Public Health and Environmental Hazards (13), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC, 20420, telephone (202) 273–8575.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on May 1, 1997 (62 FR 23731), we proposed to amend the “Medical” regulations (38 CFR part 17) by setting forth new §§ 17.900–17.905 regarding the provision of health care to Vietnam veterans’ children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. Chapter 18 (Pub. L. 104–204, section 421, September 26, 1996) provide for three separate types of benefits for Vietnam veterans’ children who suffer from spina bifida: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document establishes a final rule to set forth a mechanism regarding provision of health care to Vietnam veterans’ children with spina bifida.

We requested that comments to the proposed rule be submitted on or before June 30, 1997. We received 33 comments. Based on the rationale set forth in the proposed rule and this document, the proposed rule is adopted as a final rule with changes explained below.

Comments regarding issues concerning monthly monetary allowances for Vietnam veterans' children who suffer from spina bifida and the provision of vocational training and rehabilitation for such children will be addressed in separate final rules that specifically concern these issues.

Some of the suggested changes cannot be made because they would be inconsistent with statutory authorities. There is no authority for VA to pay for services provided before October 1, 1997, or to pay for services prior to the date of receipt of application. There is no authority to provide comprehensive health care coverage or insurance (health care is limited to care for spina bifida or disabilities associated with such condition). There is no authority to provide such health care unless the child is a child of a Vietnam veteran who was not dishonorably discharged (see Pub. L. 104-204, 38 U.S.C. 101, 1801-1806).

Commenters asserted that the final rule should state specifically that the provision of health care would cover durable medical equipment and medical supplies, including catheters, diapers, pads, etc. Because this appeared to be a concern from many of the commenters, the final rule is clarified, consistent with the intent of the proposed rule, to state specifically that these types of equipment and supplies are covered when provided by VA or authorized by an approved health care provider (see § 17.900(b) and the definition of "health care" in § 17.901).

One commenter questioned what standard would apply for replacing durable medical equipment, particularly when a child has outgrown medical equipment. In this regard, the provisions of § 17.902 provide that medical equipment will be covered based on a demonstrated medical need.

Commenters questioned whether the final rule would cover adaptive housing and vehicles. VA is authorized to provide health care determined to be medically necessary. In our view, coverage for adaptive housing and vehicles is outside the scope of this authorization.

One commenter questioned whether treatment of behavioral problems such as attention deficit disorder would be covered under the final rule. This would have to be determined on a case-by-case basis. Any health care determined to be needed for the spina bifida or any disability that is associated with such condition would be covered.

One commenter questioned whether payment would be made for services if the child suffering from spina bifida has died. Covered services provided for an

eligible child prior to death would be paid even if the child died after the services were provided.

One commenter questioned whether complications during pregnancy of a Vietnam veterans' child who suffer from spina bifida would be covered. Another commenter questioned whether hydrocephalus and Arnold-Chiari malformation would be covered for such children. Another questioned whether other abnormalities would be covered. These conditions would be covered insofar as they constitute a disability associated with spina bifida.

One commenter questioned whether care at the Department of Defense (DOD) facilities would be paid by VA. Costs for care provided by DOD is the responsibility of DOD.

One commenter asserted that preventive care should be listed specifically as a covered benefit. No changes are made based on this comment. The definition of "health care" in § 17.901 specifically states that "preventive care" is covered.

One commenter asserted that payment should be made for experimental or investigative care. No changes are made based on this comment. We have no way to determine whether such care would be effective and not harmful.

Commenters asserted that payment for respite care and home care (including attendant care) and case management services should not be limited to approved health care providers and should include health care providers that are not certified or licensed. The terms "health care provider" and "approved health care provider" are defined in § 17.901. No changes are made based on these comments. This final rule does not preclude services from individuals who do not qualify as "approved health care providers." However, VA will pay only for services rendered by "approved health care providers." We believe that the utilization of approved health care providers as defined in § 17.901 is necessary to ensure appropriate quality standards for services paid by VA.

A number of commenters expressed concern that their ability to utilize Medicaid, Medicare, or other health insurance would be limited by the spina bifida program. In this regard, the spina bifida regulations provide for VA to be the exclusive payer only for services paid under the spina bifida regulations. Also, by statute monetary benefits are not considered income or resources in determining eligibility for or the amount of benefits under any Federal or Federally-assisted program, including Medicaid and Medicare. Consistent with these concepts, we added language to

the final rule to state that in the usual case claims for health care for other than covered services for spina bifida and disabilities associated with spina bifida would be submitted to an insurer, Medicare, Medicaid, health plan, or other program providing health care coverage.

One commenter expressed concern that charges could exceed the amount reimbursed by VA and that providers would charge patients for the excess. In this regard, the regulations state that VA is the exclusive payer for services paid under the spina bifida regulations. Accordingly, the amount paid by VA would constitute payment in full.

Several commenters questioned whether they could have a choice regarding their provider. Recipients will be able to choose any provider meeting the criteria in § 17.901.

One commenter suggested that the preauthorization procedures are unnecessarily restrictive and burdensome, and that there should be an emergency exception for preauthorization. The preauthorization procedures apply to that type of care most likely to cause disagreement with respect to medical need. These procedures will help avoid unexpected liabilities for noncovered services. Further, it would be rare that an emergency would arise for the types of care requiring preauthorization. Even so, we have added provisions stating that preauthorization would not be required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. A provision also is added stating that such emergency care should be reported by telephone within 72 hours of the emergency. These provisions would ensure that preauthorization procedures would not impede the provisions of emergent health care and would help ensure that recipients understand in a timely manner what health care is covered under this final rule.

The preauthorization provisions state that care will be authorized only in those cases where there is a demonstrated medical need. One commenter asserted that the burden of proof should rest on VA regarding whether care is medically necessary. No changes are made based on this comment. The statutory provisions of 38 U.S.C. 1803(a) state that the Secretary shall provide "such health care as the Secretary determines is needed for the child for the spina bifida or any disability associated with such condition." Even so, VA will consider any evidence from providers or others that might support a claim.

One commenter asserted that Vietnam veterans' children who suffer from spina bifida should have the same appeal rights as other VA claimants. In this regard, § 17.904 sets forth an appeal process and the note to this section states that there are further appellate rights for an appeal to the Board of Veterans' Appeals. This is equivalent to the appellate process afforded veterans for other matters.

The proposed regulations provided that "if a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration." The proposed regulations further provided that "such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025." Moreover, the proposed regulations provided that "if the person or entity seeking reconsideration is still dissatisfied, within 30 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025." Commenters asserted that the 30-day period for further reconsideration should be extended to 90 or 180 days. In this regard, they argued that 30 days might not be enough time for individuals on travel or who get their mail irregularly. The final rule extends the time period from 30 days to 90 days. This should be adequate to allow sufficient time for the preparation of an appeal.

One commenter asserted that the date for satisfying the period for filing an appeal be the date the appeal is postmarked. The provisions of § 17.904 are amended to state that an appeal would be filed at the time it was delivered to VA or the time it was released for submission to VA (postmark would constitute evidence of release for submission to VA).

One commenter asserted that the review appeal decisions should be required to include a statement of findings and reasons. The regulations are clarified to specifically require inclusion of findings and reasons.

One commenter asserted that ID cards should be issued so that children suffering from spina bifida could more easily identify themselves to health care providers as eligible for benefits under the VA's spina bifida regulations. It is anticipated that ID cards will be issued.

One commenter requested that the comment period for this rule making proceeding be extended until the end of the comment period for the proposed rule regarding vocational training and rehabilitation for Vietnam veterans' children who suffer from spina bifida. Such an extension is unwarranted. An understanding of the issues in the rule making proceeding regarding vocational training and rehabilitation is not necessary to make informed comments regarding this rule making proceeding.

Additional changes are made to the final rule for purposes of clarification.

#### **Executive Order 12866**

This final rule has been reviewed by OMB under Executive Order 12866.

#### **Administrative Procedure Act**

There is good cause for making this final rule effective without regard to a 30 day delay. This final rule does not adversely affect anyone and the affected children need the benefits from the rule as soon as possible.

#### **Paperwork Reduction Act**

Information collection and recordkeeping requirements associated with this final rule (38 CFR 17.902, 17.903, 17.904) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3520) and have been assigned OMB control number 2900-0577.

The provisions of 38 CFR 17.902 will require individuals to submit to a preauthorization specialist of the Health Administration Center a preauthorization application for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization application will contain the child's name and social security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider. Such information is necessary to make preauthorization determinations in accordance with § 17.902.

The provisions of 38 CFR 17.903 will require that, as a condition of payment, claims from "approved health care providers" for health care provided under 38 CFR 17.900 must include the following information, as appropriate: with respect to patient identification information: the veteran's and patient's

full name, social security numbers, patient's address, and date of birth; with respect to patient treatment information (inpatient and outpatient services): full name and address (such as hospital or physician), remittance address, physical location where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or social security number (SSN); with respect to patient treatment information (inpatient institutional services): dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all other health care providers and ancillary outpatient services: diagnosis, procedure code for each procedure, service or supply for each date of service, and individual billed charge for each procedure, service or supply for each date of service; with respect to prescription drugs and medicines: name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity, date dispensed, and pharmacy receipt for each drug dispensed. Such information will be necessary to make payment determinations in accordance with 38 CFR 17.903.

The provisions of 38 CFR 17.904 will establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination will be required to submit such request to the Chief, Administrative Division, Health Administration Center, in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits advisor will issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity will be permitted to make a written request for review by the

Director, Health Administration Center. The information to be collected under § 17.904 is necessary to make review and appeal determinations.

Interested parties were invited to submit comments on the collection of information. However, no comments were received.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collections of information in this final rule is displayed at the end of each of the affected sections of the regulations.

### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. It is estimated that there are only between 600 and 2,000 Vietnam veterans' children who suffer from spina bifida. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), the final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers for this final rule.

### 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: September 11, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 17 is amended as follows:

### PART 17—MEDICAL

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

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

2. In part 17, an undesignated center heading and new §§ 17.900 through 17.905 are added to read as follows:

#### Health Care for a Vietnam Veteran's Child With Spina Bifida

Sec.

17.900 Spina bifida—provision of health care.

17.901 Definitions.

17.902 Preauthorization.

17.903 Payment.

17.904 Review and appeal process.

17.905 Medical records.

#### Health Care for a Vietnam Veteran's Child With Spina Bifida

##### § 17.900 Spina bifida—provision of health care.

(a) VA shall provide a Vietnam veteran's child who has been determined under § 3.814 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for the spina bifida or any disability that is associated with such condition. This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida.

(b) Health care provided under this section shall be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(Authority: 38 U.S.C. 101(2), 1801-1806)

**Note to § 17.900:** VA provides payment under this section only for health care relating to spina bifida or a disability that is associated with such condition. VA is the exclusive payer for services paid under this section regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition (accordingly, in the usual case claims for health care for other than covered services for spina bifida and disabilities associated with spinal bifida would be submitted to an insurer, Medicare, Medicaid, health plan, or other program providing health care coverage).

##### § 17.901 Definitions.

For purposes of §§ 17.900 through 17.905—

*Approved health care provider* means a health care provider approved by the Health Care Financing Administration (HCFA), Department of Defense Civilian Health and Medical Program of the

Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or any health care provider approved for providing health care pursuant to a state license or certificate. An entity or individual shall be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

*Child* means the same as defined at § 3.814(c) of this title.

*Habilitative and rehabilitative care* means such professional counseling, guidance services and treatment programs (other than vocational training under 38 U.S.C. 1804) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

*Health care* means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

*Health care provider* means any entity or individual who furnishes health care, including specialized spina bifida clinics, health care plans, insurers, organizations, and institutions.

*Home care* means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to an individual in the individual's home or other place of residence.

*Hospital care* means care and treatment furnished to an individual who has been admitted to a hospital as a patient.

*Nursing home care* means care and treatment furnished to an individual who has been admitted to a nursing home as a resident.

*Outpatient care* means care and treatment, including preventive health services, furnished to an individual other than hospital care or nursing home care.

*Preventive care* means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

*Respite care* means care furnished on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

*Spina bifida* means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or associated medical conditions which are adjunct to spina bifida according to the scientific literature).

*Vietnam veteran* means the same as defined at § 3.814(c) of this title.

(Authority: 38 U.S.C. 101(2), 1801-1806)

#### § 17.902 Preauthorization.

(a) Preauthorization from a preauthorization specialist of the Health Administration Center is required for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services, or travel (other than mileage at the General Services Administration rate for privately owned automobiles). This care will be authorized only in those cases where there is a demonstrated medical need. Applications for provision of health care requiring preauthorization shall either be made by telephone at (800) 733-8387, or in writing to Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025. The application shall contain the following:

- (1) Name of child,
- (2) Child's social security number,
- (3) Name of veteran,
- (4) Veteran's social security number,
- (5) Type of service requested,
- (6) Medical justification,
- (7) Estimated cost, and
- (8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization shall not be required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone at (800) 733-8387 to the Health Administration Center, Denver, CO within 72 hours of the emergency.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0577.)

(Authority: 38 U.S.C. 101(2), 1801-1806)

#### § 17.903 Payment.

(a)(1) Payment under this section will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.84).

(2) As a condition of payment, the services must have occurred on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title. Also, as a condition of payment, claims from approved health care providers for health care provided under this section must be filed with the Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025, no later than:

- (i) One year after the date of service; or
- (ii) In the case of inpatient care, one year after the date of discharge; or
- (iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of authorization.

(3) Claims for health care provided under the provisions of §§ 17.900 through 17.905 shall contain, as appropriate, the information set forth in paragraphs (a)(3)(i) through (a)(3)(v) of this section.

(i) Patient identification information:

- (A) Full name,
  - (B) Address,
  - (C) Date of birth, and
  - (D) Social Security number.
- (ii) Provider identification information (inpatient and outpatient services):
- (A) Full name and address (such as hospital or physician),
  - (B) Remittance address,
  - (C) Address where services were rendered,
  - (D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and
  - (E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

- (A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

- (E) All secondary diagnoses,
- (F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service or supply for each date of service, and

(C) Individual billed charge for each procedure, service or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

- (A) Name and address of pharmacy where drug was dispensed,
- (B) Name of drug,
- (C) Drug Code for drug provided,
- (D) Strength,
- (E) Quantity,
- (F) Date dispensed,
- (G) Pharmacy receipt for each drug dispensed (including billed charge), and
- (H) Diagnosis.

(b) Health care payment shall be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

- (1) Care as part of a grant study or research program,
- (2) Care considered experimental or investigational,
- (3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,
- (4) Services, procedures or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB).

When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides at a minimum, the following information:

- (1) Name and address of recipient,
- (2) Description of services and/or supplies provided,
- (3) Dates of services or supplies provided,

- (4) Amount billed,
- (5) Determined allowable amount,
- (6) To whom payment, if any, was made, and
- (7) Reasons for denial (if applicable).

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0577.)

(Authority: 38 U.S.C. 101(2), 1801-1806)

#### **§ 17.904 Review and appeal process.**

If a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206-9025. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses or modifies the previous decision. An appeal under this section would be considered as filed the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

**Note to § 17.904:** The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0577.)

(Authority: 38 U.S.C. 101(2), 1801-1806)

#### **§ 17.905 Medical records.**

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment, and that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905, must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1801-1806)

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## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 21**

**RIN 2900-A172**

#### **Provision of Vocational Training and Rehabilitation to Vietnam Veterans' Children With Spina Bifida**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document establishes Department of Veterans Affairs (VA) regulations for providing vocational training and rehabilitation to Vietnam veterans' children with spina bifida. This is necessary for providing vocational training and rehabilitation to these children under recently enacted legislation that authorizes this benefit.

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Graffam, Veterans Claims Examiner, Vocational Rehabilitation and Counseling Service (28), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; (202) 273-7410.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on July 1, 1997 (62 FR 35454), we proposed to amend the Vocational Rehabilitation and Education regulations (38 U.S.C. part 21) to add a new subpart M regarding the provision of vocational training, services, and assistance to Vietnam veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. chapter 18 (Public Law 104-204, sections 421 and 422, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such

condition, and (3) provision of vocational training and rehabilitation.

This document establishes a final rule to set forth a mechanism regarding provision of vocational training and rehabilitation to Vietnam veterans' children with spina bifida.

We requested that comments on the proposed rule be submitted on or before September 2, 1997. We received five comments. VA appreciates the comments submitted in response to the proposed rule. Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted with the changes discussed below.

Comments regarding issues concerning monthly monetary allowances for Vietnam veterans' children who suffer from spina bifida and provision of health care for such children are addressed in separate final rules that specifically concern these issues.

Commenters recommended that we reimburse children for vocational training received prior to October 1, 1997; pay for the purchase and ongoing expenses of owning and operating a vehicle; provide automobile adaptive equipment; provide for specially adapted housing; pay a subsistence allowance to individuals receiving vocational training; allow concurrent receipt of benefits under 38 U.S.C. chapter 35 and the vocational training program; provide comprehensive medical and dental care for conditions unrelated to spina bifida; provide a work-study program; and provide vocational training for children of certain individuals who do not meet the statutory definition of the term "veteran." No changes are made based on these comments since VA has no legal authority to do so.

Commenters asserted that benefits should be provided to grandchildren and other direct descendants of Vietnam veterans. No changes are made based on these comments. Under the provisions of 38 U.S.C. 1801, benefits are limited to natural children of a Vietnam veteran. In our view, this includes only the immediate offspring of a Vietnam veteran and does not include grandchildren or other descendants.

One commenter asserted that all Vietnam veterans' children suffering from spina bifida should receive vocational training and that there should be a gradation of vocational training benefits based on disability so that the most in need would receive the maximum benefit. No changes are made based on this comment. The vocational training regulations are designed to provide for training based on the