

## THE FOOT AND LEG—Continued

	Rating
5312 Group XII. <i>Function:</i> Dorsiflexion (1); extension of toes (2); stabilization of arch (3). <i>Anterior muscles of the leg:</i> (1) Tibialis anterior; (2) extensor digitorum longus; (3) extensor hallucis longus; (4) peroneus tertius.	
Severe .....	30
Moderately Severe .....	20
Moderate .....	10
Slight .....	0

## THE PELVIC GIRDLE AND THIGH

	Rating
5313 Group XIII. <i>Function:</i> Extension of hip and flexion of knee; outward and inward rotation of flexed knee; acting with rectus femoris and sartorius (see XIV, 1, 2) synchronizing simultaneous flexion of hip and knee and extension of hip and knee by belt-over-pulley action at knee joint. <i>Posterior thigh group, Hamstring complex of 2-joint muscles:</i> (1) Biceps femoris; (2) semimembranosus; (3) semitendinosus.	
Severe .....	40
Moderately Severe .....	30
Moderate .....	10
Slight .....	0
5314 Group XIV. <i>Function:</i> Extension of knee (2, 3, 4, 5); simultaneous flexion of hip and flexion of knee (1); tension of fascia lata and iliotibial (Maissiat's) band, acting with XVII (1) in postural support of body (6); acting with hamstrings in synchronizing hip and knee (1, 2). <i>Anterior thigh group:</i> (1) Sartorius; (2) rectus femoris; (3) vastus externus; (4) vastus intermedius; (5) vastus internus; (6) tensor vaginae femoris.	
Severe .....	40
Moderately Severe .....	30
Moderate .....	10
Slight .....	0
5315 Group XV. <i>Function:</i> Adduction of hip (1, 2, 3, 4); flexion of hip (1, 2); flexion of knee (4). <i>Mesial thigh group:</i> (1) Adductor longus; (2) adductor brevis; (3) adductor magnus; (4) gracilis.	
Severe .....	30
Moderately Severe .....	20
Moderate .....	10
Slight .....	0
5316 Group XVI. <i>Function:</i> Flexion of hip (1, 2, 3). <i>Pelvic girdle group 1:</i> (1) Psoas; (2) iliacus; (3) pectineus.	
Severe .....	40
Moderately Severe .....	30
Moderate .....	10
Slight .....	0
5317 Group XVII. <i>Function:</i> Extension of hip (1); abduction of thigh; elevation of opposite side of pelvis (2, 3); tension of fascia lata and iliotibial (Maissiat's) band, acting with XIV (6) in postural support of body steadying pelvis upon head of femur and condyles of femur on tibia (1). <i>Pelvic girdle group 2:</i> (1) Gluteus maximus; (2) gluteus medius; (3) gluteus minimus.	
Severe .....	*50
Moderately Severe .....	40
Moderate .....	20
Slight .....	0

## THE PELVIC GIRDLE AND THIGH—Continued

	Rating
5318 Group XVIII. <i>Function:</i> Outward rotation of thigh and stabilization of hip joint. <i>Pelvic girdle group 3:</i> (1) Piriformis; (2) gemellus (superior or inferior); (3) obturator (external or internal); (4) quadratus femoris.	
Severe .....	30
Moderately Severe .....	20
Moderate .....	10
Slight .....	0

\*If bilateral, see § 3.350(a)(3) of this chapter to determine whether the veteran may be entitled to special monthly compensation.

## THE TORSO AND NECK

	Rating
5319 Group XIX. <i>Function:</i> Support and compression of abdominal wall and lower thorax; flexion and lateral motions of spine; synergists in strong downward movements of arm (1). <i>Muscles of the abdominal wall:</i> (1) Rectus abdominis; (2) external oblique; (3) internal oblique; (4) transversalis; (5) quadratus lumborum.	
Severe .....	50
Moderately Severe .....	30
Moderate .....	10
Slight .....	0
5320 Group XX. <i>Function:</i> Postural support of body; extension and lateral movements of spine. <i>Spinal muscles:</i> Sacrospinalis (erector spinae and its prolongations in thoracic and cervical regions).	
<i>Cervical and thoracic region:</i>	
Severe .....	40
Moderately Severe .....	20
Moderate .....	10
Slight .....	0
<i>Lumbar region:</i>	
Severe .....	60
Moderately Severe .....	40
Moderate .....	20
Slight .....	0
5321 Group XXI. <i>Function:</i> Respiration. <i>Muscles of respiration:</i> Thoracic muscle group.	
Severe or Moderately Severe .....	20
Moderate .....	10
Slight .....	0
5322 Group XXII. <i>Function:</i> Rotary and forward movements of the head; respiration; deglutition. <i>Muscles of the front of the neck:</i> (Lateral, supra-, and infrahyoid group.) (1) Trapezius I (clavicular insertion); (2) sternocleidomastoid; (3) the "hyoid" muscles; (4) sternothyroid; (5) digastric.	
Severe .....	30
Moderately Severe .....	20
Moderate .....	10
Slight .....	0
5323 Group XXIII. <i>Function:</i> Movements of the head; fixation of shoulder movements. <i>Muscles of the side and back of the neck:</i> Suboccipital; lateral vertebral and anterior vertebral muscles.	
Severe .....	30
Moderately Severe .....	20
Moderate .....	10
Slight .....	0

## MISCELLANEOUS

	Rating
5324 Diaphragm, rupture of, with herniation. Rate under diagnostic code 7346.	

## MISCELLANEOUS—Continued

	Rating
5325 Muscle injury, facial muscles. Evaluate functional impairment as seventh (facial) cranial nerve neuropathy (diagnostic code 8207), disfiguring scar (diagnostic code 7800), etc. Minimum, if interfering to any extent with mastication—10.	
5326 Muscle hernia, extensive. Without other injury to the muscle—10.	
5327 Muscle, neoplasm of, malignant (excluding soft tissue sarcoma)—100.	
NOTE: A rating of 100 percent shall continue beyond the cessation of any surgery, radiation treatment, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residual impairment of function.	
5328 Muscle, neoplasm of, benign, post-operative. Rate on impairment of function, i.e., limitation of motion, or scars, diagnostic code 7805, etc.	
5329 Sarcoma, soft tissue (of muscle, fat, or fibrous connective tissue)—100.	
NOTE: A rating of 100 percent shall continue beyond the cessation of any surgery, radiation treatment, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residual impairment of function.	

(Authority: 38 U.S.C. 1155)

[FR Doc. 97-14350 Filed 6-2-97; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 17

RIN 2900-AI60

## Guidelines for Furnishing Sensori-neural Aids (i.e., Eyeglasses, Contact Lenses, Hearing Aids)

AGENCY: Department of Veterans Affairs.  
ACTION: Interim final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) medical regulations to provide guidelines for when VA will furnish veterans with sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids). These amendments are necessary to implement a requirement imposed in the recently enacted Veterans' Health

Care Eligibility Reform Act of 1996, Pub. L. 104-262.

**DATES:** This interim final rule is effective June 3, 1997. Comments must be received on or before August 4, 1997.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A160." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Frederick Downs, Jr., Chief Consultant, Prosthetics and Sensory Aids Service Strategic Healthcare Group (113), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8515.

**SUPPLEMENTARY INFORMATION:** This document amends the VA medical regulations set forth at 38 CFR part 17. It adds a new section to the regulations to provide specific guidance on when VA will furnish veterans with sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids).

Prior to the enactment of Public Law 104-262, VA's authority to furnish prosthetic devices and appliances to veterans on an outpatient basis was very limited. That law significantly expanded VA's authority to furnish such devices and appliances on an outpatient basis. The new law provided that VA could furnish needed prosthetic devices and appliances to any veteran otherwise receiving health-care services from VA. The law further provided, however, that VA could furnish needed sensori-neural aids, a type of prosthetic device, only in accordance with guidelines promulgated by the Secretary. This provision in the law effectively authorizes VA to impose limitations on the provision of those sensori-neural aids.

This interim final rule provides that VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) to the following veterans:

- (1) Those with a compensable service-connected disability;
- (2) Those who are former prisoners of war;
- (3) Those in receipt of benefits under 38 U.S.C. 1151;
- (4) Those in receipt of increased pension based on the need for regular

aid and attendance or by reason of being permanently housebound;

(5) Those who have a visual or hearing impairment that resulted from the existence of another medical condition for which the veteran is receiving VA care, or which resulted from treatment of that medical condition;

(6) Those with a significant functional or cognitive impairment evidenced by deficiencies in the ability to perform activities of daily living, but not including routinely occurring visual or hearing impairments; and

(7) Those visually or hearing impaired so severely that the provision of sensori-neural aids is necessary to permit active participation in their own medical treatment.

Examples of medical conditions which could cause visual or hearing impairments permitting VA to furnish sensori-neural aids under paragraph (5) include stroke, diabetes, multiple sclerosis, vascular disease and geriatric chronic illnesses, when they result in visual or hearing impairment. Examples of treatment of medical conditions which could cause impairments permitting the furnishing of devices under that paragraph might include treatment with ototoxic drugs, or performance of surgery on the eye or ear, such as cataract surgery.

Examples of significant functional or cognitive impairment under paragraph (6) are: one or more basic activities of daily living impairment, cognitive impairment as measured by a mental status examination, and recurrent falls with the contributing cause being visual impairment.

An example of when VA might furnish sensori-neural aids under paragraph (7) to permit a patient to participate in his or her own treatment would be a geriatric patient with a severe visual or hearing loss which, combined with other age-related infirmities, makes communication extremely difficult or impossible absent receipt of a sensori-neural aid. Another example would be a blind veteran with a hearing loss who needs a hearing aid to participate in training at a VA Blind Rehabilitation Center.

VA will provide sensori-neural aids to the first four groups of veterans because Congress determined in section 104 of Public Law 104-262 that they have the highest priority to receive VA health-care benefits. VA also will provide sensori-neural aids to the fifth, sixth and seventh groups of veterans due to their substantial needs.

This interim final rule also provides that VA will furnish needed hearing aids to those veterans who have service-

connected hearing disabilities rated 0 percent if there is a service-connected organic conductive, mixed, or sensory hearing impairment, and loss of pure tone hearing sensitivity in the low, mid, or high-frequency range or a combination of frequency ranges which contribute to a loss of communication ability; however, hearing aids are to be provided only as needed for the service-connected hearing condition. VA will provide hearing aids to this group because of their service-connected hearing disability.

Section 103(a) of Public Law 104-262 provides that VA "may not furnish sensori-neural aids other than in accordance with guidelines which the Secretary shall prescribe." Section 103(b) of this law requires that the guidelines be established on or before November 8, 1996 ("not later than 30 days after the date of the enactment of this Act."). Under these circumstances, the Secretary finds under 5 U.S.C. 553 (b) and (d) that prior notice-and-comment and a 30-day delay of the effective date are impractical, unnecessary, and contrary to the public interest, and that there is good cause for dispensing with these procedures.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that these regulatory amendments 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. These amendments do not affect any small entities.

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

The Catalog of Federal Domestic Assistance program number is 64.013.

#### 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: December 23, 1996.

**Jesse Brown,**

*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. An undesignated center heading and a new § 17.149 are added to read as follows:

### **Prosthetic, Sensory, and Rehabilitative Aids**

#### **§ 17.149 Sensori-neural Aids.**

(a) Notwithstanding any other provision of this part, VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) only to veterans otherwise receiving VA care or services and only as provided in this section.

(b) VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) to the following veterans:

(1) Those with a compensable service-connected disability;

(2) Those who are former prisoners of war;

(3) Those in receipt of benefits under 38 U.S.C. 1151;

(4) Those in receipt of increased pension based on the need for regular aid and attendance or by reason of being permanently housebound;

(5) Those who have a visual or hearing impairment that resulted from the existence of another medical condition for which the veteran is receiving VA care, or which resulted from treatment of that medical condition;

(6) Those with a significant functional or cognitive impairment evidenced by deficiencies in activities of daily living, but not including normally occurring visual or hearing impairments; and

(7) Those visually or hearing impaired so severely that the provision of sensori-neural aids is necessary to permit active participation in their own medical treatment.

(c) VA will furnish needed hearing aids to those veterans who have service-connected hearing disabilities rated 0 percent if there is organic conductive, mixed, or sensory hearing impairment, and loss of pure tone hearing sensitivity in the low, mid, or high-frequency range or a combination of frequency ranges which contribute to a loss of communication ability; however,

hearing aids are to be provided only as needed for the service-connected hearing disability.

(Authority: 38 U.S.C. 1701(6)(A)(i))

3. The undesignated center heading preceding § 17.150 is removed.

[FR Doc. 97-14349 Filed 6-2-97; 8:45 am]

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## **POSTAL RATE COMMISSION**

### **39 CFR Part 3001**

[Docket No. RM97-1; Order No. 1176]

### **Rules of Practice and Procedure**

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission amends Rule 54 of its rules of practice. When the Postal Service files a request that proposes to change rates or fees and, at the same time, proposes to change established cost attribution principles, the amendment requires the Postal Service to estimate the impact of its proposed changes in rates or fees separately from the impact of its proposed changes in attribution principles. The purpose of the amendment is to give other participants and the Commission adequate and timely notice of the impact of the proposals that it contains, in order to facilitate evaluation of those proposals.

**DATES:** This rule will take effect on June 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen Sharfman, Legal Advisor, (202) 789-6820.

**SUPPLEMENTARY INFORMATION:** On December 17, 1996, the Commission issued its Notice of Proposed Rulemaking ("NPR") in this docket. Order No. 1146, 61 FR 67760-67763, December 24, 1996. The NPR proposed to amend Rule 54(a) of the Commission's Rules of Practice [39 CFR 3001.54(a)] to require Postal Service rate filings to include an alternate cost presentation that estimates what the impact of its proposed changes in rates would be on attributable costs and cost coverages if established cost attribution principles were applied. The amendment proposed in the NPR would not require an alternate cost presentation to show the impact of minor changes in the procedures by which attribution principles are implemented. In response to the comments received, the Commission has modified the amendment proposed in the NPR in one respect. Under final amended Rule 54(a), the Postal Service's

rate request would have to describe proposed changes in the detailed procedures by which attribution principles are implemented, even though such changes would not require an alternate cost presentation.

### **I. Procedural History**

Current Rule 54(a) requires the Postal Service to include with its rate filings enough information to "fully inform" the Commission and the parties of the "significance and impact" of the proposed changes. The NPR observed that the basic purpose of Rule 54 is to require the Postal Service to accompany its requests for changes in rates with the threshold level of cost, volume, and revenue information necessary to support its direct case, so that its request can be evaluated within the tight deadline that the Act imposes.

The Commission concluded that to satisfy Rule 54(a), the Postal Service's request must separately identify the impact that its proposed changes in rates and its proposed changes in attribution principles would have on cost coverages. It noted that in Docket No. MC96-3, the Postal Service's Rule 54 cost presentation did not satisfy this objective. It estimated only the combined effect on subclass attributable costs and cost coverages of its proposed changes in rates and its proposed changes in attribution principles. It left the task of distinguishing between these effects to other parties and the Commission.

In its NPR, the Commission observed that it is not properly the parties' burden to disentangle the effects of the Postal Service's proposed changes in rates from the effects of its proposed changes in attribution principles so that they can separately evaluate these aspects of the Postal Service's proposals. As the proponent of change, the Postal Service has the burden of going forward, and the burden of persuasion. See 5 U.S.C. 556(d), 39 U.S.C. 3622, 39 CFR 3001.53 and 3001.54. If the Postal Service's request confounds the effects of its proposals to change rates and its proposals to change cost attribution principles, its request does not provide timely and effective notice of the significance of either.

The Commission noted that when a Postal Service request combines proposals to change rates with proposals to change established cost attribution principles, mailers and competitors are not able to determine from the Postal Service's request how its proposed changes in attribution principles would affect their interests until they calculate for themselves what cost coverages would be at the Postal Service's