Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad requested a temporary deviation for the Clinton Railroad Drawbridge, across the Upper Mississippi River, mile 518.0, at Clinton, Iowa to open on signal if at least 24 hours advance notice is given for 61 days from 12:01 a.m., January 2, 2012 to 9 a.m., March 2, 2012 to allow the bridge owner time for preventive maintenance. The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridge shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 16 (Mile 457.2 UMR), Lock No. 17 (Mile 437.1 UMR) and Lock No. 18 (Mile 410.5 UMR) until 4:30 p.m., March 2, 2012 will preclude any significant navigation demands for the drawspan opening.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24-hours advance notice is given. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 21, 2011.

Eric A. Washburn,

Bridge Administrator.

[FR Doc. 2011–32636 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1130]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow community celebration of New Year's Eve. This deviation allows the bridge to remain in the closed-to-navigation position during a portion of the event.

DATES: This deviation is effective from 9 p.m. to 9:20 p.m. on December 31, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1130 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1130 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 9 p.m. to 9:20 p.m. on December 31, 2011 to allow community celebration of New Year's Eve. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 7, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard.

[FR Doc. 2011–32643 Filed 12–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN49

Payment or Reimbursement for Emergency Treatment Furnished by Non-VA Providers in Non-VA Facilities to Certain Veterans With Service-Connected or Nonservice-Connected Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations concerning emergency hospital care and medical services provided to eligible veterans at non-VA facilities. The amendments are required by section 402 of the Veterans' Mental Health and Other Care Improvements Act of 2008. Among other things, the amendments authorize VA to pay for emergency treatment provided to a veteran at a non-VA facility up to the time the veteran can be safely transferred to a VA or other Federal facility and such facility is capable of accepting the transfer, or until such transfer was actually accepted, so long as the non-VA facility made and documented reasonable attempts to transfer the veteran to a VA or other Federal facility.

DATES: *Effective Date:* This final rule is effective January 20, 2012.

FOR FURTHER INFORMATION CONTACT: Lisa Brown, Chief Policy Management Department, Department of Veterans Affairs, 3773 Cherry Creek North Drive, Suite 450, Denver, CO 80209, (303) 331–7829. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Sections 1725 and 1728 of title 38, United States Code, authorize the Secretary of Veterans Affairs to reimburse eligible veterans for costs related to non-VA emergency treatment furnished at non-VA facilities, or to pay providers directly for such costs. Specifically, section 1725 authorizes reimbursement for emergency treatment for eligible veterans with nonservice-connected conditions, and section 1728 authorizes reimbursement for emergency treatment for eligible veterans with service-connected conditions. These statutory provisions are implemented at 38 CFR 17.1000 through 17.1008 for eligible veterans with nonservice-connected conditions, and at 38 CFR 17.120 and 17.121 for eligible veterans with service-connected conditions.

As explained in a notice of proposed rulemaking published on June 11, 2010 (75 FR 33216), prior to recent amendments to the law, VA was not authorized to reimburse or pay for treatment provided after ''the veteran c[ould] be transferred safely to a [VA] facility or other Federal facility'' under 38 U.S.C. 1725(f)(1)(C) (2007). Thus, under 38 U.S.C. 1725 and pursuant to regulations implementing 38 U.S.C. 1728, VA was unable to provide payment to the veteran or medical provider for services rendered beyond the point the veteran was determined to be stable enough for transfer, even if no VA or other Federal facility could immediately accept the transfer and the veteran required continued, non-emergency treatment.

On October 10, 2008, the Veterans' Mental Health and Other Care Improvements Act of 2008, Public Law 110–387, was enacted, and it made several amendments to our authority to reimburse for the cost of non-VA emergency care.

Section 402 of Public Law 110–387 amended the definition of ''emergency treatment'' in section1725(f)(1), extending VA's payment authority until ''such time as the veteran can be transferred safely to a [VA] facility or other Federal facility and such facility is capable of accepting such transfer,'' or until such transfer was accepted, so long as the non-VA facility ''made and documented reasonable attempts to transfer the veteran to a [VA] facility or other Federal facility.'' This amendment extended our authority to pay for treatment post-stabilization.

Section 402(a)(1) amended section 1725(a)(1) by striking the term ''may reimburse'' and inserting ''shall reimburse'' in its place. This amendment requires VA to reimburse the covered costs for emergency care received at non-VA facilities for eligible veterans, rather than leaving the decision to make such reimbursement at the discretion of the Secretary.

Section 402(b) of Public Law 110–387 amended 38 U.S.C. 1728. First, section 402(b)(1) authorized VA to reimburse or pay for ''customary and usual charges of emergency treatment'' when a veteran makes payment directly to a non-VA provider of emergency care. The statute had previously authorized reimbursement for ''the reasonable value of such care or services.'' This amendment relates to the amount of payment and is the subject of another rulemaking, RIN 2900–AN37, ''Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated with Non-VA Outpatient Care''. 75 FR 7218 (Feb. 18, 2010).

Second, section 402(b)(3) made the definition of ''emergency treatment'' in section 1725(f)(1) applicable to section 1728. As described above, that definition of emergency treatment now includes care or services furnished until ''such time as the veteran can be transferred safely to a [VA] facility or other Federal facility and such facility is capable of accepting such transfer,'' or until such transfer was accepted, so long as the non-VA facility ''made and documented reasonable attempts to transfer the veteran to a [VA] facility or other Federal facility.''

In the proposed rule published on June 11, 2010 (75 FR 33216), we proposed to amend the following VA regulations to comply with the amendments made to 38 U.S.C. 1725 and 1728, and make technical changes such as correcting grammatical errors and updating obsolete regulatory citations: 38 CFR 17.120, 17.121, 17.1002, 17.1005, 17.1006, and 17.1008.

We received four comments on the proposed rule. One commenter fully supported the rule because it will improve veterans' ability to obtain emergency care from non-VA facilities. The remainder of the comments are addressed below.

One commenter was concerned with our decision in §§ 17.121(a) and 17.1006 to assign a ''designated VA clinician'' with the task of determining whether treatment should be reimbursed, specifically asserting that VA should place this responsibility in more highly skilled and trained employees. We disagree with this comment, and make no changes to the rule, because this portion of the rule simply adopts customary practice as implemented in the health care industry. The common industry practice is to utilize the services of health care professionals, such as nurses, for purposes of clinical review. Further, we believe that this designation of responsibility will promote greater efficiency in the use of VA physician services. VA employs highly trained clinical staff that is capable of making a clinical determination as to whether emergency care meets the requirements set forth under this rule, and whether a veteran can be safely transferred from the non-VA facility.

We received three comments related to the transfer of veterans from non-VA hospitals. The commenters questioned whether VA was giving enough deference to the treating physician at the non-VA facility to determine when the veteran is stable enough to be transferred to a VA facility. A veteran may not be transferred from a non-VA facility to a VA facility before such veteran has first been released by the physician of the treating facility, and only after such physician determines the veteran has been stabilized. We note that this rule governs the payment for emergency services only, and VA's review of an episode of care for the purposes of determining eligibility for payment is retroactive, meaning the emergency care has already been provided. In reviewing the episode of care for payment purposes, VA will consider the treating physician's assessment of when the veteran returned to a stable condition and could have been transferred to a VA or other Federal facility. Although the procedure for transferring a VA-enrolled patient from a non-VA facility to a VA facility is not governed by this rule, we note that VA's practice is to work with the treating non-VA clinicians to determine when transfer would be safe. If the veteran's stability for transfer is questionable, the designated VA clinician will consult with the attending non-VA physician to determine whether transfer is in the best interest of the veteran. At no time during an episode of care will VA challenge the discretion of the treating non-VA physician with regard to whether an emergency situation has ended. We make no changes based on these comments.

One commenter read the refusal of transfer provisions at proposed § 17.121(c) and § 17.1005(d) to exclude payment for non-emergency care

provided up until the point that transfer was available but refused by the veteran. Under the applicable law, VA is authorized to provide reimbursement for emergency care only ''until * * * such time as the veteran can be transferred'' to a VA or other Federal facility. 38 U.S.C. 1725(f)(1)(C). *See also* 38 U.S.C. 1728(c) (adopting the meaning of ''emergency treatment'' provided in section 1725(f)(1)). VA intended that the proposed rule provide that the episode of care will be considered for payment up to the point in time where VA was able to accept transfer but the veteran refused or opted not to be transferred to the VA facility. Because the language in the proposed rule did not accurately express this statutory authorization and VA's intent, we have revised the language in both § 17.121(c) and § 17.1005(d). Specifically, in § 17.121(c), we have removed the language referring to the point of ''stabilization'' and replaced it with language referring to the point of ''refusal of transfer by the veteran.'' We make the same change in § 17.1005(d).

One commenter suggested that VA should provide payment for ancillary and pharmaceutical treatment in connection with the veteran's emergency care. To the extent the commenter wishes VA to reimburse veterans for the cost of such treatment provided during an episode of emergency care (prior to stabilization and a transfer determination), such treatment is in fact reimbursable as emergency care under this regulation—even if the emergency treatment includes the direct provision by the non-VA facility of a short course of medications needed to enable the discharge or transfer of the veteran. To the extent the commenter wishes VA to pay for medications provided after the episode of emergency care, this is beyond the scope of this rulemaking.

In light of the potential for confusion as to what constitutes emergency treatment under the regulation, we have added to § 17.120(b) and § 17.1002 clarification that emergency treatment includes ''medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to the patient for use after the emergency condition is stabilized and the patient is discharged))''. This reflects our original intent, but should reduce or eliminate some of the concerns raised by the commenter.

We propose to clarify the term ''Federal facility'' in additional subsections of the regulations implementing 38 U.S.C. 1725 and 38 U.S.C. 1728. The term ''Federal facility'' is used in the definition of ''emergency treatment'' in subparagraph (C) of section 1725(f)(1) in the context of veterans being stable enough after an emergency to be transferred to a VA or other Federal facility and the availability of such facilities. 38 U.S.C. 1725(f)(1)(C). As identified in the notice of proposed rulemaking published on June 11, 2010 (75 FR 33216), the term ''Federal facility'' as it is used in 38 U.S.C. 1725(f)(1)(C) is clarified in this rulemaking in 38 CFR 17.121 and 17.1005 to mean ''Federal facility that VA has an agreement with to furnish health care services for veterans''. Practically, VA considers that ''emergency treatment'' should be considered to continue until transfer is possible and accepted to a VA facility or Federal facility with which VA has an agreement, because determining availability of or eligibly for other Federal facilities will typically not be feasible.

The term ''Federal facilities'' is also used in the definition of ''emergency treatment'' in subparagraph (A) of 38 U.S.C. 1725(f)(1), to specify that ''emergency treatment'' under sections 1728 and 1725 means, in pertinent part, ''medical care or services furnished, in the judgment of the Secretary—(A) when Department or other Federal facilities are not feasibly available and an attempt to use them beforehand would not be reasonable''. *See* definition of ''emergency treatment'' at 38 U.S.C. 1725(f)(1)(A) and 38 U.S.C. 1728(c) referencing such definition. Current regulations implementing sections 1728 and 1725 reiterate this requirement, explaining that payment or reimbursement may only be made if a VA or other Federal facility was not feasibly available, and an attempt to use them beforehand would not have been reasonable. *See* 38 CFR 17.1002(c) and 38 CFR 17.120(c). We propose to clarify the term ''Federal facilities'' as it is used in subparagraph (A) of section 1725(f)(1), just as we have done as it is used in subparagraph (C) of section 1725(f)(1), to mean only those Federal facilities ''that VA has an agreement with to furnish health care services for veterans.'' We make this change to allow for VA reimbursement of care provided in Federal facilities with which VA does not have an agreement and where the veteran would be personally liable for payment. Without this qualification, it may not be clear that VA can pay for or reimburse a veteran who obtains emergency care in a Federal facility with which VA does not have an agreement and which holds the veteran personally financially liable for the costs of the care.

Congress did not define ''Federal facility'' (or ''Federal facilities'') in 38 U.S.C. 1728 or 1725, which provide VA's authority to make payment or provide reimbursement for emergency treatment from non-VA providers. As indicated, we propose to interpret ''Federal facility'' (and ''Federal facilities'') to mean facilities that VA has an agreement with to furnish health care services for veterans. From a practical standpoint, this interpretation makes sense because VA would generally have no way of knowing whether other Federal resources are available at any one time without such agreement. Without knowing of the availability of such Federal facilities, it is the Secretary's judgment that those facilities cannot be considered reasonable or feasible in the context of a medical emergency. This interpretation is also consistent with the intent of the statute, which is to cover the costs of care for veterans when such care must be provided outside of the VA setting. If the veteran who has an accident on a military installation is personally financially liable for that care, the intent of the statute was to relieve that burden. We note, however, that we do not interpret the statute as requiring VA to reimburse a Federal facility when the veteran receiving care would not otherwise be financially liable.

Finally, although we have added this clarifying language, we note that this is not a change in VA's interpretation of the statute because VA currently interprets the statute in this way. These regulatory amendments merely codify VA's current interpretation for legal notice purposes. We, therefore, add the clarifying language ''that VA has an agreement with to furnish health care services for veterans'' after the term ''Federal facilities'' in § 17.120(c), ''Federal facility'' in § 17.1001(d), and ''Federal facility/provider'' in § 17.1002(c). We note the reference to ''other Federal facility'' in § 17.1001(d) pertains to the veteran's stability for transfer to a VA or other Federal facility, not other Federal facilities being unavailable at the time of the emergency, but was not noted for amendment in the notice of proposed rulemaking published on June 11, 2010 (75 FR 33216). The change reflects VA's existing interpretation of the statute.

For the reasons set forth in the supplementary information to the notice of proposed rulemaking and in this notice, VA is adopting the proposed rule as a final rule with the changes discussed above.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this notice, represents the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This action contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would 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 *et seq.* This rule will not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. 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 and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 14, 2011, for publication.

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.

Dated: December 14, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department 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, and as noted in specific sections.

■ 2. Amend § 17.120 by:
■ a. Revising the section heading.
■ b. In the introductory text, removing ''care'' and adding, in its place, ''emergency treatment'', removing ''medical services'' and adding, in its place, ''emergency treatment'', and removing ''may be paid'' and adding, in its place, ''will be paid''.
■ c. Revising paragraph (a) introductory text.
■ d. In paragraph (a)(3), removing ''United State'' and adding, in its place, ''United States'' and adding the word ''or'' at the end of paragraph (a)(3).
■ e. In paragraph (a)(4), removing ''§ 17.48(j); and'' and adding, in its place, ''§ 17.47(i)(2);''.
■ f. Revising paragraph (b).
■ g. Revising paragraph (c).

The revisions read as follows:

§ 17.120 Payment or reimbursement for emergency treatment furnished by non-VA providers to certain veterans with service-connected disabilities.

* * * * *

(a) *For veterans with service connected disabilities.* Emergency treatment not previously authorized was rendered to a veteran in need of such emergency treatment:

* * * * *

(b) *In a medical emergency.* Emergency treatment not previously authorized including medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to the patient for use after the emergency condition is stabilized and the patient is discharged) was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. This standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe

pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. And,

(c) *When Federal facilities are unavailable.* VA or other Federal facilities that VA has an agreement with to furnish health care services for veterans were not feasibly available, and an attempt to use them beforehand or obtain prior VA authorization for the services required would not have been reasonable, sound, wise, or practicable, or treatment had been or would have been refused.

■ 3. Section 17.121 is revised to read as follows:

§ 17.121 Limitations on payment or reimbursement of the costs of emergency treatment not previously authorized.

(a) *Emergency Treatment.* Except as provided in paragraph (b) of this section, VA will not approve claims for payment or reimbursement of the costs of emergency treatment not previously authorized for any period beyond the date on which the medical emergency ended. For this purpose, VA considers that an emergency ends when the designated VA clinician at the VA facility has determined that, based on sound medical judgment, the veteran who received emergency treatment:

(1) Could have been transferred from the non-VA facility to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment, or

(2) Could have reported to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment.

(b) *Continued non-emergency treatment.* Claims for payment or reimbursement of the costs of emergency treatment not previously authorized may only be approved for continued, non-emergency treatment, if:

(1) The non-VA facility notified VA at the time the veteran could be safely transferred to a VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans), and the transfer of the veteran was not accepted; and

(2) The non-VA facility made and documented reasonable attempts to request transfer of the veteran to a VA facility (or to another Federal facility that VA has an agreement with to furnish health care services for veterans), which means the non-VA facility contacted either the VA Transfer Coordinator, Administrative Officer of the Day, or designated staff responsible for accepting transfer of patients, at a local VA (or other Federal facility) and documented such contact in the veteran's progress/physicians' notes, discharge summary, or other applicable medical record.

(c) *Refusal of transfer.* If a stabilized veteran who requires continued non-emergency treatment refuses to be transferred to an available VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans), VA will make payment or reimbursement only for the expenses related to the initial evaluation and the emergency treatment furnished to the veteran up to the point of refusal of transfer by the veteran.

(Authority: 38 U.S.C. 1724, 1728, 7304)

■ 4. Revise paragraph (d) of § 17.1001 to read as follows:

§ 17.1001 Definitions.

* * * * *

(d) The term *stabilized* means that no material deterioration of the emergency medical condition is likely, within reasonable medical probability, to occur if the veteran is discharged or transferred to a VA or other Federal facility that VA has an agreement with to furnish health care services for veterans.

* * * * *

■ 5. Amend § 17.1002 by:
■ a. Revising the introductory text.
■ b. Revising paragraph (c).
■ c. Removing paragraph (d).
■ d. Redesignating paragraphs (e) through (i) as new paragraphs (d) through (h) respectively.

The revision reads as follows:

§ 17.1002 Substantive conditions for payment or reimbursement.

Payment or reimbursement under 38 U.S.C. 1725 for emergency treatment (including medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to the patient for use after the emergency condition is stabilized and the patient is discharged)) will be made only if all of the following conditions are met:

* * * * *

(c) A VA or other Federal facility/provider that VA has an agreement with to furnish health care services for veterans was not feasibly available and an attempt to use them beforehand would not have been considered reasonable by a prudent layperson (as an example, these conditions would be met by evidence establishing that a veteran was brought to a hospital in an ambulance and the ambulance personnel determined the nearest available appropriate level of care was at a non-VA medical center);

* * * * *

■ 6. In § 17.1005, revise paragraph (b) and add paragraphs (c) and (d) as follows:

§ 17.1005 Payment limitations.

* * * * *

(b) Except as provided in paragraph (c) of this section, VA will not approve claims for payment or reimbursement of the costs of emergency treatment not previously authorized for any period beyond the date on which the medical emergency ended. For this purpose, VA considers that an emergency ends when the designated VA clinician at the VA facility has determined that, based on sound medical judgment, a veteran who received emergency treatment:

(1) Could have been transferred from the non-VA facility to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment, or

(2) Could have reported to a VA medical center (or other Federal facility that VA has an agreement with to furnish health care services for veterans) for continuation of treatment.

(c) Claims for payment or reimbursement of the costs of emergency treatment not previously authorized may be approved for continued, non-emergency treatment, only if:

(1) The non-VA facility notified VA at the time the veteran could be safely transferred to a VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans) and the transfer of the veteran was not accepted, and

(2) The non-VA facility made and documented reasonable attempts to request transfer of the veteran to VA (or to another Federal facility that VA has an agreement with to furnish health care services for veterans), which means the non-VA facility contacted either the VA Transfer Coordinator, Administrative Officer of the Day, or designated staff responsible for accepting transfer of patients at a local VA (or other Federal facility) and documented such contact in the veteran's progress/physicians' notes, discharge summary, or other applicable medical record.

(d) If a stabilized veteran who requires continued non-emergency treatment refuses to be transferred to an available VA facility (or other Federal facility that VA has an agreement with to furnish health care services for veterans), VA will make payment or reimbursement only for the expenses related to the initial evaluation and the emergency treatment furnished to the veteran up to the point of refusal of transfer by the veteran.

* * * * *

§ 17.1006 [Amended]

■ 7. Amend § 17.1006 by removing ''Fee Service Review Physician or equivalent officer'' and adding, in its place, ''designated VA clinician''.

§ 17.1008 [Amended]

■ 8. Amend § 17.1008 by removing ''treatment'' in both places it appears, and adding, in each place, ''treatment and any non-emergency treatment that is authorized under § 17.1005(c) of this part''.

[FR Doc. 2011–32413 Filed 12–16–11; 8:45 am]

BILLING CODE 8302–01–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) throughout various sections to reflect price adjustments and mailing requirements changes associated with the October 2011 filing with the Postal Regulatory Commission (PRC).

DATES: Effective January 22, 2012.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield at (202) 268–7278.

SUPPLEMENTARY INFORMATION: On October 18, 2011, the Postal Service filed a notice of mailing services price adjustments with the PRC, effective on January 22, 2012. In addition, on October 24, 2011, the USPS™ published a proposed rule in the **Federal Register** (FR 76 65640–65653) based on the PRC filing. This final rule conveys the comments received on the proposal, our responses to comments, and the final mailing standards.

Prices are available under Docket Number R2012–3 on the Postal Regulatory Commission's Web site at *www.prc.gov,* and also on the Postal Explorer® Web site at *pe.usps.com.*

The Postal Service's final rule includes: several mail classification changes, modifications to mailpiece characteristics, and changes in classification terminology.

Comments

The Postal Service received comments from eight submitters on various aspects of the proposed changes. The comments and responses to them are included in the applicable subject matter sections below.

Changes for Letters

Commercial First-Class Mail Letters

The pricing structure for presorted and automation First-Class Mail® letters changes so that the minimum postage charge would be for a 2-ounce letter instead of the current 1-ounce minimum postage charge.

One commenter thought that the postage for 1-ounce presorted or automation letters would be increasing to the 2-ounce prices; we clarified that instead the prices for 2-ounce letters would be closer to the current prices (with an increase as proposed) for 1-ounce letters.

We received two sets of comments detailing the difficulties that would ensue for some mailers to determine, and apply, proper postage to residual pieces with single-piece postage if they were not also eligible for the reduced postage for 2-ounce letters, and requesting therefore that those single-piece letters also be eligible for reduced postage. They asked multiple questions about postage payment and separation of mail, since the free second ounce does not include residual pieces.

Beginning on January 22, 2012, the Postal Service is revising First-Class Mail pricing to change the first weight increment for presort and automation First-Class Mail letters to include pieces weighing up to two ounces. This is sometimes referred to as ''2nd ounce free.'' This program was developed in conjunction with customers with the goal of adding value to the mail. For example, customers may use the additional weight for their operational or marketing purposes to realize more value from their mailings. On average, the price of First-Class Mail Presort letters and cards is increasing by 1.58 percent while the price for First-Class Mail single-piece letters and cards increases by 2.47 percent. The lower price increase for presorted First-Class Mail is a direct result of the ''2nd ounce free'' program. While the single-piece 1-ounce letter price increases by one cent, the price increases for most automation First-Class Mail letters increases by one cent or less.

Regarding residual letters, the standards for how additional postage is paid for those pieces will not change. Regarding permit imprint mailings, the current standards for identical weight pieces will remain; if a mailing contains nonidentical weight pieces (even if the postage for such may be the same) a special postage payment system must be used to document the correct piece counts and postage. Residual pieces that are not eligible for a free second ounce must be separated by postage increment for verification purposes.

The Postal Service also removes standards for Reply Rides Free, because the program ends on December 31, 2011.

Commercial First-Class Mail and Standard Mail Letters

The Postal Service modifies the process of submitting mailpieces to the Pricing and Classification Service Center (PCSC) for testing and deletes the provision that pieces with attached release cards be sent to Engineering.

Standard Mail Letters

We clarify that overflow Standard Mail® nonmachinable letters that mailers place into existing trays at another level require matching documentation. We received a request to clarify whether there are DSCF entry prices for nonmachinable Standard Mail letters weighing over 3.3 ounces at the mixed ADC sort level. There will be no DSCF entry prices for nonmachinable letters at mixed ADC prices.

We received a comment requesting that we confirm that the prices for Standard Mail basic carrier route letters are the same for automation-compatible and nonautomation letters. The prices are currently the same, and will continue to be the same for both types of letters. One commenter noted that the maximum weight for carrier route letters is ''less than 16 ounces.'' This is currently the case and will continue to be so.

Changes for Flats

Automation Flats

The USPS clarifies that automation flats must meet the standards for all flats (such as flexibility) in 301.1.0 as well as the standards in 301.3.0. We received two questions about whether the minimum size for automation flats will remain as it is currently. The minimum size for automation flats is not changing; the applicable dimensions for automation flats continue to be in DMM 301.3.2.