§ 522.15 No good time credits for inmates serving only civil contempt commitments.

While serving only the civil contempt commitment, an inmate is not entitled to good time sentence credit.

[FR Doc. 05–21968 Filed 11–3–05; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL66

Patients' Rights

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Veterans Affairs (VA) medical regulations to update the patients' rights regulation by bringing its provisions regarding medication, restraints, and seclusion into conformity with current law and practice. The changes are primarily intended to clarify that it is permissible for VA patients to receive medication prescribed by any appropriate health care professional authorized to prescribe medication, and that it is permissible for any authorized licensed health care professional to order the use of restraints and seclusion when necessary. The rule also makes nonsubstantive changes in the patients' rights regulation for purposes of clarification.

DATES: *Effective Date:* December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Drake, Program Director (108), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–9237. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 9, 2004 (69 FR 48184), we published a proposed rule amending VA's medical regulations at 38 CFR part 17 to update the patients' rights regulation by bringing its provisions regarding medication, restraints, and seclusion into conformity with current law and practice. We provided a 60-day comment period that ended on October 8, 2004. We received four comments. Based on the rationale set forth in the proposed rule and this document, we are adopting the proposed rule as a final rule.

One commenter expressed support for expanding the scope of health care professionals authorized to prescribe medication, and recognizing that licensed health care professionals other than physicians are authorized to order seclusion and restraint. The commenter expressed concern, however, that the reference to ''appropriate licensed health care professional'' might be interpreted as requiring that the authority to order restraint and seclusion be granted in the State licensing law rather than in some other State law. The commenter states that this is a crucial distinction because the authority for psychologists to order restraint and seclusion is not necessarily found in State licensing laws. The commenter asserts that such authority may be found in State laws governing health care institutions, or identifying patients' rights. The commenter recommends clarifying this point in the preamble to the regulation.

With regard to this issue, we note that the reference in the regulation to an ''appropriate licensed health care professional'' was not intended to require that the authority of a health care professional to order restraint and seclusion be specifically contained in State licensing law, or any State law, for that matter. Licensed health care professionals working in VA facilities may order the use of restraints and seclusion consistent with Federal, not State law. VA determines which health care providers are deemed ''appropriate licensed health care professionals'' for purposes of ordering restraint and seclusion through the privileging and credentialing process as outlined in VA policies and handbooks. No changes are made based on this comment.

One commenter opposed the rule because it would eliminate all references to physicians and replace those references with the words ''appropriate licensed health care professional.'' The commenter stated that there are clear and convincing differences between the training and education of physicians and other health care professionals, and that physicians should oversee the care of patients. The commenter states that although this can be done using a team approach, the physician should provide the diagnosis and determine the course of treatment. The commenter expressed concern with the expanding scope of practice for non-physician providers within the Veterans Health Administration and throughout the health care delivery system.

VA's policy is to provide high quality health care to patients. This is accomplished through the proper utilization of a variety of well-qualified and appropriately credentialed health care providers. In VA, non-physician health care providers commonly provide a diagnosis for patients and determine the course of treatment within their scope of practice. Nationwide, written VA policy establishes medication-prescribing authority for Clinical Nurse Specialists, Nurse Practitioners, Clinical Pharmacy Specialists, and Physicians Assistants. Written VA policy requires that procedures be in place to ensure that these practitioners are prescribing within their identified scope of practice, and licensure when appropriate, and that the scope of practice for credentialed health care providers is approved in accordance with written VHA policy. No changes are made based on these comments.

Two commenters expressed support for the proposed revision to this regulation. No changes are made based on these comments.

One nonsubstantive clarifying change has been made to this final rule. Longstanding provisions in § 17.33(e) require that an attending physician review the drug regimen of each patient at least every thirty days. In this final rule we are changing ''patient'' to ''inpatient'' to more clearly reflect the scope of this provision. This change does not alter the scope of the rule but merely clarifies VA's intent and longstanding interpretation that the thirty-day requirement is specific to inpatient treatment. As explained in the notice of proposed rulemaking, we are further clarifying that the review must be conducted by an appropriate health care provider.

Based on the rationale set forth in the proposed rule and this document, VA is adopting the provisions of the proposed rule as a final rule with the change noted above.

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 developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

VA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs 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 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

VA concludes that this final rule does not meet the economic significance threshold of $100 million effect on the economy in any one year under section 3(f)(1). VA concludes, however, that this final rule is a significant regulatory action under the Executive Order since it raises novel legal and policy issues under section 3(f)(4).

Regulatory Flexibility Act

The Secretary of Veterans Affairs (VA) hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will affect only veterans receiving certain VA benefits and does not affect any small entities. 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 64.005, Grants to States for the Construction of State Homes; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 13, 2005

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

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

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.33 is amended by:
■ a. In paragraph (b) introductory text, removing ''paragraph (c)'' and adding, in its place, ''paragraphs (c) and (d)''.
■ b. In paragraphs (c)(1) introductory text, (c)(2) introductory text, and (c)(2)(iv), removing ''health or mental health professional'' and adding, in its place, ''health care professional''.
■ c. In paragraph (c)(1)(ii), removing ''detaining'' and adding, in its place, ''detailing''.
■ d. In paragraph (c)(2) introductory text, removing ''this paragraph'' and adding, in its place, ''paragraph (c) of this section''.
■ e. In paragraph (c)(3), removing ''(c)(1)'' and adding, in its place, ''(b)''.
■ f. In paragraph (c)(4), removing ''pursuant to this paragraph'', and adding, in its place, ''under paragraph (c) of this section''.
■ g. In paragraph (c)(5), removing ''orders'' and adding, in its place, ''orders under paragraph (c) of this section''.
■ h. Revising paragraphs (d)(1), (d)(2), and (e).

The revisions read as follows:

§ 17.33 Patients' rights.

* * * * *

(d) * * * (1) Each patient has the right to be free from physical restraint or seclusion except in situations in which there is a substantial risk of imminent harm by the patient to himself, herself, or others and less restrictive means of preventing such harm have been determined to be inappropriate or insufficient. Patients will be physically restrained or placed in seclusion only on the written order of an appropriate licensed health care professional. The reason for any restraint order will be clearly documented in the progress notes of the patient's medical record. The written order may be entered on the basis of telephonic authority, but in such an event, an appropriate licensed health care professional must examine the patient and sign a written order within an appropriate timeframe that is in compliance with current community and/or accreditation standards. In emergency situations, where inability to contact an appropriate licensed health care professional prior to restraint is likely to result in immediate harm to the patient or others, the patient may be temporarily restrained by a member of the staff until appropriate authorization can be received from an appropriate licensed health care professional . Use of restraints or seclusion may continue for a period of time that does not exceed current community and/or accreditation standards, within which time an appropriate licensed health care professional shall again be consulted to determine if continuance of such restraint or seclusion is required. Restraint or seclusion may not be used as a punishment, for the convenience of staff, or as a substitute for treatment programs.

(2) While in restraint or seclusion, the patient must be seen within appropriate timeframes in compliance with current community and/or accreditation standards:

(i) By an appropriate health care professional who will monitor and chart the patient's physical and mental condition; and

(ii) By other ward personnel as frequently as is reasonable under existing circumstances.

* * * * *

(e) *Medication.* Patients have a right to be free from unnecessary or excessive medication. Except in an emergency, medication will be administered only on a written order of an appropriate health care professional in that patient's medical record. The written order may be entered on the basis of telephonic authority received from an appropriate health care professional, but in such event, the written order must be countersigned by an appropriate health care professional within 24 hours of the ordering of the medication. An

appropriate health care professional will be responsible for all medication given or administered to a patient. A review by an appropriate health care professional of the drug regimen of each inpatient shall take place at least every thirty (30) days. It is recognized that administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, for the convenience of the staff, or in quantities which interfere with the patient's treatment program.

* * * * *

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