

on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section

for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

TABLE 1.—APPLICABILITY

McDonnell Douglas model—	As identified in Boeing Alert Service Bulletin—
(1) DC-10-10, DC-10-10F, DC-10-30F (KC-10A and KDC-10), DC-10-40F, MD-10-10F, and MD-10-30F airplanes.	DC10-27A237, dated January 9, 2007.
(2) MD-11 and MD-11F airplanes .....	MD11-27A084, Revision 1, dated March 26, 2007.

#### Unsafe Condition

(d) This AD results from reports of standing water on the horizontal pressure panel above the main and center landing gear wheel wells. We are issuing this AD to prevent the accumulation of ice on the flight control cables in the wheel wells. When the landing gear doors open or vibration in this area occurs, such ice accumulation could break off and can cause injury to people or damage to property on the ground, can affect landing gear controls and rear spar flight control systems, can cause damage to other control systems, and might cause loss of control of the airplane.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Installation of Control Cable Freeze Protection

(f) Within 24 months after the effective date of this AD, install control cable freeze protection by making the changes specified in and in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

#### Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies,

notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on July 15, 2007.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Parts 17 and 70

#### RIN 2900-AM02

#### Beneficiary Travel Under 38 U.S.C. 111 Within the United States

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the beneficiary travel regulations of the Department of Veterans Affairs (VA) that provide a mechanism for payment of travel expenses within the United States under 38 U.S.C. 111 to help veterans and other persons obtain care and services from VA's Veterans Health Administration (VHA). We propose to revise the regulations to more fully implement the statutory provisions governing such payments.

**DATES:** Comments must be received by VA on or before September 21, 2007.

#### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**McDonnell Douglas:** Docket No. FAA-2007-28748; Directorate Identifier 2007-NM-115-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by September 6, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to airplanes identified in Table 1 of this AD, certificated in any category.

**ADDRESSES:** Written comments may be submitted through <http://www.regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420 or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AM02—Beneficiary Travel Under 38 U.S.C. 111 Within the United States." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>. See the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

#### FOR FURTHER INFORMATION CONTACT:

Tony Guagliardo, Chief Business Office, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 254-0406. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** We propose to revise the beneficiary travel

regulations captioned "Transportation of Claimants and Beneficiaries." These regulations provide a mechanism for payment of travel expenses within the United States under 38 U.S.C. 111 to help veterans and other persons obtain care and services from VHA. The current regulations are set forth at 38 CFR 17.143 through 17.145. We propose to transfer the current regulations to a new 38 CFR part 70 and to make changes as discussed below.

The current regulations at § 17.143(b) through (e) contain provisions listing the eligibility criteria for paying beneficiary travel expenses under 38 U.S.C. 111, for charging a statutory deductible, and for paying beneficiary travel expenses based upon a finding that an individual is unable to defray the expenses of travel. Except for changes discussed below, the substance of these provisions is included in proposed §§ 70.4, 70.10, 70.20, and 70.31.

The current regulations at § 17.143(f), (g), (h), and (k) refer to types of activities for which beneficiary travel may be paid. We propose to remove these provisions for reasons set forth below in the discussion regarding the Medical Benefits Package under the heading "§ 70.10—Eligible persons."

The current regulations at § 17.143(i), (j), (l), and (m) concern special requirements for payment. Except for changes discussed below, the substance of these provisions is included in proposed § 70.30.

The current regulation at § 17.143(n) concerns the provision of VA beneficiary travel to beneficiaries of other Federal agencies and allied beneficiaries as defined by 38 U.S.C. 109. Proposed § 70.10 provides eligibility for such beneficiaries subject to reimbursement agreement with the appropriate agency or government and is essentially unchanged from the previous regulation.

Current § 17.144 concerns the application of the deductible requirement, which we propose to amend and move to new § 70.31. Current § 17.144 also sets forth payment principles concerning travel costs, which we propose to amend and move to new § 70.30.

Current § 17.145 contains provisions regarding general prior approval for beneficiary travel. In a document published in the **Federal Register** on October 21, 1991 (56 FR 52,426), we deleted the main provisions requiring a general prior approval for beneficiary travel. We intended to remove all of the provisions concerning general prior approval for beneficiary travel, but inadvertently failed to remove § 17.145.

Accordingly, we propose to remove this section.

#### **Purpose and Scope—§ 70.1**

Section 70.1 would explain the purpose and scope of the VA's beneficiary travel regulations consistent with the current regulations. The provisions of this section would not constitute a substantive change.

#### **Definitions—§ 70.2**

Proposed § 70.2 would establish definitions of "attendant," "beneficiary," "claimant," "clinician," "emergency treatment," "irregular discharge," "special mode of transportation," "United States," "VHA," "VA," "VA authorized health care facility," and "VA facility." While used in prior regulations the terms "attendant," "beneficiary," and "irregular discharge" have not been previously defined. This led to occasional confusion by veterans, the public, and VA field stations when processing claims for beneficiary travel payments. Therefore, for purposes of clarification, we propose to define these terms in the new part 70.

Currently, 38 CFR 17.143(c)(2)(i) requires a "physician" to make medical determinations regarding the need for a special mode of transportation. We deleted the requirement that a physician make the determination. We would expect a clinician to be the decisionmaker. However, by not specifying in the regulation that a physician will be the decisionmaker will ensure that the claimant has a meaningful right of appeal via the VA clinical appeals process should he or she disagree with the decision of the clinician.

The definition of "United States" is consistent with the definition of "State" in 38 U.S.C. 101(20). The term "claimant" is the same as that established in 38 CFR 17.123.

We propose to define "VA authorized health care facility" and "VA facility" for clarification purposes due to occasional confusion on the part of veterans, the public, and VA staff.

The definition of "special mode of transportation" has been changed in the proposed rule to clarify the status of privately-owned vehicles (POV) that have been modified to transport wheelchairs or disabled individuals. The intent of "special mode of transportation" within the context of 38 U.S.C. 111 is to provide payment for beneficiary travel in commercially operated vehicles. Therefore, we propose that for the purposes of this rule that a POV is not to be considered a "special mode of transportation."

Existing regulations do not define the term "emergency treatment." However, the proposed rule would define that term because it is one of the factors that VHA considers when authorizing and providing payment for travel by special mode of transportation. We propose to define "emergency treatment" to mean "treatment for a condition of such a 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 would be met if there were 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)." This definition provides a workable, common-sense standard for determining when emergency treatment would occur for purposes of determinations under proposed §§ 70.4 (Criteria for approvals), 70.20 (Application), and 70.32 (Reimbursement or prior payment). Also, this definition is consistent with the standard in 38 CFR 17.1002 for determining when emergency treatment would occur under the regulations concerning payment for emergency transportation of veterans for non-service-connected conditions in non-VA facilities.

#### **Determination of Secretary—§ 70.3**

Proposed § 70.3 is new. It would implement 38 U.S.C. 111, which authorizes the Secretary to make beneficiary travel payments in any fiscal year if he determines that VA has available funding.

#### **Criteria for Approvals—§ 70.4**

Although it is apparent from the current regulations at 38 CFR 17.143 and 17.144 that a beneficiary must meet certain requirements to obtain payment for beneficiary travel (e.g., must be within an eligible category, and must obtain prior approval for a special mode of transportation in non-emergency situations), the current regulations do not set forth all of the applicable criteria for approving or disapproving payments under current VA practice. Proposed § 70.4 provides a full list of the approval criteria that VA would apply to claims for beneficiary travel, including the individuals who would be eligible for benefits, application procedures, payment criteria for travel without prior

VA authorization, and criteria for approval of travel in a special mode of transportation. VA has determined that these criteria would permit VA to distribute available travel funds to beneficiaries under the discretionary authority in 38 U.S.C. 111 while maintaining high standards for delivery of VA's health care benefits. Also, for purposes of fairness, the proposed rule would allow payment for travel when the failure to obtain scheduled care or services was due to actions such as a last minute clinic cancellation by VA officials or persons acting on behalf of VA. Applicants would be required to satisfy all of the criteria to receive payments.

Proposed § 70.4(b) provides that when payment for beneficiary travel is requested after the provision of care or services and the travel did not include a special mode of transportation, VA would approve round-trip payment under this part only if the travel was in connection with care or services that were scheduled with VHA prior to arrival at the facility where the care or services were to be obtained, or for emergency treatment. Also, proposed § 70.4(c) provides that when payment for beneficiary travel is requested for travel for care or services that were not scheduled with VHA prior to arrival at the facility and the travel did not include a special mode of transportation, VA would not approve round-trip payment. However, if care or services actually are provided during such unscheduled visits, VA would approve payment for the return trip.

Proposed § 70.4(b) and (c) would help ensure that beneficiary travel is covered only when necessary for the provision of care or services and not merely to obtain cash for other reasons. It would also help ensure that beneficiaries have the means to return home after receiving nonscheduled care or services.

Proposed § 70.4(d) restates a requirement in current 38 CFR 17.143(c)(2)(iii) for prior approval of travel by a special mode of transportation. Proposed paragraph (d) also restates a provision in current § 17.143(c)(2)(i).

#### **Eligible Persons—§ 70.10**

The proposed rule at § 70.10 designates as eligible persons all of those categories of persons specifically mentioned in VA statutes as persons for which payment for beneficiary travel may be made by VHA under 38 U.S.C. 111. These are the same persons eligible for beneficiary travel payments under the current program, with one exception. The current regulations include individuals eligible for payment

of travel under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), which provides care or services for certain spouses or children of veterans or persons who died in the line of duty. We propose to remove CHAMPVA beneficiaries getting their care through VA facilities from the list of persons eligible for beneficiary travel payments because there exists no statutory authority to provide them these benefits. Although 38 U.S.C. 1781 provides that these beneficiaries shall be eligible for the same medical services as a veteran, a veteran must still meet the additional eligibility criteria set forth in section 111 to receive beneficiary travel benefits. That is, not all veterans are eligible for beneficiary travel benefits under section 111. Thus a CHAMPVA beneficiary receiving care through VA facilities would similarly have to meet the additional eligibility criteria of section 111, which they do not. VA is requesting comments on this change.

Under 38 U.S.C. 111, certain veterans are eligible for beneficiary travel payments for "examination, treatment, or care." The proposed rule at § 70.10(b), provides that "examination, treatment, or care" means all of the care provided under the Medical Benefits Package in 38 CFR 17.38. This definition would replace current 38 CFR 17.143, which limits beneficiary travel payments to certain types of activities (hospital admissions, hospital readmissions, preparatory and post hospital care, hospital discharges, and outpatient services). We propose to clearly state in broader language that beneficiary travel payments are available for all of the care services provided under the Medical Benefits Package. The current regulations and the proposed rule both allow for payment related to the use of a special mode of transportation if an individual is unable to defray the expense. Therefore, the definition of "unable to defray" in proposed § 70.10(c) is the same as in current 38 CFR 17.143(e). This definition is for the purposes of this proposed rule only and does not apply to any other regulations promulgated by VA.

We note that the provisions of current § 17.143(d) refer to 38 U.S.C. 1701(6)(B) and 38 U.S.C. 1713. These statutes are not included as authorities in the proposed rule because Public Law 107-135 redesignated the authorities as 38 U.S.C. 1782 and 1783. These provisions concern limited eligibility for beneficiary travel payments for individuals with specified relationships to certain veterans.

#### **Application—§ 70.20**

The provisions of proposed § 70.20 are new, except as discussed below. The new provisions are consistent with current VA policy and practice at VA health care facilities.

Current § 17.144(d) provides, "Transportation will not be authorized for the cost of the travel in excess of the actual expense incurred by any person as certified by that person in writing." In contrast, the proposed rule at § 70.20(a) generally provides that a claimant may apply for beneficiary travel payments orally or in writing but must provide to VA the receipt for each expense other than for mileage. The proposed rule will reduce the burden on claimants while ensuring that VA obtains the necessary information for making beneficiary travel determinations. Veterans usually request payment of beneficiary travel before they leave the VA facility. There is no need to obtain a certification or written request since VA can independently determine the length of travel and the receipts would establish travel expenditures other than mileage.

For beneficiary travel that does not include a special mode of transportation, proposed § 70.20(b) provides that a claimant must apply for payment of beneficiary travel within 30 days after the travel is completed. In the usual case, it is not administratively feasible for VA to grant approval prior to travel. Further, the proposed provisions requiring that a claimant must apply for payment of beneficiary travel within 30 days after the travel is completed would provide sufficient time for applicants to apply and would assist VA in monitoring the expenditure of beneficiary travel funds.

For beneficiary travel that includes a special mode of transportation, proposed § 70.20(c), with one exception, provides that a claimant must apply for payment of beneficiary travel and obtain approval from VA prior to the travel. Under the exception, if the travel included a special mode of transportation and the claimant without prior approval applied for payment of the beneficiary travel within 30 days after the travel is completed, the application would be considered timely submitted if the travel by special mode of transportation was for emergency treatment. This is consistent with the time period for submitting applications discussed above, limits VA's payments to actual reimbursements, and otherwise implements specific requirements of 38 U.S.C. 111(b)(3)(A) regarding prior approval.

Proposed § 70.20(d) provides a new requirement that a claimant must apply for and receive approval prior to incurring expenses for meals and/or lodging. Current 38 CFR 17.143(l) authorizes payments for meals and lodging but does not require that the claimant obtain prior VA approval. The prior approval provisions would provide VA with the opportunity to explore reasonable options and minimize costs.

The proposed rule at § 70.20(e) provides that if VA determines that additional information is needed to make a determination, VA would notify the claimant in writing of the deficiency and request the needed additional information. Section 70.20(e) further provides that if the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the 1-year submission period required by 38 U.S.C. 5103(b)(1) based on all the information contained in the file, including any information it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information within 1 year of the date of the request, VA must readjudicate the claim. This would help ensure the timely resolution of matters while meeting the statutory requirements.

Proposed § 70.20(f) provides that if a claimant becomes eligible for beneficiary travel benefits after the travel takes place, the beneficiary may apply for such benefits within 30 days of the date when he or she became eligible. This would help ensure that persons would not be barred from beneficiary travel in those cases when they could not have known they were eligible for such benefit at the time of travel.

To ensure that beneficiaries meet the application deadline, the proposed rule at § 70.20(g) provides that the date of an application for beneficiary travel is the postmark date, if mailed; or the date of submission if hand delivered, provided by electronic means, or provided orally.

#### **Where To Apply—§ 70.21**

The proposed rule at § 70.21 provides that claimants must apply for travel benefits at the Chief Business Office or with the designated official at the VA health care facility responsible for the care being provided and for which travel is required. While this has been general field policy, previous regulations have not designated an office or official for receipt of beneficiary travel claims. Designation of an office or official to receive claims will help ensure that requests for travel

benefits are appropriately routed and timely processed.

#### **Payment Principles—§ 70.30**

Under proposed § 70.30(a), the Secretary, subject to the deductibles required under § 70.31, would pay for beneficiary travel as explained below.

Under 38 U.S.C. 111, VA has discretion to establish payment principles based on the number of miles traveled and/or based on actual necessary expenses. Pursuant to that discretion, VA currently pays a per-mile allowance for travel by POV and pays the actual cost of travel by common carrier and for other necessary expenses attendant to travel, subject to specified limitations. However, current regulations do not specifically state that reimbursement will be based upon mileage (except as noted). Therefore, proposed paragraph (a) includes provisions stating that the Secretary would establish and pay a per-mile rate for use of a POV or the actual cost for use of the most economical common carrier (bus, train, taxi, airplane, etc.), for travel to and from VA authorized health care and for travel by a POV for a compensation and pension examination that is solely “for the convenience of the Government” (e.g., repeat a laboratory test, redo a poor quality x-ray). The proposed rule would establish when and how the Secretary would determine whether the mileage rate should be changed. The payment principles are based on the Secretary’s determination under § 70.3 to allocate available funds for VA health care programs, and are intended to provide a reasonable and uniform amount of reimbursement consistent with the administration of VA’s overall health care program.

Proposed § 70.30(a)(1)(ii) and (iii) limiting payment for the use of a POV and payment for the use of a common carrier are based on statutory limitations at 38 U.S.C. 111(g)(2)(B) and replace 38 CFR 17.144(c).

Proposed § 70.30(a)(2) includes provisions stating that VA would pay the actual cost of ferry fares, bridge tolls, road tolls, tunnel tolls and would pay the actual cost of a special mode of transportation. This implements provisions in 38 U.S.C. 111(a) and (b)(3)(A).

Proposed § 70.30(a)(3) includes provisions stating that VA would pay the actual cost for meals, lodging, or both, when VA determines that an overnight stay is required, not to exceed 50 percent of the amount allowed for government employees under 5 U.S.C. 5702. The section also identifies four factors as examples of those VA will

consider in determining whether an overnight stay is necessary. Paying for the cost of meals only when there is an overnight stay is a reasonable cost-control measure. Current regulations do not specify a maximum for payment of meals and lodging. This proposed payment principle is based on VA’s concern about the adequate funding and administration of all VA health care programs; in view of the overall cost of administering these programs, it is intended to provide a reasonable and uniform amount of payment.

The proposed rule at § 70.30(b) would place limits on beneficiary travel payments as explained below.

Current 38 CFR 17.143(j)(1) provides that VA will pay expenses for return transportation to “the point from which the beneficiary traveled to receive care, or any other place if there is no additional cost.” Proposed paragraphs (b)(1) and (2), except as discussed below, would clarify that payment is limited to travel from the beneficiary’s residence to the nearest facility (VA facility or non-VA facility if VA determines that it is necessary to obtain the care or services at a non-VA facility) where the care or services could be provided and from such VA facility to the beneficiary’s residence. This clarification is necessary to ensure that beneficiaries do not report longer distances than they actually traveled to obtain higher payments. Further, the exceptions set forth below explain those circumstances when it appears appropriate to pay benefits from points other than the beneficiary’s residence.

If the beneficiary is not staying at his or her residence, proposed § 70.30(b)(3) would permit payment for travel from or to a place where the beneficiary is residing but this payment may not exceed the amount that would be payable for travel from the beneficiary’s residence. This provision clarifies current 38 CFR 17.143(j)(1).

Current § 17.143(j)(3) provides, “Transportation may be furnished to a point other than that from which a patient had proceeded to a hospital upon a showing of bona fide change of address to the patient’s residence during the period of hospital care.” VA intended that this provision would allow for payment for an individual’s return trip to a different location in the same area, not to a distant place. Proposed § 70.30(b)(4) would permit payment for the return trip travel to the new residence in a distant place, except that payment may not exceed the amount that would be allowed from the facility nearest to the new residence where the care or services could have been provided. For example, if during a

period of care or services in Baltimore, a beneficiary changed his or her address from Baltimore to Detroit, payment for the return trip would be limited to that allowed for traveling to the new residence from the nearest facility to the new residence in Detroit where the care or services could have been provided.

Proposed § 70.30(b)(5), which would allow payment for certain travel for beneficiaries, in substance, restates the current provisions in 38 CFR 17.143(j)(2).

Proposed § 70.30(b)(6) provides that payment may be made for travel from a non-VA health care facility where the beneficiary is receiving care or services to the nearest VA facility where the appropriate care or services could be provided. This new provision would clarify that VA may pay for travel to a VA facility from another medical facility, not just from the veteran's residence.

Proposed § 70.30(b)(7) provides that payment would not be made for return travel for a patient receiving an irregular discharge. This, in substance restates most of current 38 CFR 17.143(j)(4). However, the revised version does not include a provision in the current regulation that allows payment when the patient receiving an irregular discharge is unable to defray the expense of the return travel. That provision was deleted because payment in such cases inappropriately encourages the unacceptable behavior of leaving the facility on an irregular discharge.

Proposed § 70.30(b)(8) provides that on a case-by-case basis, payment for travel may be paid for any distance if it is financially favorable to the government. This new provision would provide VA with flexibility to, for example, pay for travel to a more distant nursing home when admission to that nursing home is a prerequisite to qualify for community assistance that would more than offset the additional travel payment.

Proposed § 70.30(c) provides that payment for travel of an attendant would be calculated on the same basis as for the beneficiary except that duplicate payment for costs would not be allowed. For example, if a beneficiary and an attendant travel in the same automobile, the travel would be limited to only one mileage payment. This new provision would clarify and implement the provisions of 38 U.S.C. 111(e) regarding payment of beneficiary travel for an attendant.

Proposed § 70.30(f) provides that the Secretary shall conduct periodic investigations in consultation with the Administrator of the General Services

Administration in order to determine whether reimbursement rates noted in § 70.30(a) should change. While always required by statute this would be an addition to current beneficiary travel regulations.

Although VA policy is generally to provide payments for beneficiary travel consistent with statutory authority and availability of funds, there are some situations where such payments are not medically feasible. Accordingly, under proposed § 70.30(e), VA would not pay beneficiary travel if paying a travel allowance would be counterproductive to prescribed therapy, and the determination is recorded in the person's VA medical records, and the chief of the care service endorses the determination in the medical records. These provisions reflect the policy of withholding payment for beneficiary travel when such payment could be detrimental to a beneficiary's treatment.

#### **Deductibles—§ 70.31**

Paragraph (a) of proposed § 70.31 provides that the VA shall deduct an amount established by the Secretary (currently \$3 or the total amount of travel if it is less than \$3) for each one-way trip from the amount otherwise payable for such one-way trip, except that VA shall not make any more deductions in a calendar month after the completion of six one-way trips for which deductions were made in such calendar month. In addition, whenever the Secretary makes adjustments to the mileage reimbursement rates as noted in § 70.30(a)(1)(iv), the deductible amount will be adjusted proportionately.

Proposed § 70.31 implements 38 U.S.C. 111(c)(1), (2) and (5), which require VA to deduct \$3 from the amount otherwise payable for each one-way trip with a calendar monthly cap of \$18 (but limiting these \$3 deductions to six one-way trips), and to adjust proportionately the amounts whenever there is a change to the mileage rates. However, since the deductible amount and monthly cap could change, these proposed regulations do not limit those rates to those currently established. In addition, we do not interpret 38 U.S.C. 111(c) as requiring VA to deduct more than the cost of a one-way trip if the reimbursement would be less than the deductible. Therefore, in a given calendar month, we would pay beneficiary travel without a deductible for trips seven, eight, nine, and so on, even if the total deductible amount for the first six trips were less than the monthly cap in effect at time of travel.

Section 111(c)(4) further provides that the VA may waive the deductible when imposition of the deductible would

cause severe financial hardship. Under the current regulations, the test for "severe financial hardship" is essentially the same as "unable to defray," which is used for determinations regarding basic eligibility for beneficiary travel. However, we do not believe that Congress intended the terms "unable to defray" and "severe financial hardship" to have the same meaning. The term "severe financial hardship" would seem to require that a beneficiary have less financial ability than would be the maximum allowed for basic eligibility for beneficiary travel. Accordingly, we propose that an individual with "severe financial hardship" is one who has no more than 90 percent of the maximum income allowed for meeting the "unable to defray" standard.

#### **Reimbursement or Prior Payment—§ 70.32**

Proposed § 70.32(a) provides that payment would be made on a reimbursement basis after the travel has occurred with the following two statutory exceptions.

Upon completion of examination, treatment, or care, 38 U.S.C. 111(d) specifically allows payment to be made before the return travel has occurred. This helps provide the beneficiary with resources for return travel. This exception is included in proposed § 70.32(a)(1).

With respect to a special mode of travel, 38 U.S.C. 111(b)(3)(B) authorizes VA to provide payment for beneficiary travel to the provider of the transportation before determining eligibility of such person for payment if VA determines that providing payment is in the best interest of furnishing care and services. This exception is included in proposed § 70.32(a)(2). We would interpret "is in the best interest of furnishing care and services" to mean "that the travel is for emergency treatment and VA determines that the beneficiary is eligible for payment for the travel." In non-emergency situations, we would have time to determine eligibility before travel. Further, the proposed provisions are designed to help ensure that individuals likely to be subsequently found eligible are not initially denied travel by special mode of transportation.

Proposed § 70.32(b) provides that payment would be made to the beneficiary, except that VA may make a beneficiary travel payment to a person or organization other than the beneficiary upon satisfactory evidence that the person or organization actually provided or paid for the travel. This is for the convenience of the veteran or the

person or organization that provided or paid for the travel.

#### **Administrative Procedures—§ 70.40**

Proposed § 70.40 incorporates reconsideration and appeal rights as established by 38 CFR 17.133 and 38 CFR parts 19 and 20. These rights will be utilized when an adverse decision is made regarding beneficiary travel benefits. This is an established procedure, which we intend to clarify in this proposed rule.

#### **Recovery of Payments—§ 70.41**

For informational purposes, the proposed rule at § 70.41 makes reference to applicable VA provisions governing recovery of payments.

#### **False Statements—§ 70.42**

For informational purposes, the proposed rule at § 70.42 advises that a person who makes a false statement for the purpose of obtaining payments for beneficiary travel would be subject to prosecution under applicable laws, including 18 U.S.C. 1001.

#### **Reduced Fare Requests—§ 70.50**

Proposed § 70.50 restates statutory provisions authorizing VA to make forms available to veterans and their authorized attendants for use in requesting a reduced fare from transportation providers when they are traveling at their own expense in relation to VA or VA-authorized health care. Whether to grant a reduced fare is determined by the transportation provider.

#### **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). The Executive Order classifies a “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 proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order and/or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

#### **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 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 given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### **Paperwork Reduction Act**

The proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) (“Act”) that would need approval by the Office of Management and Budget (OMB). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for review.

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.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Regulations Management (00REG), Room 1068, 810 Vermont Ave., NW., Washington, DC 20420; or faxed to (202) 273–9026; or e-mailed to <http://www.regulations.gov>. Comments should

indicate that they are submitted in response to “RIN 2900–AM02.”

*Title:* VHA Beneficiary Travel Program Under 38 U.S.C. 111.

*Summary of collection of information:* The proposed rule at § 70.20 requires that certain information is required by VA to determine payment of VHA beneficiary travel under 38 U.S.C. 111. In most cases, this information is electronically available due to previous submissions by the claimant for other VHA benefits or through other VA data sources and no further information is required for VA to determine eligibility and payment amount for VHA beneficiary travel. However, in those cases where a claimant requests reimbursement for the cost of ferry fares, bridge tolls, road tolls, or tunnel tolls in accordance with § 70.30(a)(2), such information is not available and receipt for those expenses must be collected from the claimant.

*Description of the need for information and proposed use of information:* This information is needed to determine eligibility for payment of beneficiary travel.

*Description of likely respondents:* Beneficiaries and attendants requesting payment for beneficiary travel.

*Estimated number of respondents per year:* 23,835.

*Estimated frequency of responses per year:* 3 per individual (total of 68,505).

*Estimated average burden per response:* 3 minutes.

*Estimated total annual reporting and recordkeeping burden:* 3,425 hours.

The Department considers comments by the public on proposed collections of information in:

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
  - Enhancing the quality, usefulness, and clarity of the information to be collected; and
  - Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed

rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

### Regulatory Flexibility Act

VA hereby certifies that the provisions of the proposed rule 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. 601–602. This proposed rule primarily affects individuals and any effects on small businesses would be inconsequential. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles are 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.013, Veterans Prosthetic Appliances; 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 Parts 17 and 70

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 record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: March 26, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

**Editorial Note:** This document was received at the Office of the Federal Register on July 17, 2007.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR Chapter I as follows:

### PART 17—MEDICAL

1. The authority citation continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as stated in specific sections.

2. In § 17.38, revise paragraph (a)(1)(xii) to read as follows:

#### § 17.38 Medical benefits package.

(a) \* \* \*

(1) \* \* \*

(xii) Payment of beneficiary travel as authorized under 38 CFR part 70.

\* \* \* \* \*

#### §§ 17.143 through 17.145 [Removed]

3. Remove §§ 17.143 through 17.145 and the undesignated center heading “TRANSPORTATION OF CLAIMANTS AND BENEFICIARIES”.

4. Add a new part 70 to read as follows:

### PART 70—VHA BENEFICIARY TRAVEL UNDER 38 U.S.C. 111

Sec.

70.1 Purpose and scope.

70.2 Definitions.

70.3 Determination of Secretary.

70.4 Criteria for approvals.

70.10 Eligible persons.

70.20 Application.

70.21 Where to apply.

70.30 Payment principles.

70.31 Deductibles.

70.32 Reimbursement or prior payment.

70.40 Administrative procedures.

70.41 Recovery of payments.

70.42 False statements.

70.50 Reduced fare requests.

**Authority:** 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302.

#### § 70.1 Purpose and scope.

(a) This part provides a mechanism under 38 U.S.C. 111 for the Veterans Health Administration (VHA) to make payments for travel expenses incurred in the United States to help veterans and other persons obtain care or services from VHA.

(b) This part does not cover payment for emergency transportation of veterans for non-service-connected conditions in non-VA facilities when the payment for transportation is covered by §§ 17.1000 through 17.1008 of this chapter, as authorized by 38 U.S.C. 1725.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### § 70.2 Definitions.

For purposes of this part:

*Attendant* means an individual traveling with a beneficiary who is eligible for beneficiary travel and requires the aid and/or physical assistance of another person.

*Beneficiary* means a person determined eligible for VHA benefits.

*Claimant* means a veteran who received services (or his/her guardian) or the hospital, clinic, or community

resource that provided the services, or the person other than the veteran who paid for the services.

*Clinician* means a Physician, Physician Assistant (PA), Nurse Practitioner (NP), Psychologist, or other independent licensed practitioner.

*Emergency treatment* means treatment for a condition of such a 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 would be met if there were 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).

*Irregular discharge* means the release of a competent patient from a VA or VA authorized hospital, nursing home, or domiciliary care due to: refusal, neglect or obstruction of examination or treatment; leaving without the approval of the treating health care clinician; or disorderly conduct and discharge is the appropriate disciplinary action.

*Special mode of transportation* means an ambulance, ambulette, air ambulance, wheelchair van, or other modes of transportation specially designed to transport disabled persons (this would not include a mode of transportation not specifically designed to transport disabled persons, such as a bus, subway, taxi, train, or airplane). A modified, privately owned vehicle, with special adaptive equipment and/or capable of transporting disabled persons is not a special mode of transportation for the purposes of this rule.

*United States* means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

*VA* means the Department of Veterans Affairs.

*VA authorized health care facility* means a non-VA health care facility where VA has approved care for an eligible beneficiary at VA expense.

*VA facility* means VA Medical Center (VAMC), VA Outpatient Clinic (OPC), or VA Community Based Outpatient Clinic (CBOC).

*VHA* means the Veterans Health Administration, a principal unit within VA.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)



**§ 70.3 Determination of Secretary.**

For each fiscal year, the Secretary of Veterans Affairs will determine whether funds are available for paying expenses of VHA beneficiary travel under 38 U.S.C. 111. If the Secretary determines that funds are available for such purpose, VA will make payment for expenses of such travel in accordance with the provisions of this part.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

**§ 70.4 Criteria for approvals.**

(a) VA will approve payment for beneficiary travel under this part if:

(1) The travel was made to obtain care or services for a person who is eligible for beneficiary travel payments under § 70.10,

(2) The travel was in connection with care or services for which such person was eligible under the laws administered by VA,

(3) Application was made in accordance with § 70.20,

(4) All of the requirements of this part for payment are met, and

(5) Any failure to obtain the care or services was due to actions by officials of VA or persons acting on behalf of VA.

(b) When a claimant requests payment for beneficiary travel after the provision of care or services and the travel did not include a special mode of transportation, VA will approve round-trip payment under this part only if the travel was:

(1) In connection with care or services that were scheduled with VHA prior to arrival at the VHA-designated facility, or

(2) For emergency treatment.

(c) When a claimant requests payment for beneficiary travel for care or services that were not scheduled with VHA prior to arrival at the facility and were not emergency treatment and the travel did not include a special mode of transportation, VA will not approve round-trip payment under this part but will approve payment for the return trip if VHA actually provided care or services.

(d) Except as provided in § 70.32 concerning reimbursement or prior payment, when payment for beneficiary travel is requested for travel that includes a special mode of transportation, VA will approve payment under this part if:

(1) The travel is medically required,

(2) The beneficiary is unable to defray the cost of such transportation, and

(3) VHA approved the travel prior to travel in the special mode of transportation or the travel was undertaken in connection with a medical emergency.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

**§ 70.10 Eligible persons.**

(a) The following listed persons are eligible for beneficiary travel payments under this part:

(1) A veteran who travels to or from a VA facility or VA authorized health care facility in connection with treatment or care for a service-connected disability (regardless of percent of disability).

(2) A veteran with a service-connected disability rated at 30 percent or more who travels to or from a VA facility or VA authorized health care facility for examination, treatment, or care for any condition.

(3) A veteran who travels to a VA facility or VA authorized health care facility for a scheduled compensation and pension examination.

(4) A veteran receiving pension under 38 U.S.C. 1521, who travels to or from a VA facility or VA authorized health care facility for examination, treatment, or care.

(5) A veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of pension that the veteran would receive under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the veteran was eligible for pension and who travels to or from a VA facility or VA authorized health care facility for examination, treatment, or care.

(6) A veteran who travels to or from a VA facility or VA authorized health care facility for examination, treatment, or care, and who is unable to defray the expenses of that travel as defined in paragraph (c) of this section.

(7) A member of a veteran's immediate family, a veteran's legal guardian, or a person in whose household the veteran certifies an intention to live, if such person is traveling for consultation, professional counseling, training, or mental health services concerning a veteran who is receiving care for a service-connected disability; or a member of a veteran's immediate family, if such person is traveling for bereavement counseling relating to the death of such veteran in the active military, naval, or air service in the line of duty and under circumstances not due to the veteran's own misconduct.

(8) An attendant other than a VA employee, who is accompanying and assisting a beneficiary eligible for beneficiary travel payments under this section, when such beneficiary is medically determined to require the presence of the attendant because of a physical or mental condition.

(9) Beneficiaries of other Federal agencies, incident to medical services rendered upon requests of those agencies, subject to reimbursement agreement by those agencies.

(10) Allied beneficiaries as defined by 38 U.S.C. 109 subject to reimbursement agreement by the government concerned.

(b) For purposes of this section, the term "examination, treatment, or care" means the care services provided under the Medical Benefits Package in § 17.38 of this chapter.

(c) For purposes of this section, a beneficiary shall be considered unable to defray the expenses of travel if the beneficiary:

(1) Has an income for the year (as defined under 38 U.S.C. 1503) immediately preceding the application for beneficiary travel that does not exceed the maximum annual rate of pension that the beneficiary would receive under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the beneficiary were eligible for pension during that year; or

(2) Is able to demonstrate that due to circumstances such as loss of employment, or incurrence of a disability, his or her income in the year of travel will not exceed the maximum annual rate of pension that the beneficiary would receive under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the beneficiary were eligible for pension; or

(3) Has a service-connected disability rated at least 30 percent; or

(4) Is traveling in connection with treatment of a service-connected disability.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

**§ 70.20 Application.**

(a) A claimant may apply for beneficiary travel orally or in writing but must provide VA the receipt for each expense other than for mileage.

(b) A claimant must apply for payment of beneficiary travel within 30 calendar days after completing beneficiary travel that does not include a special mode of transportation.

(c) For beneficiary travel that includes a special mode of transportation, a claimant must apply for payment of beneficiary travel and obtain approval from VA prior to the travel; however, if the travel included a special mode of transportation and the claimant without prior approval applies for payment of the beneficiary travel within 30 calendar days after the travel is completed, the application will be considered timely submitted if the travel was for emergency treatment.



(d) Notwithstanding other provisions of this section, for travel that includes meals and/or lodging, a claimant must apply for and receive approval prior to obtaining the meals and/or lodging.

(e) If VA determines that additional information is needed to make a determination concerning an application under this part, VA will notify the claimant in writing of the deficiency and request additional information. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the 1-year submission period required by 38 U.S.C. 5103(b)(1) based on all the information contained in the file, including any information it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information within 1 year of the date of the request, VA must readjudicate the claim.

(f) Notwithstanding other provisions of this section, if a person becomes eligible for payment of beneficiary travel after the travel takes place, payment may be made if the person applies for travel benefits within 30 days of the date when the person became eligible for travel benefits.

(g) The date of an application for beneficiary travel is the postmark date, if mailed; or the date of submission if hand delivered, provided by electronic means, or provided orally.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.21 Where to apply.**

Claimants for beneficiary travel must submit the information required in § 70.20 to the Chief of the Business Office or other designee at the VA medical facility responsible for the medical care or services being provided and for which travel is required.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.30 Payment principles.**

(a) Subject to the other provisions of this section and subject to the deductibles required under § 70.31, VA will pay the following for beneficiary travel by an eligible beneficiary when travel expenses are actually incurred:

(1) The per mile rate established by the Secretary for the period of travel for use of privately owned vehicle or the actual cost for use of the most economical common carrier (bus, train, taxi, airplane, etc.), for travel to and from VA or VA authorized health care subject to the following:

(i) Travel by a privately-owned vehicle for a compensation and pension examination that is solely for the

convenience of the Government (e.g., repeat a laboratory test, redo a poor quality x-ray) may have a different per mile rate if deemed appropriate by the Secretary.

(ii) Per mile payment for use of privately-owned vehicle may not exceed the cost of such travel by public transportation (even if it is for the convenience of the government) unless determined to be medically necessary.

(iii) Payment for a common carrier may not exceed the amount allowed for a privately-owned vehicle unless travel by a privately-owned vehicle is not reasonably accessible or is determined to be medically necessary.

(iv) As required by law, each time the Federal government makes a change in mileage rates payable under 5 U.S.C. 5702 and 5704 for Federal employee travel by privately-owned vehicle, but not less frequently than annually, the Secretary shall conduct an investigation of the actual costs of travel, including lodging and subsistence. In conducting the investigation, the Secretary shall consult with the Administrator of the General Services Administration, the Secretary of Transportation, and veterans' service organizations. As part of the investigation, the Secretary shall review and consider various factors including vehicle depreciation, State and Federal vehicle taxes and the costs of gasoline, oil, maintenance, accessories, parts, tires, and insurance. However, to the extent that the Administrator of General Services has, within a reasonable period of time, conducted an investigation of travel costs that included the factors described in this paragraph, the Secretary may consider that investigation in lieu of conducting a separate investigation with respect to the findings of those individual factors. The Secretary is not obligated to accept or rely on any conclusions of the Administrator's investigation. Based on the investigation required by this subsection, VA shall determine whether there is a need to change the mileage rates payable under paragraph (a) of this section. If a determination is made that a change is warranted the new rate(s) will be published in the notices section of the **Federal Register**. Current rate(s) may be found at <http://vaww1.va.gov/cbo/> or by contacting the Beneficiary Travel office at the closest VA health care facility.

(2) The actual cost of ferry fares, bridge tolls, road tolls, and tunnel tolls upon presentation of receipts for such expenses.

(3) The actual cost for meals, lodging, or both, not to exceed 50 percent of the amount allowed for government employees under 5 U.S.C. 5702, when

VA determines that an overnight stay is required. Factors VA may consider in making that determination include, but are not limited to the following:

(i) The distance the veteran must travel.

(ii) The time of day when VA scheduled the veteran's appointment.

(iii) The weather conditions or congestion conditions affecting the travel.

(iv) The veteran's medical condition and its impact on the ability to travel.

(4) The actual cost of a special mode of transportation.

(b) Payments under this section are subject to the following:

(1) Except as otherwise allowed under this section, payment is limited to travel from the beneficiary's residence to the nearest VA facility where the care or services could be provided and from such VA facility to the beneficiary's residence.

(2) Payment may be made for travel from the beneficiary's residence to the nearest non-VA facility where the care or services could be provided and from such facility to the beneficiary's residence if VA determines that it is necessary to obtain the care or services at a non-VA facility.

(3) Payment may be made for travel from or to a place where the beneficiary is staying (if the beneficiary is not staying at the beneficiary's residence) but the payment may not exceed the amount that would be payable for travel under paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) If the beneficiary's residence changed while receiving care or services, payment for the return trip will be for travel to the new residence, except that payment may not exceed the amount that would be allowed from the facility where the care or services could have been provided that is nearest to the new residence (for example, if during a period of care or services in Baltimore, a beneficiary changed his or her address from Baltimore to Detroit, payment for the return trip would be limited to that allowed for traveling to the new residence from the nearest facility to the new residence in Detroit where the care or services could have been provided).

(5) If the beneficiary is in a terminal condition at a VA facility or other facility under VA auspices and travels to a non-VA medical facility for the purpose of being nearer to his or her residence, payment may be made for travel to the medical facility receiving the beneficiary for such purpose.

(6) Payment may be made for travel from a non-VA health care facility where the beneficiary is receiving care or services to the nearest VA facility

where the appropriate care or services could be provided.

(7) Payment will not be made for return travel for a beneficiary receiving an irregular discharge.

(8) On a case-by-case basis, payment for travel may be paid for any distance if it is financially favorable to the government (for example, travel could be allowed to a more distant nursing home when admission to that nursing home is a prerequisite to qualify for community assistance that would more than offset the additional travel payment).

(c) Payment for travel of an attendant under this section will be calculated on the same basis as for the beneficiary.

(d) For shared travel in a privately-owned vehicle, payments are limited to the amount for one beneficiary (for example, if a beneficiary and an attendant travel in the same automobile or if two beneficiaries travel in the same automobile, the amount for mileage will be limited to the amount for one beneficiary).

(e) Beneficiary travel will not be paid under the following circumstances:

(1) The payment of the travel allowance would be counterproductive to the therapy being provided and such determination is recorded in the patient's medical records, and

(2) The chief of the service or a designee reviewed and approved the determination by signature in the patient's medical record.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.31 Deductibles.**

(a) VA shall deduct an amount established by the Secretary (currently \$3 or the total amount of travel if it is less than \$3) for each one-way trip from the amount otherwise payable under this part for such one-way trip, except that:

(1) VA shall not deduct any amounts in a calendar month after the completion of six one-way trips for which deductions were made in such calendar month, and

(2) Whenever the Secretary adjusts the mileage rates as a result of the investigation described in § 70.30(a)(1)(iv), the Secretary shall, effective on the date such mileage rate change should occur, adjust proportionally the deductible amount in effect at the time of the adjustment.

(b) The provisions under this section for making deductions shall not apply to:

(1) Travel that includes travel by a special mode of transportation,

(2) Travel to a VA facility for a scheduled compensation and pension examination, and

(3) Travel by a non-veteran.

(c) VA may waive the deductible under this section when it would cause severe financial hardship. For purposes of this section, a beneficiary shall be considered to suffer severe financial hardship if the beneficiary:

(1) Has an income for the year immediately preceding the application for beneficiary travel that does not exceed 90 percent of the maximum annual rate of pension that would be payable to such beneficiary under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the person were eligible for pension; or

(2) Is able to demonstrate that due to circumstances such as loss of employment, or incurrence of a disability, his or her income in the year of travel will not exceed 90 percent of the maximum annual rate of pension that would be payable to such beneficiary under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the beneficiary were eligible for pension.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.32 Reimbursement or prior payment.**

(a) Payment will be made on a reimbursement basis after the travel has occurred, except that:

(1) Upon completion of examination, treatment, or care, payment may be made before the return travel has occurred, and

(2) In the case of travel by a person to or from a VA facility by special mode of transportation, VA may provide payment for beneficiary travel to the provider of the transportation before determining eligibility of such person for such payment if VA determines that the travel is for emergency treatment and the beneficiary or other person made a claim that the beneficiary is eligible for payment for the travel.

(b) Payment under this part will be made to the beneficiary, except that VA may make a beneficiary travel payment under this part to a person or organization other than the beneficiary upon satisfactory evidence that the person or organization actually provided or paid for the travel.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.40 Administrative procedures.**

Upon denial of an initial claim for beneficiary travel, VA will provide the claimant written notice of the decision and advise the claimant of reconsideration and appeal rights. A claimant who disagrees with the initial

decision denying the claim for beneficiary travel, in whole or in part, may obtain reconsideration under § 17.133 of this chapter and may file an appeal to the Board of Veterans' Appeals under parts 19 and 20 of this chapter. An appeal may be made directly to the Board of Veterans' Appeals without requesting reconsideration.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.41 Recovery of payments.**

Payments for beneficiary travel made to persons ineligible for such payment are subject to recapture under applicable law, including the provisions of §§ 1.900 through 1.953 of this chapter.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.42 False statements.**

A person who makes a false statement for the purpose of obtaining payments for beneficiary travel may be prosecuted under applicable laws, including 18 U.S.C. 1001.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.50 Reduced fare requests.**

Printed reduced-fare requests for use by eligible beneficiaries and their attendants when traveling at their own expense to or from any VA facility or VA authorized facility for authorized VA health care are available from any VA medical facility. Beneficiaries may use these request forms to ask transportation providers, such as bus companies, for a reduced fare. Whether to grant a reduced fare is determined by the transportation provider.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

[FR Doc. E7-14069 Filed 7-20-07; 8:45 am]

BILLING CODE 8320-01-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R04-OAR-2006-0042-200715; FRL-8443-4]

### **Approval and Promulgation of Implementation Plans Tennessee; Approval of Revisions to the Tennessee SIP and the Nashville/Davidson County Portion of the Tennessee SIP; Prevention of Significant Deterioration and Nonattainment New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).