

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, Government 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 12, 2010.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

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

■ 2. Revise paragraph (a) introductory text of § 17.52 to read as follows:

§ 17.52 Hospital care and medical services in non-VA facilities.

(a) When VA facilities or other government facilities are not capable of furnishing economical hospital care or medical services because of geographic inaccessibility or are not capable of furnishing care or services required, VA may contract with non-VA facilities for care in accordance with the provisions of this section. When demand is only for infrequent use, individual authorizations may be used. Care in public or private facilities, however, subject to the provisions of §§ 17.53, 17.54, 17.55 and 17.56, will only be authorized, whether under a contract or an individual authorization, for—

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■ 3. Revise § 17.56 to read as follows:

§ 17.56 VA payment for inpatient and outpatient health care professional services at non-departmental facilities and other medical charges associated with non-VA outpatient care.

(a) Except for health care professional services provided in the state of Alaska (see paragraph (b) of this section) and except for non-contractual payments for home health services and hospice care, VA will determine the amounts paid under §§ 17.52 or 17.120 for health care professional services, and all other medical services associated with non-

VA outpatient care, using the applicable method in this section:

(1) If a specific amount has been negotiated with a specific provider, VA will pay that amount.

(2) If an amount has not been negotiated under paragraph (a)(1) of this section, VA will pay the lowest of the following amounts:

(i) The applicable Medicare fee schedule or prospective payment system amount (“Medicare rate”) for the period in which the service was provided (without any changes based on the subsequent development of information under Medicare authorities), subject to the following:

(A) In the event of a Medicare waiver, the payment amount will be calculated in accordance with such waiver.

(B) In the absence of a Medicare rate or Medicare waiver, payment will be the VA Fee Schedule amount for the period in which the service was provided. The VA Fee Schedule amount is determined by the authorizing VA medical facility, which ranks all billings (if the facility has had at least eight billings) from non-VA facilities under the corresponding procedure code during the previous fiscal year, with billings ranked from the highest to the lowest. The VA Fee Schedule amount is the charge falling at the 75th percentile. If the authorizing facility has not had at least eight such billings, then this paragraph does not apply.

(ii) The amount negotiated by a repricing agent if the provider is participating within the repricing agent’s network and VA has a contract with that repricing agent. For the purposes of this section, *repricing agent* means a contractor that seeks to connect VA with discounted rates from non-VA providers as a result of existing contracts that the non-VA provider may have within the commercial health care industry.

(iii) The amount that the provider bills the general public for the same service.

(b) For physician and non-physician professional services rendered in Alaska, VA will pay for services in accordance with a fee schedule that uses the Health Insurance Portability and Accountability Act mandated national standard coding sets. VA will pay a specific amount for each service for which there is a corresponding code. Under the VA Alaska Fee Schedule, the amount paid in Alaska for each code will be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2003. For services that VA provided less than eight times in Alaska in FY 2003, for services represented by codes

established after FY 2003, and for unit-based codes prior to FY 2004, VA will take the Centers for Medicare and Medicaid Services’ rate for each code and multiply it times the average percentage paid by VA in Alaska for Centers for Medicare and Medicaid Services-like codes. VA will increase the amounts on the VA Alaska Fee Schedule annually in accordance with the published national Medicare Economic Index (MEI). For those years where the annual average is a negative percentage, the fee schedule will remain the same as the previous year. Payment for non-VA health care professional services in Alaska shall be the lesser of the amount billed or the amount calculated under this subpart.

(c) Payments made by VA to a non-VA facility or provider under this section shall be considered payment in full. Accordingly, the facility or provider or agent for the facility or provider may not impose any additional charge for any services for which payment is made by VA.

(d) In a case where a veteran has paid for emergency treatment for which VA may reimburse the veteran under § 17.120, VA will reimburse the amount that the veteran actually paid. Any amounts due to the provider but unpaid by the veteran will be reimbursed to the provider under paragraphs (a) and (b) of this section.

(Authority: 38 U.S.C. 1703, 1728)

[FR Doc. 2010–31629 Filed 12–16–10; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE**39 CFR Part 232****Conduct on Postal Property**

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The U.S. Postal Service is updating its regulations concerning Conduct on Postal Property (COPP) to correct or eliminate outdated citations, obviate the need for continuous updates of such citations by harmonizing the regulations with federal law, and make certain other minor, editorial revisions.
DATES: *Effective date:* December 17, 2010.

FOR FURTHER INFORMATION CONTACT: Christy Noel, Attorney, U.S. Postal Service, 202–268–3484.

SUPPLEMENTARY INFORMATION: The current rules governing Conduct on Postal Property contain a number of outdated or confusing references to non-postal statutes, and in some cases do not

appear to harmonize clearly with Federal law. As discussed in more detail below, this final rule is intended to remedy those shortcomings, as well as make certain minor editorial revisions to the COPP regulations set forth in 39 CFR 232.1.

1. *Paragraph (f) Gambling:* The prohibition of lottery ticket sales contains an exception for Randolph-Sheppard vendors. This exception is amended to replace obsolete citations to Postal Service regulations with the statutory basis for the exception contained in the Randolph-Sheppard Act Amendments of 1974. Subsection (a)(5) of 20 U.S.C. 107a requires that blind vendors licensed to conduct vending operations on federal property be permitted to sell tickets "for any lottery authorized by State law and conducted by an agency of a State". This amendment harmonizes Postal Service regulations with the Randolph-Sheppard Act by citing 20 U.S.C. 107a (a)(5) as the statutory basis for the exception.

2. *Paragraph (m) Nondiscrimination:* The nondiscrimination provision is amended to remove inappropriate references to employment policy. The Postal Service has determined that facilities regulations governing public access to and use of Postal Service property are not the appropriate venue for articulating employment policy. This amendment is necessary to eliminate potential conflict or redundancy with regard to employment regulations, and to correct the scope of the nondiscrimination provision of the COPP regulations, which governs the use of Postal Service facilities "of a public nature".

3. *Paragraph (o) Depositing Literature:* The exception to the prohibition against depositing literature for posting of notices by U.S. Government-related organizations is amended to correct an outdated citation to title 36 of the United States Code. This amendment is necessary for consistency with title 36, which was revised in 1998 without substantive change (Pub. L. 105-225, section 501, 112 Stat. 1253). The amended regulation updates the statutory definition for U.S. Government-related organizations such as the Inaugural Committee, which is currently defined in 36 U.S.C. 501.

4. *Paragraph (p) Penalties and other law:* The penalty provision is amended to incorporate the procedures for a sentence of a fine under title 18 of the United States Code. This amendment is necessary for consistency with title 18, which authorizes the Postal Service to promulgate regulations for the administration and protection of

property under its charge and control and of any persons on such property. 18 U.S.C. 3061. The Postal Accountability and Enhancement Act (Pub. L. 109-435, section 1001, 120 Stat. 3198) contains a penalty provision for violations of such regulations, codified at 18 U.S.C. 3061(c). This penalty provision provides that "a person violating a regulation prescribed under this subsection [authorizing Postal Service promulgation of regulations for the protection of its property and persons on such property] shall be fined under [title 18]." 18 U.S.C. 3061(c)(4)(B). Title 18 sets forth procedures for sentences of a fine for defendants found guilty of a criminal offense. 18 U.S.C. 3571. This amendment harmonizes Postal Service regulations with the Postal Accountability and Enhancement Act by citing 18 U.S.C. 3571 as the statutory basis for the penalty provision of the regulations.

List of Subjects in 39 CFR Part 232

Authority designations (Government agencies), Crime, Federal buildings and facilities, Government property, Law enforcement officers, Postal Service, Security measures.

■ In view of the considerations discussed above, the Postal Service adopts the following amendments to 39 CFR Part 232:

PART 232—[Amended]

■ 1. The authority citation for Part 232 is revised to read as follows:

Authority: 18 U.S.C. 13, 3061, 3571; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7), 1201(2).

■ 2. In § 232.1, paragraphs (f), (m), (o)(3), and (p)(2) are revised to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(f) *Gambling.* Participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets, is prohibited on postal premises. In accordance with 20 U.S.C. 107a(a)(5), this prohibition does not apply to the vending or exchange of State Lottery tickets at vending facilities operated by licensed blind persons where such lotteries are authorized by state law.

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(m) *Nondiscrimination.* There must be no discrimination by segregation or otherwise against any person or persons because of race, color, religion, national origin, sex, or disability, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a

public nature, including all services, privileges, accommodations, and activities provided on postal property.

* * * * *

(o) * * *

(3) Posting of notices by U.S. Government-related organizations, such as the Inaugural Committee as defined in 36 U.S.C. 501.

(p) * * *

(2) Whoever shall be found guilty of violating the rules and regulations in this section while on property under the charge and control of the Postal Service is subject to a fine as provided in 18 U.S.C. 3571 or imprisonment of not more than 30 days, or both. Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

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Stanley F. Mires,
Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2010-0859; FRL -9240-2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) Units, Negative Declaration and Withdrawal of EPA Plan Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Commonwealth of Virginia's negative declaration and request for EPA withdrawal of its section 111(d)/129 plan (the plan) approval for HMIWI units.

DATES: This rule is effective February 15, 2011 without further notice, unless EPA receives adverse written comment by January 18, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2010-0859 by one of the following methods: