

anchor, or remain within the safety zone unless authorized by the COTP New Orleans or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP New Orleans or designated representative.

(2) Persons who must notify or request authorization from the COTP may do so by telephone at (504) 365-2540 or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This rule will be enforced from 12 p.m. on August 9, 2024, through 12 p.m. on October 9, 2024.

Dated: August 9, 2024.

G.A. Callaghan,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2024-18869 Filed 8-21-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

Processing Certain Claims for Payment for Transportation, Care, and Services

AGENCY: Department of Veterans Affairs.

ACTION: Notification of guidance.

SUMMARY: This notification informs the public of the Department of Veterans Affairs' (VA) interpretation of law and regulations regarding timely filing for certain claims for payment for transportation, care and services affected by a cybersecurity incident.

DATES: The guidance is effective August 22, 2024. Claims submitted pursuant to this document must be received by VA by October 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Joseph Duran, Policy Directorate, 16IVCEO3, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; 303-370-1637. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Factual Background: On February 21, 2024, a cybersecurity incident impacted Change Healthcare (CHC). CHC serves as a clearinghouse for a number of claims for payment related to ambulance transportation and health care services under a contract with VA. This incident prevented providers and entities from submitting claims electronically to VA. As of May 8, 2024, VA is able to receive all claims electronically. Between

February 21, 2024, and May 8, 2024, VA had limited or no ability to receive and process claims because of this incident. During this period of more than 70 days, providers and entities were unable to, or were limited in their ability to, submit claims to VA for services for which VA would normally have processed payment that were provided either before or during this period.

Legal Background: Entities seeking payment from VA for ambulance transportation and health care services are required to comply with timely filing requirements established by several different provisions of law and regulation.

Section 1703D(b) of title 38, United States Code (U.S.C.), requires health care entities or providers that furnish hospital care, medical services, or extended care services under chapter 17, title 38, U.S.C., to submit to VA claims for payment for furnishing such services not later than 180 days after the date on which the entity or provider furnished the services.

Section 17.126 requires claimants to file a claim for reimbursement for emergency services for service-connected care within 2 years of the date the care or services were rendered, or, in the case of care or services rendered prior to VA adjudication allowing service-connection, within two years of the date the veteran was notified by VA of the allowance of the award of service connection.

Section 17.1004(d) of title 38, Code of Federal Regulations (CFR), requires claimants to file a claim for reimbursement for emergency services for non-service-connected care within 90 days of the latest of the date the veteran was discharged from the facility that furnished emergency treatment; the date of death (but only if death occurred during transportation to a facility for emergency treatment or if the death occurred during the stay in the facility that included the provision of emergency treatment); or the date the veteran finally exhausted, without success, action to obtain payment or reimbursement for the treatment from a third-party.

Sections 17.1225 and 17.1230 of title 38, CFR, require providers of emergent suicide care and emergency transportation for emergent suicide care, respectively, to submit to VA a standard billing form and other information as required no later than 180 calendar days from the date the services or transportation was furnished.

Section 70.20(b) of title 38, CFR, requires claimants to apply for payment of beneficiary travel within 30 calendar days after completing beneficiary travel

that does not include a special mode of transportation. For travel that includes a special mode of transportation (including ambulances), claimants must apply for payment of beneficiary travel and obtain approval from VA prior to the travel; if prior approval has not been granted, claimants must apply for payment within 30 calendar days after the travel is completed. VA may pay for transportation for emergency treatment under separate authorities as well.

Section 17.276 of title 38, CFR, requires claims under the Civilian Health and Medical Program of VA (CHAMPVA) program to be filed not later than one year after the date of service or the date of discharge (for inpatient care), or within 180 days following beneficiary notification of authorization in the case of retroactive approval for medical services or supplies, generally. Requests for extensions must be submitted in writing, and VA may grant exceptions if it determines there was good cause for missing the filing deadline.

Section 17.903 of title 38, CFR, requires claims for the Children of Women Vietnam Veterans and the Spina Bifida program to be filed not later than one year after the date of service or the date of discharge (for inpatient care), or within 180 days following beneficiary notification of authorization in the case of retroactive approval for medical services or supplies, generally.

Other claims, including those for medical care provided through reimbursement agreements with the Indian Health Service, Tribal health programs, and Urban Indian Organizations under 25 U.S.C. 1645 and 38 U.S.C. 8153, are subject to timely filing requirements and were also affected by the CHC outage. Timely filing under these reimbursement agreements generally requires claims submission within one year of the date of service.

Legal Issue: The plain text of these statutes and regulations, with the exception of 17.276, does not include exceptions for established timely filing requirements. If VA applied these statutes and regulations without exception, it would be forced to deny claims affected by the CHC outage as not timely filed and thus not payable. This would expose veterans to personal liability in some cases for these services through no fault of their own. It also would result in inequitable outcomes, where entities and providers furnished services on behalf of VA but were unable to be paid for reasons beyond either VA's or their control.

Legal Interpretation: In light of this issue, VA is publicly stating its

interpretation of these statutes and regulations that affected providers and entities are not subject to the timely filing requirements established by the statutes and regulations described in this document, subject to the terms and conditions articulated in this document.

VA's legal basis for this position is its interpretation of these statutes and regulations in light of the common law. The Supreme Court has noted that, "where a common law principle is well established . . . the courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident.'" See *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991).

The common law principle of force majeure refers to situations that free parties from obligations if an extraordinary event directly preventing one or both parties from performing occurs. Impossibility is another provision in common law that generally provides relief from requirements under similar conditions and would apply here as well. Under the doctrines of both force majeure and impossibility, the event precipitating that state must have been unanticipated and beyond the control of the parties. VA has determined the CHC outage satisfies these requirements.

The concepts of force majeure and impossibility originated in the common law and still apply today. VA finds no evidence that in section 1703D(b), for example, Congress intended a statutory purpose inconsistent with the application of these common law principles. The purpose of section 1703D broadly was to ensure prompt payment of entities or providers furnishing care and services on VA's behalf. Congress stated clearly that "VA's ability to timely and accurately process payments to community providers is critical to the [Community Care] Program's success and to ensuring access to community care for the increasing number of veterans who rely on it." H. Rpt. 115-671, Part 1, May 11, 2018, p. 7. Interpreting provisions in this statute to deny the timely and accurate payment of entities or providers when submission delays were not the fault of VA or the entities or providers would be plainly contrary to this intent and would damage the credibility and reliability of the Veterans Community Care Program and VA benefits more broadly.

VA similarly interprets its regulations regarding timely filing by applying the same canon of statutory interpretation described above. The Supreme Court has held that the canons of statutory

interpretation should be applied to Federal regulations as well. See, e.g., *Kisor v. Wilkie*, 588 U.S. ____ (2019) ("And before concluding that a rule is genuinely ambiguous, a court must exhaust all the 'traditional tools' of construction.")

VA has contracts or agreements for much of the care and services that are furnished on its behalf, and these contracts or agreements generally include well-established exceptions for situations of force majeure or impossibility. Where applicable, VA is exercising its contractual flexibility, but where not, VA's interpretation here should provide appropriate relief to entities or providers affected by the CHC outage.

In determining that force majeure and impossibility precluded the timely submission of claims, we similarly interpret that VA is relieved of obligations it may have otherwise incurred, as the common law relieved both parties of their obligations. In general, if VA fails to pay a valid, submitted claim, it owes interest for late payment. However, because VA was unable to accept claims, no late payment period could begin that would result in interest liability. Consequently, VA will not pay interest on any claims a provider attempted to submit to VA during the outage described above. However, if VA fails to pay claims submitted now, it will be liable for interest payments under relevant provisions of law.

The vast majority of provisions in law and regulation concerning VA health care benefits do not affect or implicate common law principles, but the timely filing requirements do. Consequently, VA's interpretation here that common law principles apply are limited to the statutes and regulations identified in this document.

Requirements for Timely Filing: Impacted entities or providers seeking payment may submit impacted claims for payment by October 31, 2024. Impacted claims covered by this document that are received after October 31, 2024, will not be considered timely filed and will be denied. This will provide Impacted entities or providers approximately 60 days' notice from publication of this document to file claims, which VA believes to be a sufficient period of time for claims submission in this situation.

For purposes of this document, "impacted entities and providers" are those who submit medical (including transportation) or dental claims directly to VA for payment. "Impacted claims" are claims from impacted entities and providers that would be considered not

timely filed based on the dates of service and the dates of the claim submission. Impacted entities and providers may submit impacted medical, (including transportation) claims, to electronic data interchange (EDI) payor ID 12115 for services provided to veterans, dental claims to EDI payor ID 12116 for services provided to veterans, medical claims to EDI payor ID 84146 for services provided to family members of veterans, and dental claims to EDI payor ID 84147 for services provided to family members of veterans. Transportation claims that are not submitted to payor ID 12115 are not applicable to this document and should continue to be submitted according to normal procedures and requirements. Medical claims whose timely filing period expired between February 21, 2024, and March 23, 2024, for payor IDs 12115 and 84146, and dental claims whose timely filing period expired between February 21, 2024, and May 8, 2024, for payor IDs 12116 and 84147, will be considered timely filed if such claims are submitted to VA by October 31, 2024.

Claims must be submitted to VA as they normally would be (e.g., location, content, etc.) in accordance with standard submission protocols.

Impacted claims may include: claims for non-emergent medical care furnished to veterans with a date of service between February 21, 2023, and March 23, 2024; claims for dental care furnished to veterans with a date of service between February 21, 2023, and May 8, 2024; claims for emergency care furnished to veterans with a date of service between February 21, 2022, and March 23, 2024; claims for transportation furnished to veterans with a date of service between February 21, 2022, and March 23, 2024; claims for medical care furnished to eligible family members under the Civilian Health and Medical Program of VA (CHAMPVA), Spina Bifida Health Care Benefits Program (SBHCBP) or Children of Women Vietnam Veterans (CWV) Health Care Benefits Program with a date of service between February 21, 2023, and March 23, 2024; and claims for dental care furnished to eligible family members under CHAMPVA, SBHCBP or CWV with a date of service between February 21, 2023, and May 8, 2024.

The dates of service identified above reflect the earliest and latest possible qualifying dates. The general descriptions above reflect various legal authorities, each of which may include additional requirements regarding timely filing, and VA will apply additional requirements as needed. For

example, VA can reimburse claims for emergency care furnished to veterans under several different statutory authorities, including 38 U.S.C. 1703, 1720J, 1725, and 1728. VA's regulations provide for different timely filing requirements under these authorities. Section 1728 and its implementing regulations require eligible entities or providers to submit a claim within two years of the date of service. Given the outage for medical claims between February 21, 2024, and March 23, 2024, for such claims, a provider could have attempted to submit a claim on February 21, 2024, for emergency care furnished to a veteran on February 21, 2022, and that claim could have been considered timely and potentially approved by VA (if other conditions were met). However, under section 1725 and its implementing regulations (specifically, 17.1004, as described above), claims must be submitted to VA within 90 days of the later of any of several dates or events. If VA determined that a claim for services furnished on February 21, 2022, that is submitted based on this document is not payable under section 1728 but only payable under section 1725, that claim would be considered not timely filed. VA does not expect providers to know under what authority they are filing claims; VA will process received claims, as it does today, to determine which authority is appropriate. If providers believe VA has denied a claim incorrectly, they are free to appeal that decision, as they can today.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on August 15, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024-18651 Filed 8-21-24; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102-5, 102-36, 102-38, 102-39, 102-40, 102-41, and 102-42

[FMR Case 2024-01; Docket No. GSA-FMR-2024-0001; Sequence No. 1]

RIN 3090-AK79

Federal Management Regulation; Updating the FMR With Diversity, Equity, Inclusion, and Accessibility Language

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule that makes technical amendments to the Federal Management Regulation (FMR) regarding gender neutrality. These technical amendments result in more inclusive language by replacing gender-specific pronouns (e.g., he, she, his, her) with non-gendered pronouns. GSA is also correcting minor grammatical and administrative errors in FMR parts 102-5 and 102-42. These changes are grammatical and technical in nature and do not result in added costs or associated policy changes.

DATES: This final rule is effective on October 21, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. William Garrett, Director, Personal Property Policy Division, Office of Government-wide Policy, at 202-368-8163 or personalpropertypolicy@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite "FMR Case 2024-01."

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order (E.O.) 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, dated January 20, 2021, establishes a policy "to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation." The Federal Government must be a model for diversity, equity, inclusion, and accessibility, where all employees are treated with dignity and respect. Therefore, GSA has undertaken a review of FMR parts 102-5 and 102-33 through 102-42.

Consistent with the American Psychological Association (APA) Style Guide, 7th Edition, Publication Manual Section 5.5 guidance on "Gender and Pronoun Usage", GSA is replacing gender-specific pronouns, such as he, she, his, or her, with more inclusive and respectful terminology to all segments of society. Other terms that do not use gender-specific language, such as Administrator, Architect, employee, and purchaser, have also been used as appropriate.

II. Discussion of the Final Rule

A. Summary of Significant Changes

This final rule is technical in nature and does not significantly change any definition, operation, or interpretation of the FMR.

B. Expected Cost Impact to the Public

There is no expected cost impact to the public due to these technical changes to the FMR.

III. Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) amends Section 3(f) of E.O. 12866 and supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this rule is not a significant regulatory action, and therefore, it was not reviewed under Section 6(b) of E.O. 12866.

IV. Congressional Review Act

OIRA has determined that this rule is not a "major rule" under 5 U.S.C. 804(2). Title II, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801-808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, unless excepted, the agency promulgating the rule must