

Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

For more information about this AD, contact William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516-228-7300; email: 9-avs-nyaco-cos@faa.gov.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 700-26-7505, dated February 10, 2023.

(ii) [Reserved]

(3) For Bombardier material identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-2999; email ac.yul@aero.bombardier.com; website bombardier.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on July 10, 2024.

James D. Foltz,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

Editorial Note: This document was received for publication by the Office of the Federal Register on November 5, 2024.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 70

RIN 2900-AS19

Changes in Rates VA Pays for Special Modes of Transportation; Delay of Effective Date From February 16, 2025, Until February 16, 2029

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Veterans Affairs (VA) published in the **Federal Register** on February 16, 2023, a final rule to amend its beneficiary travel regulations to establish a new payment methodology for special modes of transportation available through the VA beneficiary travel program. The preamble of that final rule stated the effective date was February 16, 2024. VA published in the **Federal Register** on December 29, 2023, a final rule to delay the effective date for the rule from February 16, 2024, to February 16, 2025. This rulemaking further delays the effective date of February 16, 2025, to February 16, 2029.

DATES: Effective Date: The effective date for the final rule published February 16, 2023, at 88 FR 10032, and delayed on December 29, 2023, at 88 FR 90120, until February 16, 2025, is further delayed until February 16, 2029.

FOR FURTHER INFORMATION CONTACT: Ben Williams, Director, Veterans Transportation Program (15MEM), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (404) 828-5691. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 5, 2020, VA proposed amending its beneficiary travel regulations to implement the discretionary authority in 38 U.S.C. 111(b)(3)(C), which permits VA to pay the lesser of the actual charge for ambulance transportation or the amount determined by the Centers for Medicare and Medicaid Services (CMS) Medicare Part B Ambulance Fee Schedule (hereafter referred to the CMS ambulance fee schedule) established under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), unless VA has entered into a contract for that transportation. We provided a 60-day comment period that ended on January 4, 2021, and we received six comments, five of which were substantive. Those five comments all raised similar concerns about 38 CFR

70.30(a)(4) introductory text and (a)(4)(i) and (ii) as proposed, related to using the CMS ambulance fee schedule or, in the case of travel by modes other than ambulance, the posted rates from each State. We responded to all comments in a final rule published in the **Federal Register** on February 16, 2023 (88 FR 10032), wherein we stated that we would not make changes from the proposed rule related to application of the CMS ambulance fee schedule but would delay the effective date of the final rule by one year (to be February 16, 2024) to ensure that ambulance providers have adequate time to adjust to VA's new methodology for calculating ambulance rates. (88 FR 10035). We further stated in the final rule that such adjustment could include ambulance providers entering negotiations with VA to contract for payment rates different than those under the CMS ambulance fee schedule, as contemplated in the final rule.

After the final rule was published, VA received feedback from both internal and external stakeholders, including VA employees, ambulance providers, and industry experts, that more time would be necessary for successful implementation of the rule. Specifically, delaying the effective date was intended to accommodate unforeseen difficulties in air ambulance broker contracting. At the time, VA believed it would be able to enter into contracts and/or subcontract relationships with air ambulance service providers for non-VA initiated service calls if given more time for negotiations. Based on this feedback and evaluation of the continued effort that would be required by air ambulance brokers to negotiate and enter into contracts before February 16, 2024, VA published a final rule on December 29, 2023, (88 FR 90120) that delayed the effective date of the regulation by one year to February 16, 2025.

After the final rule delaying the effective date to February 2025 was published, however, VA learned through continued discussions with industry experts, including air ambulance providers and brokers, that contracting for emergency, non-VA initiated air transportation is not feasible at this time. Impediments include the lack of air industry infrastructure for air ambulance brokers to enter into subcontracts with providers for non-VA initiated ambulance transports, as well as the general lack of authority of non-VA individuals to enter into orders or other contractually binding agreements for transportation on behalf of VA.

Air ambulance providers contend that the Medicare reimbursement rate that

will apply absent a contract is unsustainable for their business operations and may result in either a reduction in the availability of air ambulance services for both veterans and the public and/or will place veterans at risk of receiving bills for the balance of charges for services. As a result, VA is delaying the effective date of the regulation by four years to allow time for VA to establish additional protections to veterans against balance billing for non-VA initiated air emergency ambulance transports that are reimbursed at a rate other than actual charges. In addition, the delay will provide time for VA to examine alternative payment methodologies for non-VA initiated air ambulance transports. VA has determined that a 4-year delay is necessary to ensure sufficient time to evaluate and address these concerns, which may require additional notice and comment rulemaking.

Administrative Procedure Act

The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice of proposed rulemaking and to solicit public comment. However, pursuant to 5 U.S.C. 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

VA finds that there is good cause under the APA to issue this rule without prior notice and opportunity for public comment. As stated previously, VA last delayed the effective date of the final rule (that published on February 16, 2023, at 88 FR 10032) in late December 2023, to provide additional time for air ambulance brokers to enter into subcontracts with ambulance providers for emergency, non-VA initiated transports. During the first few months of 2024, VA engaged in continued discussions and further contracting efforts with the ambulance industry generally, with a particular focus on emergent, non-VA initiated air ambulance transportation. In the spring of 2024, however, VA learned that contracting for emergency, non-VA initiated air transportation is not feasible at this time due to the lack of air industry infrastructure for ambulance brokers to enter into subcontracts with providers for non-VA

initiated ambulance transports, as well as the general lack of authority of non-VA individuals to enter into orders or other contractually binding agreements for transportation on behalf of VA. As a result, VA promptly began developing alternative courses of action to address emergent non-VA initiated air ambulance transportation. However, due to the upcoming effective date of the final rule, VA ultimately determined that the best and most veteran-centric way forward would be to further delay the final rule, to allow additional time for VA to ensure that veterans would not be negatively impacted by balance billing from these ambulance providers.

The final rule published at 88 FR 10032 would become effective on February 16, 2025, pursuant to the final rule delaying its effective date that published at 88 FR 90120. Seeking prior notice and the opportunity for public comment on this delay is impracticable. Specifically, VA was not aware of the need to delay the effective date until summer of 2024. Given the process for publishing a notice of proposed rulemaking followed by an adequate public comment period on the proposed rule, and adequate time to respond to any comments and publish a final rule, VA does not believe there would be sufficient time to ensure that the new rule would be effective before February 16, 2025. As a result, the current final rule would become effective February 16, 2025, and ambulance providers who have been unable to contract for services would be subject to those payment methodologies, which is likely to cause confusion, uncertainty, and possibly result in veterans being billed directly.

Similarly, VA finds that prior notice and opportunity for comment would be contrary to the public interest because it could adversely impact veteran care or result in veterans being billed directly for services. If the new regulation becomes effective on February 16, 2025, VA will pay the lesser of actual charges associated with an air ambulance service or the CMS ambulance fee schedule rate for non-VA initiated ambulance services, because separate contract rates will not exist (as explained earlier, VA now knows that it cannot effectively establish contractual or sub contractual relationships with air ambulance service providers at this time for non-VA initiated emergency transportation). Air ambulance providers contend that the Medicare reimbursement rate that would apply is unsustainable for their business operations and may result in either a reduction in the availability of air ambulance services for veterans and the public, and/or place veterans at risk for

being billed directly for the difference between the Medicare rate that VA pays for emergency, non-VA initiated trips and the amount billed by the ambulance provider. For these reasons, VA finds that good cause exists to dispense with the prior notice and public comment procedures for this final rule, as it concludes that such procedures are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B).

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 31, 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.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

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