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Medical

Book I

Title 38, Parts 17, 46, 47, 51–53,
58–64, 70, 71, and 200

Supplement No. 120

Covering period of *Federal Register* issues
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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book I*

Code of Federal Regulations

Title 38, Parts 17, 46, 47, 51–53, 58–64, 70, 71, and 200

Medical

Supplement No. 120

5 April 2019

Covering the period of Federal Register issues
through April 1, 2019

When **Book I** was originally prepared, it was current through final regulations published in the *Federal Register* of 15 January 2000. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page I-8 of Book I, *Medical*.

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it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page I-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page I-2.
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FILING INSTRUCTIONS

**Book I, Supplement No. 120
April 5, 2019**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
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all prior supplements have been filed**

17.INDEX-1 to 17.INDEX-2	17.INDEX-1 to 17.INDEX-2	Part 17 Index
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17.111-5 to 17.111-6	17.111-5 to 17.111-6	§17.111
17.350-1 to 17.380-1	17.350-1 to 17.380-1	§17.380
17.410-2 to 17.412-1	17.410-2 to 17.412-1	§17.412

**Be sure to complete the
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when you have finished filing this material.**

HIGHLIGHTS

Book I, Supplement No. 120 April 5, 2019

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §17.100, you will see a note at the end of that section which reads: “Supplement *Highlights* references—37(1).” This means that paragraph 1 of the *Highlights* section in Supplement No. 37 contains information about the changes made in §17.100. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: Beginning 1 January 2000, supplements for this Book I will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 5 March 2019, the VA published a final rule effective that same day, to amend its medical regulations governing eligibility for VA health care and copayment requirements to conform to recent statutory changes. VA is changing its enrollment criteria to move Medal of Honor recipients from priority category three to priority category one, and exempting recipients of the Medal of Honor from copayments for inpatient care, outpatient care, medications, and extended care services. Changes:

- In §17.36, revised paragraphs (b)(1) and (b)(3),
- In §17.108, added paragraph (d)(13),
- In §17.110, added paragraph (c)(11), and
- In §17.111, added paragraph (f)(10).

2. On 7 March 2019, the VA published a final rule effective that same day, to adopt as final, with changes based on subsequent changes to our statutory authority, an interim final rule adding a new section to the medical regulations authorizing in vitro fertilization (IVF) for a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. In addition, the rule added a new section stating that VA may provide fertility counseling and treatment using assisted reproductive technologies (ART), including IVF, to a spouse of a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. As a result of this rulemaking, VA may provide both a covered veteran and spouse of a covered veteran all ART treatments available to enrolled veterans under the medical benefits package, as well as IVF. Changes:

- In §17.380, revised paragraph (b), and
- In §17.412, revised paragraph (b).

Part 17 — Medical

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

Section 17.35 is also issued under 38 U.S.C. 1724

Section 17.38 is also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Section 17.125 is also issued under 38 U.S.C. 7304

Section 17.169 is also issued under 38 U.S.C. 1712C.

Sections 17.380, 17.390 and 17.412 are also issued under sec. 260, Pub. L. 114-223, 130 Stat. 857 and §236, div. J, Pub. L 115-141, 132 Stat. 348.

Section 17.410 is also issued under 38 U.S.C. 1787.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Sections 17.640 and 17.647 are also issued under sec. 4, Pub. L. 114-2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Pub. L. 114-2, 129 Stat. 30.

Section 17.417 also issued under 38 U.S.C. 1701 (note), 1709A, 1712A (note), 1722B, 7301, 7330A, 7401-7403, 7406 (note).

Section 17.655 also issued under 38 U.S.C. 501(a), 7304, 7405.

Ed. Note: Nomenclature changes to Part 17 appear at 61 FR 7216, Feb. 27, 1996

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Enrollment Provisions and Medical Benefits Package**§17.36 Enrollment—provision of hospital and outpatient care to veterans.**

(a) *Enrollment requirement for veterans.*

(1) Except as otherwise provided in §17.37, a veteran must be enrolled in the VA healthcare system as a condition for receiving the “medical benefits package” set forth in §17.38.

Note to paragraph (a)(1): A veteran may apply to be enrolled at any time. (See §17.36(d)(1).)

(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section and who, if required by law to do so, has agreed to make any applicable copayment is eligible for VA hospital and outpatient care as provided in the “medical benefits package” set forth in §17.38.

Note to paragraph (a)(2): A veteran’s enrollment status will be recognized throughout the United States.

(3) A veteran enrolled based on having a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War“(the period between August 2, 1990, and November 11, 1998), or any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e), is eligible for VA care provided in the “medical benefits package” set forth in §17.38 for the disorder.

(b) *Categories of veterans eligible to be enrolled.* The Secretary will determine which categories of veterans are eligible to be enrolled based on the following order of priority:

(1) Veterans with a singular or combined rating of 50 percent or greater based on one or more service-connected disabilities or unemployment; and veterans awarded the Medal of Honor.

(2) Veterans with a singular or combined rating of 30 percent or 40 percent based on one or more service-connected disabilities.

(3) Veterans who are former prisoners of war; veterans awarded the Purple Heart; veterans with a singular or combined rating of 10 percent or 20 percent based on one or more service-connected disabilities; veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty; veterans who receive disability compensation under 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for that care is provided for in the judgment or settlement described in 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the 10 percent rating level based on

multiple noncompensable service-connected disabilities that clearly interfere with normal employability.

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

(5) Veterans not covered by paragraphs (b)(1) through (b)(4) of this section who are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(6) Veterans of the Mexican border period or of World War I; veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War (the period between August 2, 1990, and November 11, 1998), or for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 U.S.C. 1710(e); Camp Lejeune veterans pursuant to §17.400; and veterans with 0 percent service-connected disabilities who are nevertheless compensated, including veterans receiving compensation for inactive tuberculosis.

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes “low income” under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§3.271, 3.272, 3.273, and 3.276. After determining the veterans’ income and the number of persons in the veterans’ family (including only the spouse and dependent children), VA will compare their income with the current applicable “low-income” income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran’s income is below the applicable “low-income” income limits for the area in which the veteran resides, the veteran will be considered to have “low income” for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the “low income” income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a *Federal Register* document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a *Federal Register* document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(7)(i) of this section; and

(iv) Nonservice-connected veterans not included in paragraph (b)(7)(ii) of this section.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who subsequently do not request disenrollment;

(ii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) of this section and whose income is not greater than ten percent more than the income that would permit their enrollment in priority category 5 or priority category 7, whichever is higher;

(iii) Nonservice-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who subsequently do not request disenrollment;

(iv) Nonservice-connected veterans not included in paragraph (b)(8)(iii) of this section and whose income is not greater than ten percent more than the income that would permit their enrollment in priority category 5 or priority category 7, whichever is higher;

(v) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) or paragraph (b)(8)(ii) of this section; and

(vi) Nonservice-connected veterans not included in paragraph (b)(8)(iii) or paragraph (b)(8)(iv) of this section.

(c) *Federal Register notification of eligible enrollees.*

(1) It is anticipated that each year the Secretary will consider whether to change the categories and subcategories of veterans eligible to be enrolled. The Secretary at any time may revise the categories or subcategories of veterans eligible to be enrolled by amending paragraph (c)(2) of this section. The preamble to a *Federal Register* document announcing which priority categories and subcategories are eligible to be enrolled must specify the projected number of fiscal year applicants for enrollment in each priority category, projected healthcare utilization and expenditures for veterans in each priority category, appropriated funds and other revenue projected to be available for fiscal year enrollees, and projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, e.g., economic changes, changes in medical practices, and waiting times to obtain an appointment for care. Consistent with these criteria, the Secretary will

determine which categories of veterans are eligible to be enrolled based on the order of priority specified in paragraph (b) of this section.

(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll the priority categories of veterans set forth in §17.36(b) beginning June 15, 2009, except that those veterans in subcategories (v) and (vi) of priority category 8 are not eligible to be enrolled.

(d) *Enrollment and disenrollment process.*

(1) *Application for enrollment.* A veteran who wishes to be enrolled must apply by submitting a VA Form 10-10EZ:

(i) To a VA medical facility or by mail it to the U.S. Postal address on the form; or

(ii) Online at the designated World Wide Web internet address; or

(iii) By calling a designated telephone number and submitting application information verbally. To complete a telephone application, the veteran seeking enrollment must attest to the accuracy and authenticity of their verbal application for enrollment and consent to VA's copayment requirements and third-party billing procedures.

(2) *Action on application.* Upon receipt of a completed VA Form 10-10EZ, a VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, will accept a veteran as an enrollee upon determining that the veteran is in a priority category eligible to be enrolled as set forth in §17.36(c)(2). Upon determining that a veteran is not in a priority category eligible to be enrolled, the VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, will inform the applicant that the applicant is ineligible to be enrolled.

(3) *Placement in enrollment categories.*

(i) Veterans will be placed in priority categories whether or not veterans in that category are eligible to be enrolled.

(ii) A veteran will be placed in the highest priority category or categories for which the veteran qualifies.

(iii) A veteran may be placed in only one priority category, except that a veteran placed in priority category 6 based on a specified disorder or illness will also be placed in priority category 7 or priority category 8, as applicable, if the veteran has previously agreed to pay the applicable copayment, for all matters not covered by priority category 6.

(iv) A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in priority category 5 due to failure to submit to VA a current VA Form 10-10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8 (or more than one of these categories if the previous principle applies), as applicable, and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must be eligible for priority category 5 based on the information submitted to VA in a current VA Form 10-10EZ. To be current, after VA has sent a form 10-10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.

(v) Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

(4) [Reserved]

(5) *Disenrollment.* A veteran enrolled in the VA health care system under paragraph (d)(2) of this section will be disenrolled only if:

(i) The veteran submits to a VA Medical Center or to the VA Health Eligibility Center, 2957 Clairmont Road, NE., Suite 200, Atlanta, Georgia 30329-1647, a signed and dated document stating that the veteran no longer wishes to be enrolled; or

(ii) A VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, determines that the veteran is no longer in a priority category eligible to be enrolled, as set forth in §17.36(c)(2).

(6) *Notification of enrollment status.* Notice of a decision by a VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, regarding enrollment status will be provided to the affected veteran by letter and will contain the reasons for the decision. The letter will include an effective date for any changes and a statement regarding appeal rights. The decision will be based on all information available to the decisionmaker, including the information contained in VA Form 10-10EZ.

(e) *Catastrophically disabled.* For purposes of this section, catastrophically disabled means to have a permanent severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the individual requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others. This definition is met if an individual has been found by the Chief of Staff (or equivalent clinical official) at the VA facility where the individual was examined to have a permanent condition specified in paragraph (e)(1) of this section; to meet permanently one

of the conditions specified in paragraph (e)(2) of this section by a clinical evaluation of the patient's medical records that documents that the patient previously met the permanent criteria and continues to meet such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment; or to meet permanently one of the conditions specified in paragraph (e)(2) of this section by a current medical examination that documents that the patient meets the permanent criteria and will continue to meet such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment.

(1) Quadriplegia and quadriparesis; paraplegia; legal blindness defined as visual impairment of 20/200 or less visual acuity in the better seeing eye with corrective lenses, or a visual field restriction of 20 degrees or less in the better seeing eye with corrective lenses; persistent vegetative state; or a condition resulting from two of the following procedures, provided the two procedures were not on the same limb:

- (i) Amputation, detachment, or reamputation of or through the hand;
- (ii) Disarticulation, detachment, or reamputation of or through the wrist;
- (iii) Amputation, detachment, or reamputation of the forearm at or through the radius and ulna;
- (iv) Amputation, detachment, or disarticulation of the forearm at or through the elbow;
- (v) Amputation, detachment, or reamputation of the arm at or through the humerus;
- (vi) Disarticulation or detachment of the arm at or through the shoulder;
- (vii) Interthoracoscaphular (forequarter) amputation or detachment;
- (viii) Amputation, detachment, or reamputation of the leg at or through the tibia and fibula;
- (ix) Amputation or detachment of or through the great toe;
- (x) Amputation or detachment of or through the foot;
- (xi) Disarticulation or detachment of the foot at or through the ankle;
- (xii) Amputation or detachment of the foot at or through malleoli of the tibia and fibula;
- (xiii) Amputation or detachment of the lower leg at or through the knee;
- (xiv) Amputation, detachment, or reamputation of the leg at or through the femur;
- (xv) Disarticulation or detachment of the leg at or through the hip; and

(xvi) Interpelviaabdominal (hindquarter) amputation or detachment.

(2) (i) Dependent in 3 or more Activities of Daily Living (eating, dressing, bathing, toileting, transferring, incontinence of bowel and/or bladder), with at least 3 of the dependencies being permanent with a rating of 1, using the Katz scale.

(ii) A score of 2 or lower on at least 4 of the 13 motor items using the Functional Independence Measure.

(iii) A score of 30 or lower using the Global Assessment of Functioning.

(f) *VA Form 10-10EZ*. Copies of VA Form 10-10EZ are available at any VA medical center and at <https://www.1010ez.med.va.gov/sec/vha/1010ez/>.

(Authority: 38 U.S.C. 101, 501, 1521, 1701, 1705, 1710, 1722)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0091.)

[64 FR 54212, Oct. 6, 1999, as amended at 67 FR 35039, May 17, 2002; 67 FR 62887, Oct. 9, 2002; 68 FR 2672, Jan. 17, 2003; 74 FR 22834, May 15, 2009; 74 FR 48012, Sept. 21, 2009; 75 FR 52628, Aug. 27, 2010; 76 FR 52274, Aug. 22, 2011; 78 FR 72578, Dec. 3, 2013; 79 FR 57414; Sep. 24, 2014; 81 FR 13997, Mar. 16, 2016; 84 FR 7815, March 5, 2019]

Supplement *Highlights* references: 37(1). Book I, 9(1), 12(1), 13(2), 47(2), 51(1), 56(1), 64(1), 85(1), 86(2), 99(2), 120(1).

Reserved

- (7) A veteran whose entitlement to disability compensation is suspended because of the receipt of military retirement pay.
- (8) A veteran of the Mexican border period or of World War I.
- (9) A military retiree provided care under an interagency agreement as defined in section 113 of Public Law 106-117, 113 Stat. 1545.
- (10) A veteran who VA determines to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).
- (11) A veteran who VA determines to be catastrophically disabled, as defined in 38 CFR 17.36(e).
- (12) A veteran receiving care for psychosis or a mental illness other than psychosis pursuant to §17.109.
- (13) A veteran who was awarded the Medal of Honor.

(e) *Services not subject to copayment requirements for inpatient hospital care or outpatient medical care.* The following are not subject to the copayment requirements under this section:

- (1) Care provided to a veteran for a noncompensable zero percent service-connected disability;
- (2) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Gulf War veterans, post-Gulf War combat-exposed veterans, or Camp Lejeune veterans pursuant to §17.400;
- (3) Special registry examinations (including any follow-up examinations or testing ordered as part of the special registry examination) offered by VA to evaluate possible health risks associated with military service;
- (4) Counseling and care for sexual trauma as authorized under 38 U.S.C 1720D;
- (5) Compensation and pension examinations requested by the Veterans Benefits Administration;
- (6) Care provided as part of a VA-approved research project authorized by 38 U.S.C. 7303;
- (7) Outpatient dental care provided under 38 U.S.C. 1712;
- (8) Readjustment counseling and related mental health services authorized under 38 U.S.C 1712A;
- (9) Emergency treatment paid for under 38 U.S.C. 1725 or 1728;
- (10) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck;

- (11) Publicly announced VA public health initiatives (e.g., health fairs) or an outpatient visit solely consisting of preventive screening and immunizations (e.g. influenza immunization, pneumococcal immunization, hypertension screening, hepatitis C screening, tobacco screening, alcohol screening, hyperlipidemia screening, breast cancer screening, cervical cancer screening, screening for colorectal cancer by fecal occult blood testing, and education about the risks and benefits of prostate cancer screening);
- (12) Weight management counseling (individual and group);
- (13) Smoking cessation counseling (individual and group);
- (14) Laboratory services, flat film radiology services, and electrocardiograms;
- (15) Hospice care;
- (16) In-home video telehealth care; and
- (17) Mental health peer support services.

(f) *Additional care not subject to outpatient copayment.* Outpatient care is not subject to the outpatient copayment requirements under this section when provided to a veteran during a day for which the veteran is required to make a copayment for extended care services that were provided either directly by VA or obtained for VA by contract. (Authority: 38 U.S.C. 501, 1710, 1730A, Sec. 101, Pub. L. 113-146, 128 Stat. 1754)

[66 FR 63448, Dec. 6, 2001, as amended at 66 FR 64904, Dec. 14, 2001; 67 FR 21998, May 2, 2002; 68 FR 60854, Oct. 24, 2003; 70 FR 22596, May 2, 2005; 71 FR 2464, Jan. 17, 2006; 73 FR 20532, Apr. 16, 2008; 73 FR 65260, Nov. 3, 2008; 75 FR 54030, Sept. 3, 2010; 76 FR 52274, Aug. 22, 2011; 77 FR 13198, Mar. 6, 2012; 78 FR 28143, May 14, 2013; 79 FR 57414, Sep. 24, 2014; 79 FR 65584, Nov. 5, 2014; 79 FR 70940, Nov. 28, 2014; 84 FR 7815, March 5, 2019]

Supplement *Highlights* references: 21(1), 27(1), 31(1), 40(1), 57(1), 64(1), 68(1), 77(1), 86(2), 88(2), 89(1), 120(1).

(B) The medication is not a topical cream, a product used to treat musculoskeletal conditions, an antihistamine, or a steroid-containing medication;

(C) The medication is available on the VA National Formulary;

(D) The medication is not an antibiotic that is primarily used for short periods of time to treat infections; and

(E) The medication primarily is used to either treat or manage a chronic condition, or to reduce the risk of adverse health outcomes secondary to the chronic condition, for example, medications used to treat high blood pressure to reduce the risks of heart attack, stroke, and kidney failure. For purposes of this section, conditions that typically are known to persist for 3 months or more will be considered chronic.

(ii) The medication must be among the top 75 most commonly prescribed multi-source medications that meet the criteria in paragraph (b)(2)(i) of this section, based on the number of prescriptions issued for a 30-day or less supply on an outpatient basis during a fixed period of time.

(iii) VA must determine that the medication identified provides maximum clinical value consistent with budgetary resources.

(3) Information on Tier 1 medications. Not less than once per year, VA will publish a list of Tier 1 medications in the *Federal Register* and on VA's Web site at www.va.gov/health.

(4) *Veterans Choice Program*. For medications furnished through the Veterans Choice Program under §17.1500 through 17.1540, the copayment amount at the time the veteran fills the prescription is \$0. VA will determine and assess the veteran's copayment amount at the end of the billing process, but at no time will a veteran's copayment be more than the amount identified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section

(5) *Copayment cap*. The total amount of copayments for medications in a calendar year for an enrolled veteran will not exceed \$700.

(c) *Medication not subject to the copayment requirements*. The following are exempt from the copayment requirements of this section:

(1) Medication for a veteran who has a service-connected disability rated 50% or more based on a service-connected disability or unemployability.

(2) Medication for a veteran's service-connected disability.

(3) Medication for a veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of VA pension which would be payable to such veteran if such veteran were eligible for pension under 38 U.S.C. 1521.

- (4) Medication authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, post-Persian Gulf War combat-exposed veterans, or Camp Lejeune veterans pursuant to §17.400.
- (5) Medication for treatment of sexual trauma as authorized under 38 U.S.C. 1720D.
- (6) Medication for treatment of cancer of the head or neck authorized under 38 U.S.C. 1720E.
- (7) Medications provided as part of a VA approved research project authorized by 38 U.S.C. 7303.
- (8) Medication for a veteran who is a former prisoner of war.
- (9) A veteran who VA determines to be catastrophically disabled, as defined in 38 CFR 17.36(e).
- (10) A veteran receiving care for psychosis or a mental illness other than psychosis pursuant to §17.109. (Authority: 38 U.S.C. 501, 1710, 1720D, 1722A, 1730A, Sec. 101, Pub. L. 113-146, 128 Stat. 1754)
- (11) Medication for a veteran who was awarded the Medal of Honor.

[66 FR 63451, Dec. 6, 2001, as amended at 74 FR 69285, Dec. 31, 2009; 75 FR 32670, June 9, 2010; 75 FR 32672, June 9, 2010; 75 FR 54030, Sept. 3, 2010; 76 FR 9646, Feb. 22, 2011; 76 FR 52274, Aug. 22, 2011; 76 FR 78826, Dec. 20, 2011; 77 FR 76867, Dec. 31, 2012; 78 FR 28143, May 14, 2013; 78 FR 30768, May 23, 2013; 78 FR 79317, Dec. 30, 2013; 79 FR 57414, Sep. 24, 2014; 79 FR 63821, Oct. 27, 2014; 79 FR 65585, Nov. 5, 2014; 81 FR 88120, Dec. 7, 2016; 81 FR 88120, Dec. 7, 2016; 81 FR 89390, Dec. 12, 2016; 84 FR 7815, March 5, 2019]

Supplement *Highlights* references: 53(1), 55(1), 57(1), 64(1), 66(2), 74(4), 77(1), 83(3), 86(2), 87(1), 88(2), 103(1), 104(1), 102(1).

(3) Care for a veteran's noncompensable zero percent service-connected disability.

(4) An episode of extended care services that began on or before November 30, 1999.

(5) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, post-Persian Gulf War combat-exposed veterans, or Camp Lejeune veterans pursuant to §17.400.

(6) Care for treatment of sexual trauma as authorized under 38 U.S.C. 1720D.

(7) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.

(8) A veteran who VA determines to be catastrophically disabled, as defined in 38 CFR 17.36(e), is exempt from copayments for adult day health care, non-institutional respite care, and non-institutional geriatric care.

(9) A veteran receiving care for psychosis or a mental illness other than psychosis pursuant to §17.109.

(10) A veteran who was awarded the Medal of Honor.

(g) VA Form 10-10EC.

[Note: Form 10-10EC will be found on the next three pages.]

(Authority: 38 U.S.C. 101(28), 501, 1701(7), 1710, 1710B, 1720B, 1720D, 1722A, Sec. 101, Pub. L. 113-146, 128 Stat. 1754)

[67 FR 35040, May 17, 2002, as amended at 69 FR 39846, July 1, 2004; 76 FR 52274, Aug. 22, 2011; 78 FR 28143, May 14, 2013; 79 FR 57414, Sep. 24, 2014; 79 FR 65585, Nov. 5, 2014; 84 FR 7815, March 5, 2019]

Supplement *Highlights* references: 9(1), 24(1), 64(1), 77(1), 86(2), 88(2), 120(1).

Application for Extended Services, VAF 10-10EC:

<http://www.va.gov/vaforms/medical/pdf/10-10EC.pdf>

§§17.350 through 17.370 [Removed].

§ 17.380 In vitro fertilization treatment.

- (a) (1) In vitro fertilization may be provided when clinically appropriate to--
- (i) A veteran who has a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment; and,
 - (ii) The spouse of such veteran, as provided in §17.412.
- (2) For the purposes of this section, “a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment” means, for a male veteran, a service-connected injury or illness that prevents the successful delivery of sperm to an egg; and, for a female veteran with ovarian function and a patent uterine cavity, a service-connected injury or illness that prevents the egg from being successfully fertilized by sperm.
- (3) In vitro fertilization treatment will be provided under this section when clinically appropriate and to the same extent such treatment is provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in the April 3, 2012, memorandum issued by the Assistant Secretary of Defense for Health Affairs on the subject of “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued by the Department of Defense to implement such policy, including any limitations on the amount of such benefits available to such a member.
- (b) The time periods regarding embryo cryopreservation and storage set forth in part III(G) and in part IV(H) of the memorandum referenced in paragraph (a)(3) of this section do not apply. Embryo cryopreservation and storage may be provided to an individual described in paragraph (a)(1) of this section without limitation on the duration of such cryopreservation and storage.

[82 FR 6275, Jan. 19, 2017; as amended at 82 FR 11153, Feb. 21, 2017; 84 FR 8257, March 7, 2019]

Supplement *Highlights* references: 104(3), 105(1), 120(2).

(ii) In the case of a Camp Lejeune family member who resided at Camp Lejeune between August 1, 1953, and December 31, 1956, for hospital care and medical services received prior to the date an application for benefits is filed per paragraph (c) of this section, the hospital care and medical services must have been provided on or after December 16, 2014, but no more than 2 years prior to the date that VA receives the application. The claim for payment or reimbursement must be received by VA no more than 60 days after VA approves the application;

(iii) For hospital care and medical services provided on or after the date an application for benefits is filed per paragraph (c) of this section, the claim for payment or reimbursement must be received by VA no more than 2 years after the later of either the date of discharge from a hospital or the date that medical services were rendered;

(2) The Camp Lejeune family member's treating physician certifies that the claimed hospital care or medical services were provided for a covered illness or condition as defined in §17.400(b), and provides information about any co-morbidities, risk factors, or other exposures that may have contributed to the illness or condition;

(3) VA makes the clinical finding, under VA clinical practice guidelines, that the illness or condition did not result from a cause other than the residence of the family member at Camp Lejeune;

(4) VA would be authorized to provide the claimed hospital care or medical services to a veteran under VA's medical benefits package in §17.38;

(5) The Camp Lejeune family member or hospital care or medical service provider has exhausted without success all claims and remedies reasonably available to the family member or provider against a third party, including health-plan contracts; and

(6) Funds were appropriated to implement 38 U.S.C. 1787 in a sufficient amount to permit payment or reimbursement.

(e) *Payment or reimbursement amounts.* Payments or reimbursements under this section will be in amounts determined in accordance with this paragraph (e).

(1) If a third party is partially liable for the claimed hospital care or medical services, then VA will pay or reimburse the lesser of the amount for which the Camp Lejeune family member remains personally liable or the amount for which VA would pay for such care under §§ 17.55 and 17.56.

(2) If VA is the sole payer for hospital care and medical services, then VA will pay or reimburse in accordance with §§ 17.55 and 17.56, as applicable.

(The information collection requirements have been submitted to OMB and are pending OMB approval.)

[79 FR 57414, Sep. 24, 2014; as amended at 82 FR 21122, May 5, 2017]

Supplement *Highlights* reference: 86(3).

§ 17.412 Fertility counseling and treatment for certain spouses.

(a) (1) VA may provide fertility counseling and treatment to a spouse of a veteran described in §17.380 to the extent such services are available to a veteran under §17.38, and consistent with the benefits relating to reproductive assistance provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in the April 3, 2012, memorandum issued by the Assistant Secretary of Defense for Health Affairs on the subject of “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued by the Department of Defense to implement such policy, including any limitations on the amount of such benefits available to such a member.

(2) VA may provide in vitro fertilization to a spouse of a veteran described in §17.380 when clinically appropriate and consistent with the benefits relating to reproductive assistance provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in the April 3, 2012, memorandum issued by the Assistant Secretary of Defense for Health Affairs on the subject of “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued by the Department of Defense to implement such policy, including any limitations on the amount of such benefits available to such a member.

(b) The time periods regarding embryo cryopreservation and storage set forth in part III(G) and in part IV(H) of the memorandum referenced in paragraph (a) of this section do not apply. Embryo cryopreservation and storage may be provided to a spouse of a covered veteran without limitation on the duration of such cryopreservation and storage.

[82 FR 6275, Jan. 19, 2017, as amended at 82 FR 11153, Feb. 21, 2017; 84 FR 8257, March 7, 2019]

Supplement *Highlights* references: 104(3), 105(1), 120(2).