

## Department of Veterans Affairs

## § 17.4135

### § 17.4125 Review of Veterans Care Agreements.

VA will periodically review each Veterans Care Agreement that exceeds \$5,000,000 annually, to determine if it is feasible and advisable to furnish the hospital care, medical services, and extended care services that VA has furnished or anticipates furnishing under such Veterans Care Agreements through a VA facility, contract, or sharing agreement instead. If VA determines it is feasible and advisable to provide any such hospital care, medical services, or extended care services in a VA facility or by contract or sharing agreement, it will take action to do so.

### § 17.4130 Discontinuation of Veterans Care Agreements.

(a) Discontinuation of the agreement by the entity or provider requires a written notice of request to discontinue, in accordance with the terms of the Veterans Care Agreement and the following notice requirements:

(1) Written notice must be received by VA at least 45 calendar days before the discontinuation date and must specify the discontinuation date; and

(2) Such notice must be delivered to the designated VA official to which such notice must be submitted under the terms of the Veterans Care Agreement, and the notice and delivery must comply with all terms of the Veterans Care Agreement.

(b)(1) Discontinuation of the agreement by VA requires a written notice of discontinuation to the entity or provider in accordance with the terms of the Veterans Care Agreement and the following notice standards:

(i) Written notice of discontinuation will be issued at least 45 calendar days before the discontinuation date, except as provided in subparagraph (ii).

(ii) Notice may be issued fewer than 45 calendar days before the discontinuation date, including notice that is effective immediately upon issuance, when VA determines such abbreviated or immediate notice is necessary to protect the health of covered individuals or when such abbreviated or immediate notice is permitted under the terms of the Veterans Care Agreement.

(2) Notice will be delivered to the entity or provider in accordance with the terms of the Veterans Care Agreement.

(3) VA may discontinue a Veterans Care Agreement for the following reasons:

(i) If VA determines the entity or provider failed to comply substantially with the provisions of 38 U.S.C. 1703A or 38 CFR 17.4100–17.4135

(ii) If VA determines the entity or provider failed to comply substantially with the provisions, terms, or conditions of the Veterans Care Agreement;

(iii) If VA determines the entity or provider is excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)) under section 1128 or 1128A of such Act (42 U.S.C. 1320a–7 and 1320a–7a), or is identified as an excluded source on the System for Award Management Exclusions list described in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations;

(iv) If VA ascertains that the entity or provider has been convicted of a felony or other serious offense under federal or state law and determines that discontinuation of the Veterans Care Agreement would be in the best interest of a covered individual or VA; or

(v) If VA determines it is reasonable to discontinue the Veterans Care Agreement based on the health care needs of a covered individual.

(The information collection requirements have been submitted to the Office of Management and Budget (OMB) and are pending OMB approval.)

### § 17.4135 Disputes.

(a) *General.* (1) This section establishes the administrative procedures and requirements for asserting and resolving disputes arising under or related to a Veterans Care Agreement. For purposes of this section, a dispute means a disagreement, between VA and the entity or provider that entered into the subject Veterans Care Agreement with VA, that meets the following criteria:

(i) Pertains to one of the subject matters set forth in paragraph (b) of this section;

(ii) Is not resolved informally by mutual agreement of the parties; and

(iii) Culminates in one of the parties demanding or asserting, as a matter of right, the payment of money in a sum certain under the Veterans Care Agreement, the interpretation of the terms of the Veterans Care Agreement or a specific authorization thereunder, or other relief arising under or relating to the Veterans Care Agreement. However, a dispute does not encompass any demand or assertion, as a matter of right, for penalties or forfeitures prescribed by a statute or regulation that another federal agency is specifically authorized to administer, settle, or determine.

(2) The procedures established in this section should only be used when the parties to a Veterans Care Agreement have failed to resolve an issue in controversy by mutual agreement.

(3) The procedures established in this section constitute an entity's or provider's exclusive administrative remedy for disputes under this section.

(4) Disputes under this section are not considered claims for the purposes of laws that would otherwise require the application of sections 7101 through 7109 of title 41 U.S.C.

(5) An entity or provider must first exhaust the procedures established in this section before seeking judicial review under section 1346 of title 28 U.S.C.

(b) *Subject matter of disputes.* Disputes under this section must pertain to:

(1) The scope of one or more specific authorizations under the applicable Veterans Care Agreement; or

(2) Claims for payment under the applicable Veterans Care Agreement.

(c) *Procedures—(1) Initiation of dispute.* Disputes under this section must be initiated in accordance with the following procedures and requirements:

(i) Disputes must be initiated by submitting a notice of dispute, in writing, to the designated VA official to which notice must be submitted under the terms of the Veterans Care Agreement. The notice of dispute must comply with, and be submitted in accordance with, applicable terms of the Veterans Care Agreement.

(ii) The notice of dispute must contain all specific assertions or demands,

all facts pertinent to the dispute, any specific resolutions or relief sought, and all information and documentation necessary to review and adjudicate the dispute.

(iii) The notice of dispute must be received by the designated VA official to which such notice must be submitted, in accordance with the terms of the Veterans Care Agreement, within 90 calendar days after the accrual of the dispute. For purposes of this paragraph, the accrual of the dispute is the date when all events, that fix the alleged liability of either VA or the entity or provider and permit the applicable demand(s) and assertion(s), were known or should have been known. The term "accrual of the dispute," as defined, has the following meanings in each of the two specific circumstances that follow:

(A) When a dispute consists of an entity or provider asserting that VA has made payment in an incorrect amount, under circumstances where VA has issued a corresponding payment notice and the entity or provider has received such notice, the accrual of the dispute is the date such notice was received by the entity or provider.

(B) When a dispute consists of an entity or provider asserting that VA has improperly denied payment to which it is entitled, under circumstances where VA has issued a corresponding denial of payment notice and the entity or provider has received such notice, the accrual of the dispute is the date such notice was received by the entity or provider.

(2) *VA authority to decide and resolve disputes arising under or relating to Veterans Care Agreements.* (i) A VA official acting within the scope of authority delegated by the Secretary of Veterans Affairs (hereafter referred to in this section as the "responsible VA official") will decide and resolve disputes under this section.

(ii) The authority to decide or resolve disputes under this section does not extend to the settlement, compromise, payment, or adjustment of any claim for payment that involves fraud or misrepresentation of fact. For purposes of this paragraph, "misrepresentation of fact" means a false statement of substantive fact, or any conduct which

leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. If the responsible VA official encounters evidence of misrepresentation of fact or fraud on the part of the entity or provider, the responsible VA official shall refer the matter to the agency official responsible for investigating fraud and may refer the matter to other federal entities as necessary.

(3) *Review of dispute and written decision.* (i) Upon receipt of a notice of dispute, the responsible VA official will review the dispute and all facts pertinent to the dispute.

(ii) If the responsible VA official determines additional information or documentation is required for review and adjudication of the dispute, the official will, within 90 calendar days of VA's receipt of the notice of dispute, provide written notice to both parties, in accordance with the notice provisions of the Veterans Care Agreement, that additional information or documentation is required for review and adjudication of the dispute. Such notice will identify and request the additional information and documentation deemed necessary to review and adjudicate the dispute.

(iii) Upon VA receipt of a notice of dispute that conforms to the requirements of paragraph (c)(1) of this section (including containing all information and documentation necessary to review and adjudicate the dispute), the responsible VA official will take one of the following actions within 90 calendar days:

(A) Issue a written decision, in accordance with the notice provisions of the Veterans Care Agreement, to both parties. The written decision will include:

- (1) A description of the dispute;
- (2) A reference to the pertinent terms of the Veterans Care Agreement and any relevant authorizations;
- (3) A statement of the factual areas of agreement and disagreement;
- (4) A statement of the responsible official's decision, with supporting rationale; and
- (5) A statement that the decision constitutes the final agency decision on the matter in dispute.

(B) Upon a determination that additional time is reasonably required to issue a decision, the responsible VA official will provide written notice to both parties, in accordance with the notice provisions of the Veterans Care Agreement, of such determination and the time within which a decision will be issued. The time within which a decision will be issued must be reasonable, taking into account the complexity of the dispute and any other relevant factors, and must not exceed 150 calendar days after receipt of a notice of dispute that conforms to the requirements of paragraph (c)(1) of this section and all information and documentation necessary to review and adjudicate the dispute. The responsible VA official will subsequently issue a written decision in accordance with paragraph (c)(3)(iii)(A) of this section.

(4) *Issuance of decision.* VA will furnish the decision to the entity or provider by any method that provides evidence of receipt.

(5) *Effect of decision.* A written decision issued by the responsible VA official constitutes the agency's final decision on the dispute.

(The information collection requirements have been submitted to the Office of Management and Budget (OMB) and are pending OMB approval.)

#### § 17.4600 Urgent care.

(a) *Purpose.* The purpose of this section is to establish procedures for accessing urgent care. Eligible veterans may obtain urgent care, in accordance with the requirements and processes set forth in this section, from qualifying non-VA entities or providers in VA's network that are identified by VA in accordance with paragraph (c)(2) of this section.

(b) *Definitions.* The following definitions apply to this section.

(1) *Eligible veteran* means a veteran described in 38 U.S.C. 1725A(b).

(2) *Episodic care* means care or services provided in a single visit to an eligible veteran for a particular health condition, or a limited set of particular health conditions, without an ongoing relationship being established between the eligible veteran and qualifying non-VA entities or providers.