(c) *Definitions.*

(1) *Vietnam veteran.* For the purposes of this section, the term ''Vietnam veteran'' means a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Child.* For the purposes of this section, the term ''child'' means a natural child of a Vietnam veteran, regardless of age or marital status, conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA shall require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a child is the natural child of a Vietnam veteran.

(3) *Spina bifida.* For the purposes of this section, the term ''spina bifida'' means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) Upon receipt of competent medical evidence that a child has spina bifida, VA shall determine the level of disability suffered by the child in accordance with the following criteria:

(i) *Level I.* The child is able to walk without braces or other external support (although gait may be impaired), has no sensory or motor impairment of upper extremities, has an IQ of 90 or higher, and is continent of urine and feces.

(ii) *Level II.* Provided that none of the child's disabilities are severe enough to be evaluated at Level III, and the child: is ambulatory, but only with braces or other external support; or has sensory or motor impairment of upper extremities, but is able to grasp pen, feed self, and perform self care; or has an IQ of at least 70 but less than 90; or requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function.

(iii) *Level III.* The child is unable to ambulate; or has sensory or motor impairment of upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or has an IQ of 69 or less; or has complete urinary or fecal incontinence.

(2) Provided that they are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section, VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination. In the absence of such information, VA will schedule an examination for the purpose of assessing the level of disability.

(3) Unless or until VA is able to obtain medical evidence adequate to assess the level of disability due to spina bifida, it will rate the disability of a person eligible for this monetary allowance at no higher than Level I.

(4) Children under the age of one year will be rated at Level I unless a pediatric neurologist certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the child from ambulating; from grasping a pen, feeding him or herself, or performing self care; or from achieving urinary or fecal continence. If such a deficit is present, the child will be rated at Level III. VA will reassess the level of disability of each child to which this provision is applied at the age of one year.

(5) VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it will reassess the level of disability at intervals of not more than five years. Thereafter, it will reassess the level of disability only if evidence indicates there has been a material change in the level of disability or that the current rating may be incorrect.

(Authority: 38 U.S.C. 501, 1805)

13. The Cross-Reference following § 3.57 is amended by removing ''§ 3.403(a)'' and ''§ 3.503(c)'' and adding, in their places, ''§ 3.403(a)(1)'' and ''§ 3.503(a)(3)'', respectively. Each Cross-Reference following §§ 3.659 and 3.703 is amended by removing ''§ 3.503(g)'' and adding, in its place, ''§ 3.503(a)(7)''. Each Cross Reference following §§ 3.707 and 3.807 is amended by removing ''§ 3.503(h)'' and adding, in its place, ''§ 3.503(a)(8)''.

[FR Doc. 97–11256 Filed 4–30–97; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AI65

Provision of Health Care to Vietnam Veterans' Children With Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding Vietnam veterans' children with spina bifida by providing for the provision of health care needed for the spina bifida or any disability that is associated with such condition. This is necessary for providing health care to such children in accordance with recently enacted legislation. A companion document (RIN: 2900-AI70) concerning a proposal to provide for payment of a monetary allowance to a Vietnam veteran's child with spina bifida is set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900-AI65.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Robert De Vesty, Health Systems Specialist, Office of Public Health and Environmental Hazards (13), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, telephone (202) 273–8456.

SUPPLEMENTARY INFORMATION: This document proposes to amend the ''Medical regulations (38 CFR part 17),'' by setting forth new §§ 17.900–17.905 regarding the provision of health care to Vietnam Veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. Chapter 18 (Public Law 104–204, section 421, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document proposes to set forth a mechanism regarding provision of health care to Vietnam Veterans' children with spina bifida. In large part the proposed regulations restate statutory provisions.

As a condition of eligibility for the provision of health care under proposed §§ 17.900–17.905, it is proposed that a recipient must be eligible for a monetary allowance under the provisions setting forth a mechanism for monthly monetary payments relating to spina bifida. This would ensure that each recipient would have been determined to be a Vietnam Veteran's child suffering from spina bifida, and would obviate the need for duplicative medical determinations. In this regard, it is noted that monetary allowance would be awarded if the parent is determined to be a Vietnam veteran; if the child is determined, based on medical evidence, to suffer from spina bifida; and if the parent has not been dishonorably discharged (38 U.S.C. 101(2)). The provisions of §§ 17.900 through 19.905 and the rationale for such provisions are contained in the companion document (RIN: 2900-AI70) discussed above in the **SUMMARY** portion of this document.

The proposal explains, consistent with the authorizing legislation, that the proposed provisions are not intended to be a comprehensive insurance plan and do not cover health care unrelated to spina bifida.

The statutory provisions state that ''the Secretary may provide health care directly or by contract or other arrangement with any health care provider.'' It is proposed that any health care paid for by VA be provided only by ''approved health care providers.'' In this regard, it is proposed that such health care providers be only those approved by the Health Care Financing Administration (HCFA), Department of Defense (DoD) Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), or Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or those who possess a state license or certificate. This appears to provide reasonable assurance that individuals providing health care are qualified to do so.

Under the proposal VA officials may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities. This would allow recipients to consider such sources for health care.

The proposal includes a note clarifying when VA is the exclusive payer for health care provided. The note states that VA would provide payment under the proposal only for health care relating to spina bifida or a disability that is associated with such condition. The note also states that VA is the exclusive payer for services authorized under this proposal regardless of any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. The note further states that any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition.

It is proposed as a condition of payment that preauthorization from a preauthorization specialist of the Health Administration Center (P.O. Box 65025, Denver, CO 80206–9025) be required in accordance with prescribed procedures for case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants—other than mileage at the General Services Administration rate for privately owned automobiles). This will help VA provide necessary care.

Under the proposal, payment to approved health care providers would be made using the methodology already established for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.270 *et seq.*). We believe this methodology based on Medicare and DoD principles would result in fair payments and allow VA to utilize a payment mechanism already in place.

It is proposed that claims from approved health care providers be submitted to the Health Administration Center for payment and that the claims contain specified information. The Center already provides the same types of services for eligible veterans' dependents under the CHAMPVA program. Also, the specified information appears to be necessary to make determinations concerning authorization for payment. The proposal also includes time frames for submission of claims to ensure an orderly and efficient payment system. Further, it is proposed that in response to a request for payment, VA will provide an explanation of benefits to ensure that VA determinations of payments would be understood by claimants.

The proposal sets forth a review/appeal process concerning determinations relating to the provision of health care or payment. A note also would be added to state that the final decision of the Health Administration Center Director concerning provision of health care or payment will inform the claimant of further appellate rights for appeals to the Board of Veterans' Appeals.

Consistent with the statutory scheme, we propose that payments made shall constitute payment in full. The proposed rule also includes a specific list of items that would be excluded from payment since we believe they were not intended to be subject to payment.

The proposal includes provisions concerning medical records. It is proposed that copies of medical records generated outside VA that relate to activities for which VA provided payment and that VA determines are necessary to adjudicate claims under §§ 17.900–17.905 of this part, must be provided to VA at no charge when requested by VA.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that the proposed §§ 17.902–17.904 of 38 CFR contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI65''.

Preauthorization—§ 17.902

Title: Preauthorization for Provision of Certain Health Care to Vietnam Veterans' Children with Spina Bifida.

Summary of collection of information: The provisions of the proposed 38 CFR 17.902 would require individuals to submit a to a preauthorization specialist of the Health Administration Center a preauthorization application for health

care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization application would contain the child's name and social security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider.

Description of need for information and proposed use of information: Such information would be necessary to make preauthorization determinations in accordance with proposed 38 CFR 17.902.

Description of likely respondents: Individuals seeking provisions of health care to Vietnam veterans' children with spina bifida.

Estimated number of respondents: 600 to 2000.

Estimated frequency of responses: One time.

Estimated total annual reporting and recordkeeping burden: 500 hours.

Estimated annual burden per collection: 15 minutes each.

Payment of Claims—§ 17.903

Title: Payment of Claims for Provision of Health Care to Vietnam Veterans' Children with Spina Bifida.

Summary of collection of information: The provisions of the proposed 38 CFR 17.903 would require that, as a condition of payment, claims from ''approved health care providers'' for health care provided under 38 CFR 17.900 must include the following information, as appropriate: With respect to patient identification information: The veteran's and patient's full name, social security numbers, patient's address, and date of birth; with respect to patient treatment information (inpatient and outpatient services): Full name and address (such as hospital or physician), remittance address, physical location where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or Social Security Number (SSN); with respect to patient treatment information (inpatient institutional services): Dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all health care providers and ancillary outpatient services: Diagnosis, procedure code for each procedure, service or supply for each date of service, and individual billed charge for each procedure, service or supply for each date of service; with respect to prescription drugs and medicines: Name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity date dispensed, and pharmacy receipt for each drug dispensed.

Description of need for information and proposed use of information: Such information would be necessary to make payment determinations in accordance with proposed 38 CFR 17.903.

Description of likely respondents: Individuals seeking provision of health care to Vietnam Veterans' children with spina bifida.

Estimated number of respondents: 600 to 2000.

Estimated frequency of responses: 10.

Estimated total annual reporting and recordkeeping burden: 2,000 hours.

Estimated annual burden per collection: 6 minutes per item.

Review/Appeal process—§ 17.904

Title: Review/Appeal process regarding provision of health care or payment relating to provision of health care to Vietnam Veterans' Children with Spina Bifida.

Summary of collection of information: The provisions of the proposed 38 CFR 17.904 would establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination would be required to submit such request to the Chief, Administrative Division, Health Administration Center, in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits advisor would issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity would be permitted to make a written request for review by the Director, Health Administration Center.

Description of need for information and proposed use of information: The information proposed to be collected under 17.904 appears to be necessary to make review and appeal determinations.

Description of likely respondents: Beneficiaries and providers disagreeing with determinations regarding covered services and benefits.

Estimated number of respondents: 100.

Estimated frequency of responses: 10.

Estimated total annual reporting and recordkeeping burden: 334 hours.

Estimated annual burden per collection: 20 minutes per item.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. It is estimated that there are only between 600 and 2,000 Vietnam veterans' children who suffer from spina bifida. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b),

the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance program numbers.

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, Grant 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.

Approved: March 21, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, an undesignated center heading and new §§ 17.900–17.905 are added to read as follows:

Health Care for a Vietnam Veteran's Child with Spina Bifida

Sec.

Health Care for a Vietnam Veteran's Child with Spina Bifida

§ 17.900 Spina Bifida—Provision of health care.

(a) VA shall provide a Vietnam veteran's child who has been determined under § 3.814 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for the spina bifida or any disability that is associated with such condition. This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida.

(b) Health care provided under this section shall be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(Authority: 38 U.S.C. 101(2), 1801–1806)

Note: VA provides payment under this section only for health care relating to spina bifida or a disability that is associated with such condition. VA is the exclusive payer for services authorized under this section regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition.

§ 17.901 Definitions.

For the purpose of this section—

Approved health care provider means a health care provider approved by the Health Care Financing Administration (HCFA), Department of Defense Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health care Organizations (JCAHO), or any health care provider approved for providing health care pursuant to a state license or certificate. An entity or individual shall be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child means the same as defined at § 3.814(c) of this title.

Habilitative and rehabilitative care means such professional counseling, guidance services and treatment programs (other than vocational training under 38 U.S.C. 1804) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provisions of such pharmaceuticals, supplies, equipment, devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual who furnishes health care, including specialized spina bifida clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to an individual in the individual's home or other place of residence.

Hospital care means care and treatment furnished to an individual who has been admitted to a hospital as a patient.

Nursing home care means care and treatment furnished to an individual who has been admitted to a nursing home as a resident.

Outpatient care means care and treatment including preventive health services, furnished to an individual other than hospital care or nursing home care.

Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

Respite care means care furnished on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or associated medical conditions which are adjunct to spina bifida according to the scientific literature).

Vietnam veteran means the same as defined at § 3.814(b) of this title.

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.902 Preauthorization.

Preauthorization from a preauthorization specialist of the Health Administration Center is required for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (other than mileage at the General Services Administration rate for privately owned automobiles). These services will be authorized only in those cases where there is a demonstrated medical need. Applications for provision of health care requiring preauthorization shall either

be made by telephone at (800) 733–8387, or in writing to Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The application shall contain the following:

(a) Name of Child,

(b) Child's Social Security number,

(c) Name of veteran,

(d) Veteran's Social Security number,

(e) Type of service requested,

(f) Medical justification,

(g) Estimated cost, and

(h) Name, address, and telephone number of provider.

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.903 Payment.

(a) (1) Payment under this section will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.720 et seq.).

(2) As a condition of payment, claims from approved health care providers for health care provided under this section must be filed with the Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025, no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of authorization.

(3) Claims for health care provided under the provisions of §§ 17.900 through 17.905 of this part shall contain, as appropriate, the information set forth in paragraphs (a)(3)(i) through (a)(3)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service or supply for each date of service, and

(C) Individual billed charge for each procedure, service or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) Drug Code for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis.

(b) Health care payment shall be provided in accordance with the provisions of §§ 17.900 through 17.905 of this part. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 of this part shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB). When a claim under the provisions of §§ 17.900 through 17.905 of this part is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides at a minimum, the following information:

(1) Name and address of recipient,

(2) Description of services and/or supplies provided,

(3) Dates of services or supplies provided,

(4) Amount billed,

(5) Determined allowable amount,

(6) To whom payment, if any, was made, and

(7) Reasons for denial (if applicable).

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.904 Review appeal process.

If a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination to the person or entity seeking reconsideration that affirms, reverses or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 30 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The Director will review the claim and any relevant supporting documentation and issue a decision in writing that affirms, reverses or modifies the previous decision.

(Authority: 38 U.S.C. 101(2), 1801–1806)

Note: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals.

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment, and that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 of this part, must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1801–1806)

[FR Doc. 97–11257 Filed 4–30–97; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC62

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration, (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations establishing the Financial Assistance/Subsidy Arrangement. This Arrangement may be entered into by and between the Administrator and private sector insurers under the Write Your Own (WYO) program. The proposed amendments would: (1) Reduce the range between the minimum and maximum amount of premium income a company may retain as a servicing fee as a result of its marketing performance; (2) restructure the Arrangement so that under no circumstance would a company have to return any portion of the expense allowance; (3) reformat the Arrangement to make it easier to read; (4) standardize references throughout the document, and (5) add details to clarify responsibilities of private sector insurers under the Arrangement with regard to reporting requirements, litigation, and ''errors and omissions.''

DATES: All comments received on or before June 16, 1997 will be considered before final action is taken on the proposed rule.

ADDRESSES: Please submit any written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443.

SUPPLEMENTARY INFORMATION: The Write Your Own (WYO) program has operated for fourteen years as a cooperative venture between the Federal Government and private insurance companies in order to make it easier for the public to obtain flood insurance coverage. The duties and responsibilities of the Federal Government and the private insurers participating in the WYO program are spelled out each year in the Financial Assistance/Subsidy Arrangement (the ''Arrangement'').

Prior to the 1994–95 Arrangement Year, the amount of premium which the Company retained as a servicing fee or expense allowance was adjusted based on the average of expense ratios for ''Other Acq.,'' ''General Exp.,'' and ''Taxes'' as published in the latest available ''Best's'' Aggregates and Averages: Property Casualty Insurance Underwriting— by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril combined. The average for the 1993–94 Arrangement Year was 32.6 percent, and the expense allowance has not been adjusted for the last three years. This rule proposes an expense allowance range between 31.6 percent and 32.9 percent depending on a company's reaching certain policy growth goals, with 31.9 percent, the current industry average, corresponding to a four percent growth, the current annual growth of flood insurance under the Write Your Own program. FIA also plans, after the implementation of the Arrangement for 1997–98, to continue discussions with the WYO companies on the best way to maintain in future years financial incentives for companies to market flood insurance while minimizing financial uncertainties from one year to the next for participating companies.

This rule proposes in ''B. Time Standards'' of Article II, ''Undertaking of the Company'' adding specific provisions regarding ''continual failure'' of a participating company to meet the time standards of the Arrangement.

Additionally, this rule proposes adding under ''Article III-Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds'': 1. Specific reporting requirements regarding litigation, 2. specific criteria for reporting litigation, and 3. Authority to withhold reimbursement for companies failing to meet the Arrangement's reporting requirements for litigation. Also added in Article III and Article IX, ''Errors and Omissions,'' is proposed language that clarifies the responsibilities of participating companies in connection with ''errors and omissions.''

Finally, this rule proposes other changes that would reformat the Arrangement by modifying the outline format and rearranging text in order to make the document clearer and easier to read. These proposed changes would be consistent with the changes made to the Arrangement last year for the express purpose of making the Arrangement more serviceable for FIA and its insurance industry partners.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental assessment has been prepared.

Executive Order 12898, Environmental Justice

The socioeconomic conditions to this proposed rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this final rule.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this final rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, 44 CFR part 62 is proposed to be amended as follows:

PART 62— SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Appendix A of part 62 would be revised to read as follows: