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#### SUPPLEMENTARY INFORMATION:

##### Background

On March 13, 2009, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Perquimans River, Hertford, NC" in the Federal Register (74 FR 10850-10853). The rulemaking would have allowed the drawbridge to operate on an advance notice basis during specific times of the year. Officials from the Town of Hertford commented that not maintaining a tender during peak boating times would have an adverse impact on public safety.

##### Withdrawal

The North Carolina Department of Transportation (NCDOT), responsible for the operation of the US17 Bridge, had requested advance notification of vessel openings during specific times of the year due to the infrequency of requests for vessel openings of the drawbridge.

The Coast Guard received several comments opposing changes to the proposed rulemaking. We conducted a lengthy and thorough investigation that included a site visit and a meeting with officials of the Town of Hertford. The Coast Guard met with the Mayor, Town Manager, Town Planner and a representative from NCDOT. We also met separately with a marina owner and the Chief of the Water Rescue team.

Our investigation along with the majority of the comments revealed that the rulemaking could impose critical service delays to commercial and recreational boaters and impede the ability of rescue boats to arrive promptly on scene. The withdrawal is based on the reason that this change would not improve the schedule for roadway and waterway users.

##### Authority

This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

Dated: May 11, 2010.

##### Wayne E. Justice,

*Real Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2010-12980 Filed 5-28-10; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AN45

#### Responding To Disruptive Patients

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs (VA) regulation that authorizes appropriate action when a patient engages in disruptive behavior at a VA medical facility. VA needs to update its current regulation to reflect modern medical care and ethical practices. The proposed rule would authorize VA to modify the time, place, and/or manner in which VA provides treatment to a patient, in order to ensure the safety of others at VA medical facilities, and to prevent any interference with the provision of medical care.

**DATES:** *Comment Date:* Comments on the proposed rule must be received by VA on or before August 2, 2010.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN45—Responding To Disruptive Patients." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. This is not a toll free number. In addition, during the comment period, comments may be viewed online at <http://www.Regulations.gov> through the Federal Docket Management System (FDMS).

#### FOR FURTHER INFORMATION CONTACT:

Roscoe Butler, Deputy Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1586. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. chapters 17 and 18, VA has authority to provide medical care to certain veterans and nonveterans. VA is required, per 38 U.S.C. 1721, to prescribe rules and regulations to promote good conduct on the part of VA

patients. VA has implemented this authority in 38 CFR part 17.

Regarding the rights of patients receiving VA care, 38 CFR 17.33(a) prescribes, in part, that patients have "a right to be treated with dignity in a humane environment that affords them both reasonable protection from harm and appropriate privacy with regard to their personal needs." Patients also have "a right to receive, to the extent of eligibility therefor under the law, prompt and appropriate treatment for any physical or emotional disability." Section 17.33(b) also prescribes rights with respect to visitations and communications, clothing, personal possessions, money, social interaction, exercise, and worship for VA residents and inpatients. These rights may be restricted by the appropriate health care professional in certain circumstances. See 38 CFR 17.33(c). The restrictions authorized by § 17.33(c), however, do not apply to outpatients and only cover restrictions on the listed rights. In certain cases, VA must restrict the provision of medical care to a patient in order to prevent harm to other patients and VA staff and disruptions in VA's provision of medical care due to the patient's behavior.

VA regulations also prescribe rules of conduct for patients and other individuals who have access to VA facilities. See 38 CFR 1.218. In particular, § 1.218(a)(5) prohibits persons on VA property from causing a wide variety of disturbances, including creating "loud or unusual noise," obstructing public areas, and impeding or disrupting "the performance of official duties by Government employees." The sole enforcement mechanism provided by paragraph (a)(5) is "arrest and removal from the premises." 38 CFR 1.218(a)(5). VA has determined that arrest is generally not an appropriate remedy in a situation where the Department must balance the rights and needs of a disruptive patient against the need to protect other patients, guests, and staff. Some patients establish a pattern of disruptive behavior when interacting with VA personnel or when they are on VA property, and we believe that by understanding these patterns of behavior, planning for such behavior in advance, and setting safe conditions for care delivery, we can intervene in ways that can prevent subsequent episodes requiring removal and arrest.

In addition to §§ 1.218 and 17.33, the behavior of patients is specifically governed by current 38 CFR 17.106. It requires, in part, that VA maintain the good conduct of patients through "corrective and disciplinary procedure."

However, current § 17.106, which VA promulgated in 1973 and last amended over 10 years ago, does not adequately reflect modern practice or VA's policy regarding disruptive patients in the health care setting, which opposes the use of punishment in the management of disruptive patients. Instead, it reflects the view that patients exhibiting disruptive behavior must be punished. For example, current § 17.106 emphasizes disciplining patients who do not engage in "good conduct," and includes measures (such as withholding pass privileges) that do not differentiate between providing care and ensuring the safety of others. Moreover, the current rule could be viewed as interfering with VA's legal obligation to provide medical care to certain veterans and nonveterans. Accordingly, VA has determined that amendments to current regulations are necessary to implement its policy regarding disruptive patients, which emphasizes continuation of treatment.

We propose to amend § 17.106 to prescribe the remedial measures VA will take when a patient is disruptive and the procedures for implementing those measures. VA intends that the proposed rule would minimize the risk of a particular patient jeopardizing the health or safety of others, or disrupting the safe provision of medical care to another patient, in a VA medical facility.

In proposed § 17.106(a), we would define "VA medical facility" to mean any VA medical center, outpatient clinic, or domiciliary. We would not include VA nursing homes (also referred to as community living centers) because the limitations on the time, place, and manner for delivering care are not applicable to patients in this residential setting.

Proposed paragraph (b) would authorize VA to restrict the time, place, and/or manner of the provision of a patient's medical care if the patient's behavior at a VA medical facility has or could jeopardize the health or safety of other patients, VA staff, or guests at the facility, or otherwise interfere with the delivery of safe medical care to another patient at the facility. Decisions regarding these restrictions would be made by the VA medical facility Chief of Staff or his or her designee. An appropriate designee might include, for example, a Disruptive Behavior Committee (DBC). VA has mandated DBCs at all of the Department's medical centers, and these committees regularly assess disruptive behavior. As such, they have developed expertise in this area.

Proposed paragraph (b) would also set forth procedures for implementing these determinations. Thus, any order restricting a patient's care would need to be in writing and signed by the Chief of Staff or designee with a copy entered into the patient's VA medical record. The Chief of Staff or designee would provide the patient a copy of the order and an explanation of the procedure for an administrative review under paragraph (e) as soon as possible after issuance. Unless otherwise stated in the order, these restrictions would take effect upon the signature of the Chief of Staff or designee. We have determined that restrictions under this proposed rule would be necessary in situations where a patient's behavior has or could harm another person or interfere with the delivery of medical care to another patient at the facility. Accordingly, in almost every case VA would need to implement the restrictions immediately to prevent the harm and meet its obligation to provide safe medical care.

The proposed procedure would emphasize addressing the disruptive patient's needs in order to advance VA's focus on patient care. We propose to require that authorized officials making determinations under this section narrowly tailor restrictions to avoid interfering with the disruptive patient's care. Ultimately, we expect that actions under this proposed rule would increase the likelihood that the disruptive patient will engage, or re-engage (if it has been necessary to terminate an episode of care), in health care in a safe and efficacious manner, without being disruptive. Indeed, through our DBCs and similar committees, we are already seeing anecdotal evidence of such results.

The standard for making determinations under the proposed rule is in paragraph (b)(1). Under this standard, the Chief of Staff or designee would evaluate whether the patient's behavior has or could jeopardize the health or safety of patients or other individuals who have access to VA medical facilities. The Chief of Staff or designee would also evaluate whether the patient's behavior has or could interfere with the delivery of medical care to another patient at a VA medical facility. In making such determinations, the Chief of Staff or designee would consider, among other things, the patient's individual fears; VA's obligation to provide the patient with high-quality medical care; and all of the pertinent facts, such as any prior counseling of the patient regarding his or her inappropriate behavior. See proposed paragraph (c).

Proposed paragraph (d) would also suggest a range of possible restrictions that could be imposed. We believe that these suggestions would assist Chiefs of Staff or their designees to narrowly tailor restrictions imposed under the proposed rule. We do not intend to limit the remedial options available to the officials making determinations under this section. Rather, proposed paragraph (d) would illustrate the types of restrictions that might be appropriate in a given situation and would authorize any other restriction that the Chief of Staff or designee deems appropriate short of arrest and removal. Restrictions could thus be tailored to consider the needs of a particular situation or patient.

Proposed paragraph (e) would prescribe the procedures for obtaining an administrative review of restrictions imposed by order of the Chief of Staff or designee under the proposed rule. VA provides medical care through 21 networks of medical facilities known as Veterans Integrated Service Networks. We propose to allow one appeal of an order restricting medical care under this section to the Network Director of jurisdiction. The patient would initiate the Network Director's review by submitting a request to the Chief of Staff within 30 days of the effective date of the Chief of Staff's or designee's order. However, in light of VA's obligation to provide safe medical care for all patients, the order would be enforced while under review by the Network Director. The Chief of Staff would provide the patient written notice of the Network Director's final decision.

At the end of the proposed rule, we would include a note stating as follows: "Although VA may restrict the time, place, and/or manner of care under this section, VA will continue to offer the full range of needed medical care to which a patient is eligible under title 38 of the United States Code or Code of Federal Regulations." We do not intend to prevent patients from accessing non-emergent VA medical care and will work with veterans to try to find other VA medical facilities that can provide the care. However, we recognize that in a few instances VA restrictions on the time, place, or manner of care may make it very difficult for a veteran to access VA care if the veteran is unwilling to accept the restrictions placed upon his or her behavior by the local facility. We also note that it has been our experience that through creative case management on the part of VA staff and other involved parties, it is almost always possible to find transportation, even for veterans who must travel great distances for routine appointments.

We do not consider patients disruptive if they merely do not comply with a doctor's orders, decline recommended medical treatment, or leave a facility against medical advice. Such noncompliance can be, and is, addressed most effectively through clinical means. We propose to add a second sentence to the note explicitly stating that noncompliance with VA medical treatment recommendations is not disruptive under this section.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule will have no such effect on State, local, or tribal governments, or the private sector.

#### Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have

been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, 64.015, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on March 22, 2010, for publication.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes.

Dated: May 26, 2010.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel.*

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

#### PART 17—MEDICAL

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

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

2. Section 17.106 is revised to read as follows:

#### § 17.106 VA response to disruptive behavior of patients.

(a) *Definition.* For the purposes of this section:

*VA medical facility* means VA medical centers, outpatient clinics, and domiciliaries.

(b) *Response to disruptive patients.* The time, place, and/or manner of the provision of a patient's medical care may be restricted by written order of the Chief of Staff of the VA Medical Center of jurisdiction or his or her designee if:

(1) The Chief of Staff or designee determines pursuant to paragraph (c) of this section that the patient's behavior at a VA medical facility has or could jeopardize the health or safety of other patients, VA staff, or guests at the facility, or otherwise interfere with the delivery of safe medical care to another patient at the facility;

(2) The order is narrowly tailored to address the patient's disruptive behavior and avoid undue interference with the patient's care;

(3) The order is signed by the Chief of Staff or designee, and a copy is entered into the patient's permanent medical record;

(4) The patient receives a copy of the order and written notice of the procedure for appealing the order to the network director of jurisdiction as soon as possible after issuance; and

(5) The order contains an effective date and any appropriate limits on the duration of or conditions for continuing the restrictions. The Chief of Staff or designee may order restrictions for a definite period or until the conditions for removing conditions specified in the order are satisfied. Unless otherwise stated, the restrictions imposed by an order will take effect upon issuance by the Chief of Staff or designee. Any order issued by the Chief of Staff or designee shall include a summary of the pertinent facts and the bases for the Chief of Staff's or designee's

determination regarding the need for restrictions.

(c) *Evaluation of disruptive behavior.* In making determinations under paragraph (b) of this section, the Chief of Staff or designee must consider all pertinent facts, including any prior counseling of the patient regarding his or her disruptive behavior or any pattern of such behavior, and whether the disruptive behavior is a result of the patient's individual fears, preferences, or perceived needs. A patient's disruptive behavior must be assessed in connection with VA's duty to provide good quality care, including care designed to reduce or otherwise clinically address the patient's behavior.

(d) *Restrictions.* The restrictions on care imposed under this section may include but are not limited to:

(1) Specifying the hours in which nonemergent outpatient care will be provided;

(2) Arranging for medical and any other services to be provided in a particular patient care area (e.g., private exam room near an exit);

(3) Arranging for medical and any other services to be provided at a specific site of care;

(4) Specifying the health care provider, and related personnel, who will be involved with the patient's care;

(5) Requiring police escort; or

(6) Authorizing VA providers to terminate an encounter immediately if certain behaviors occur.

(e) *Review of restrictions.* The patient may request the Network Director's review of any order issued under this section within 30 days of the effective date of the order by submitting a written request to the Chief of Staff. The Chief of Staff shall forward the order and the patient's request to the Network Director for a final decision. The Network Director shall issue a final decision on this matter within 30 days. VA will enforce the order while it is under review by the network director. The Chief of Staff will provide the patient who made the request written notice of the Network Director's final decision.

**Note:** Although VA may restrict the time, place, and/or manner of care under this section, VA will continue to offer the full range of needed medical care to which a patient is eligible under title 38 of the United States Code or Code of Federal Regulations. Patients have the right to accept or refuse treatments or procedures, and such refusal by a patient is not a basis for restricting the provision of care under this section.

(Authority: 38 U.S.C. 501, 901, 1721)

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BILLING CODE 8320-01-P

## POSTAL SERVICE

### 39 CFR Part 501

#### Revisions to the Requirements for Authority To Manufacture and Distribute Postage Evidencing Systems

**AGENCY:** Postal Service™.

**ACTION:** Proposed rule.

**SUMMARY:** In this proposed rule, the Postal Service proposes to amend regulations on Authorization to Manufacture and Distribute Postage Evidencing Systems. This proposed revision clarifies the requirement for examination by an independent audit firm of a Postage Evidencing System Provider's Computerized Meter Resetting System (CMRS) or PC Postage® system internal controls.

**DATES:** Submit comments on or before July 1, 2010.

**ADDRESSES:** Mail or deliver written comments to the Manager, Postage Technology Management, U.S. Postal Service, 475 L'Enfant Plaza SW., Suite 4200 NB, Washington, DC 20260-4200. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postage Technology Management office.

**FOR FURTHER INFORMATION CONTACT:** Marlo Kay Ivey, Marketing Specialist, Postage Technology Management, U.S. Postal Service, at 202-268-7613.

**SUPPLEMENTARY INFORMATION:** Postage Evidencing Systems are devices or systems of components that a customer uses to print evidence that the prepaid postage required for mailing has been paid. They include, but are not limited to, postage meters and PC Postage systems. The Postal Service regulates these systems and their use in order to protect postal revenue. Only Postal Service-authorized product service providers may design, produce, and distribute Postage Evidencing Systems. This proposed revision clarifies the internal controls required in 39 CFR 501.15(i), Computerized Meter Resetting system, and 501.16(f), PC Postage Payment Methodology. This requirement was added as part of a final rule published in the **Federal Register** on November 9, 2006, at 71 FR 65732.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [39 U.S.C. 410(a)], the Postal Service invites public comment on the following proposed revisions to the Code of Federal Regulations (see 39 CFR part 501).

## List of Subjects in 39 CFR Part 501

Postal Service.

Accordingly, 39 CFR part 501 is proposed to be amended as follows:

### PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

1. The authority citation for 39 CFR part 501 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95-452, as amended); 5 U.S.C. App. 3.

2. Section 501.15 is amended by revising paragraph (i) to read as follows:

#### § 501.15 Computerized Meter Resetting System.

\* \* \* \* \*

(i) *Security and Revenue Protection.* To receive Postal Service approval to continue to operate systems in the CMRS environment, the RC must submit to a periodic examination of its CMRS system and any other applications and technology infrastructure that may have a material impact on Postal Service revenues, as determined by the Postal Service. The examination shall be performed by a qualified, independent audit firm and conducted in accordance with the Statement on Auditing Standards (SAS) No. 70, Service Organizations, developed by the American Institute of Certified Public Accountants (AICPA), as amended or superseded. The examination shall include testing of the operating effectiveness of relevant RC internal controls (Type II SAS 70 Report). If the service organization uses another service organization (sub-service provider), Postal Service management should consider the nature and materiality of the transactions processed by the sub-service organization and the contribution of the sub-service organization's processes and controls in the achievement of the Postal Service's information processing objectives. The Postal Service should have access to the sub-service organization's SAS 70 report. The control objectives to be covered by the SAS 70 report are subject to Postal Service review and approval and are to be provided to the Postal Service 30 days prior to the initiation of each examination period. As a result of the examination, the auditor shall provide the RC and the Postal Service with an opinion on the design and operating effectiveness of the RC's internal controls related to the CMRS system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the RC. Such