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Director, Regulations Policy and Management (00REG)
Department of Veterans Affairs
810 Vermont Avenue, NW, Room 1063B
Washington, DC 20420

**RE: Urgent Care
(RIN 2900-AQ47)**

The DAV (Disabled American Veterans) is pleased to respond to the Department of Veterans Affairs (VA) notice of proposed rulemaking on the above-referenced subject as published in the *Federal Register* on January 31, 2019.

DAV is a nonprofit Congressionally chartered veterans service organization that provides a lifetime of support for veterans of all generations and their families, helping more than one million veterans in positive, life-changing ways each year. With nearly 1,300 chapters and more than one million members across the country, DAV empowers our nation's heroes and their families by helping to provide the resources they need and ensuring our nation keeps the promises made to them. Annually, the organization provides more than 600,000 rides to veterans attending medical appointments and assists veterans with well over 200,000 benefit claims. DAV is also a leader in connecting veterans with meaningful employment, hosting job fairs and providing resources to ensure they have the opportunity to participate in the American Dream their sacrifices have made possible. All of DAV's services are offered at no cost to all generations of veterans, their families and survivors.

On June 6, 2018, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 or the VA MISSION Act of 2018 ("MISSION Act"), Public Law 115-182, was signed into law. Section 105 of the MISSION Act amended Chapter 17 of title 38 United States Code (U.S.C.) by inserting § 1725A. Access to walk-in care.

The new 38 U.S.C. §1725A, requires the Secretary to develop procedures to allow certain veterans to access walk-in and urgent care through community providers, including Federally-Qualified Health Centers that have entered into a contract or other agreement with the Secretary. All veterans enrolled in the VA health care system, and who have received VA care or services within 24 months prior to accessing a walk-in care clinic, are eligible. Both requirements must be satisfied for eligibility under this provision. Under this section, walk-in care means nonemergent care provided by qualifying non-VA providers or entities, including third-party administrators, that furnish episodic care and not longitudinal management of conditions, and as further defined by the Secretary in regulations.

VA would be required to ensure continuity of care for veterans receiving walk-in or urgent care this section, including through the establishment of a mechanism to receive medical records from walk-in care providers and to share pertinent patient medical records with walk-in care providers.

This section also requires veterans to pay copayments when receiving walk-in or urgent care. If a veteran is required to pay a copayment for care at a VA facility, then the veteran may be required to pay a copayment when accessing walk-in care. If a veteran is not required to pay a copayment at a VA facility, then the first two visits in a calendar year will be free, and any additional visits after the first two visits “*may*” require copayments, as determined by the Secretary in regulations. If a veteran is required to pay a copayment for care at a VA facility, then the veteran would be required to pay the same regular copayment amount for the first two walk-in care visits in a calendar year. For any additional visits, a higher copayment amount, as determined by the Secretary in regulations, “*may*” be required.

DAV applauds VA proposing regulations that would provide eligible veterans for the first time ever, access to non-VA walk-in and urgent care as part of VA’s medical benefits package. Since 2015, DAV has been calling for an urgent care benefit be made part of VA’s medical benefits package recognizing a health care benefits package is incomplete without appropriate access to and coverage for urgent care, which is typically lower cost than emergency treatment, and encourages health care in the appropriate setting.

In testimony before the Senate Veterans’ Affairs Committee, DAV opposed a proposal for an across the board \$50 copayment for urgent care, which would have made no exception for veterans with service-connected disabilities or who are currently exempted from copayments. In light of previous proposals and enactment the VA MISSION Act of 2018, we support VA’s proposed regulations to provide veterans three urgent care visits rather than after two urgent care visits without requiring copayments.

However, DAV opposes the proposed requirement that service connected veterans pay a copayment as a condition to receiving walk-in or urgent care, including veterans receiving such care for a service-connected condition.

As of January 2018, all VA facilities offer same-day services for urgent primary care.¹ If a veteran is seeking same day care, this can only currently be accessed through a VA facility. Facilities eligible to furnish this care are made readily available to veterans. Designations for each eligible facility includes availability for the following: same day primary care, same day mental health care, emergency room care, urgent care clinic, walk-in primary care clinic, walk-in mental health clinic, telehealth for primary care, and telehealth for mental health. There are no referrals, authorizations, or eligibility requirements in place to receive this service. Any veteran who qualifies for VA benefits can receive this service. Unlike the proposed copayment structure for walk-in and urgent care under 38 U.S.C. 1725A, copayments for these services include \$15 per primary care for nonservice-connected care and \$50 for specialty care for nonservice-connected care—importantly, no copayment is assessed for same-day services for urgent primary care for service-connected care.

As authorized under 38 U.S.C. § 1725A(f)(2), “After the first two episodes of care furnished to an eligible veteran under this section, the Secretary *may adjust the copayment*

¹ <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=3998>

required of the veteran under this subsection based upon the priority group of enrollment of the eligible veteran, the number of episodes of care furnished to the eligible veteran during a year, and other factors the Secretary considers appropriate under this section.” (Emphasis Added)

DAV urges the Secretary to reconsider the proposed copayment structure to one that aligns with other provisions related to outpatient copayment requirements under title 38. Veteran copayment requirements for outpatient care described in other sections such as 38 U.S.C. §§ 1710, 1722, 1730A are promulgated under 38 C.F.R. § 17.108 as follows:

(d) *Veterans not subject to copayment requirements for inpatient hospital care or outpatient medical care.* The following veterans are not subject to the copayment requirements of this section:

- (1) A veteran with a compensable service-connected disability.
- (2) A veteran who is a former prisoner of war.
- (3) A veteran awarded a Purple Heart.
- (4) A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty;
- (5) A veteran who receives disability compensation under 38 U.S.C. 1151.
- (6) A veteran whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that the veteran's continuing eligibility for care is provided for in the judgment or settlement described in 38 U.S.C. 1151.
- (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 § 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.

Aligning the copayment requirements for walk-in and urgent care with existing statute would also comport with Section 101 of the MISSION Act, which amends title 38. Specifically, 38 U.S.C. § 1703(k) provides that a veteran shall not pay a greater amount for receiving care or services under the Veteran Community Care Program than the amount the veteran would pay for receiving the same or comparable care or services at a medical facility of the Department or from a health care provider of the Department.

Adopting existing outpatient copayment requirements to the walk-in and urgent care benefit would reduce the associated costs in educating veterans on different copayment requirements, minimize Departmental staff training and additional copayment determinations, and limit the need for new Information Technology development and maintenance to implement a different copayment structure.

Rather than requiring copayments for walk-in or urgent care, we urge the Secretary to encourage appropriate patient behavior in using this benefit by integrating its telehealth program. For example, the Department of Defense offers a Nurse Advice Line available 24 hours a day, 7 days a week at no cost to direct beneficiaries seeking care to the source of the most appropriate level of health care required to treat the medical conditions of the beneficiaries, including urgent care services.

The final report on a pilot program required by Section 725 of the National Defense Authorization Act for fiscal year 2016, Public Law 114-92, which encouraged the use of the Nurse Advice Line to guide enrollees to the most appropriate level of health care, reported urgent care encounter volume rose by 13 percent from fiscal (FY) 2016 to FY 2017, and the more costly emergency department encounter volume fell by 6 percent during the same time period. Furthermore, total non-Department urgent care non-pharmaceutical costs rose 33 percent from FY 2016 to FY 2017, although non-Department urgent care costs per visit remained significantly lower than non-Department emergency care costs per visit. The data in this report also demonstrate the positive impact of the Nurse Advice Line in directing covered beneficiaries to the most appropriate care setting. For example, of the callers who intended to visit an Emergency Department facility, 72 percent were directed to less resource-intensive care centers. Additionally, more than 98 percent of covered beneficiaries used two or fewer urgent care visits during the first sixteen months of the pilot. Beneficiary surveys reveal that 92 percent of beneficiaries who participated in the pilot are satisfied with the increased access to care under the pilot.²

Notwithstanding the proposed walk-in and urgent care copayment requirements, VA's existing copayment requirements acknowledge that through service to their nation in which they made extraordinary sacrifices and contributions, injured and ill veterans have earned the right to certain benefits in return. As the beneficiaries of veterans' service and sacrifice, the citizens of our grateful nation want our government to fully honor its moral obligation to care for veterans and generously provide them benefits and services without additional sacrifice.

In conclusion, the Secretary should eliminate the proposed requirement that service-connected veterans pay a copayment as a condition to receiving walk-in or urgent care, including veterans receiving such care for a service-connected condition. This proposed copayment structure contradicts VA's current practice of not assessing a copayment for urgent care provided in VA facilities to service-connected veterans or for their service-connected condition. In addition, the proposal runs counter to the larger Veteran Community Care Program to be established under Section 101 of the MISSION Act, which requires that a veteran not pay more for utilizing non-VA care than the veteran would pay for comparable care or services at VA.

Sincerely,



EDWARD R. REESE

Executive Director

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² <https://health.mil/Reference-Center/Congressional-Testimonies/2018/06/14/Pilot-Program-on-Urgent-Care-Under-TRICARE-Program>