

VA to pay 'partial' non-VA emergency claims

BY TOM PHILPOTT

Months after conceding defeat in the *Staab* federal court decision, the Department of Veterans Affairs published a regulation and began to pay backlogged claims for episodes of private-sector emergency care in which a veteran's other health insurance paid only part of resulting costs.

The rule expands eligibility for reimbursement of non-VA emergency treatment to any veteran who receives only partial payment for such care from a health-plan contract. It also establishes a reimbursement methodology for payments, which are to cover "reasonable" emergency costs for VA-enrolled veterans – including hospital charges, professional fees and emergency transportation such as ambulances.

Some of the claims to be reimbursed were filed as far as back as 2010 but kept alive on appeal. Individual reimbursements on some claims could total tens of thousands of dollars – for example, if emergency care required heart surgery or other complex procedures that a veteran's other health insurance covered poorly.

VA stopped deciding claims for partially paid non-VA emergency care on April 8, 2016, the day a three-judge panel on the U.S. Court of Appeals for Veterans Claims ruled unanimously that VA wrongly ignored the "plain language" of a statute enacted in 2009 to reimburse veterans the portion of private-sector emergency care expenses not covered by any other plan. Instead, VA continued to reject such claims for years. It even ignored the 2009 law while revising a regulation on non-VA emergency care in 2012.

By the end of September, VA had a backlog of *Staab*-related claims of 749,000 from 2016 and 2017 alone, and expects 635,000 more in fiscal 2018, for a total of 1,384,000 claimants through September.

After the appeals court defeat, VA spent over a year pondering whether to appeal to a higher appellate court. Last June, VA Secretary David Shulkin dismissed that idea. VA would begin paying the claims when it had rules written to implement the decision and processes in place to calculate and make payments.

Not all veterans enrolled in VA health care who needed non-VA emergency care costs will be pleased. The Jan. 9 rule said *Staab* does not benefit veterans whose claims for reimbursement were made final before the 2016 court decision. When a judicial decision invalidates a VA regulation or VA interpretation of law it "cannot affect prior final VA decisions," VA officials said, citing the precedent set from two earlier federal court decisions.

Air Force veteran Richard W. Staab filed his lawsuit against VA because he faced \$48,000 in unpaid hospital bills after emergency heart surgery in December 2010. VA officials told Staab the department was responsible for unpaid non-VA emergency costs only if the veteran had no other health insurance. Because Staab was eligible



for Medicare Part A, which paid a portion of his emergency care, VA rejected his claim to cover what Medicare did not.

After a few lower-court victories, Staab also won on appeal. The court agreed with his argument that VA kept its convoluted interpretation of payment obligations for non-VA emergency care even after Congress clarified the law so VA would be responsible for any outside emergency care costs left unpaid.

While deciding whether to appeal to a higher appellate court, VA warned that if *Staab* stood it would have to pay almost \$2 billion on pending claims and more than \$10 billion on additional emergency care costs over the next decade.

With the Jan. 9 rule, however, VA freshened its cost estimates and came in sharply lower than it earlier argued to the courts. VA developed a low, medium and high cost estimate, by year. The highest estimate has *Staab*-related claims costing VA \$100 million in fiscal 2018 and \$297 million over five years. VA officials also expect to cover the added costs within current budgets, with no need for a special appropriation from Congress.

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