CITATION: VAOPGCPREC 13-90
Vet. Aff. Op. Gen. Couns. Prec. 13-90

DATE: 05-21-90

TEXT:

SUBJ: Application of Recoveries from Health Insurance to Category C Debts

QUESTION PRESENTED:

What is the correct application of a reimbursement from a third-party health insurer representing the cost of VA health care when there is also a Category C "means test" copayment debt?

COMMENTS:

1. The question initially posed in the request for an opinion was specific to the situation in which a Category C veteran who has health insurance receives an episode of VA hospitalization. The veteran now has a bill for $560 ("means test copayment"). The veteran submits this bill to his Medicare supplemental ("medigap") carrier. The VA medical center also submits a bill to the same carrier for the third-party debt. If the veteran's bill is processed first by the carrier, the veteran will receive the $560 (since the means test copayment is by law equal to the Medicare inpatient deductible) and then remits this amount to VA to satisfy the means test copayment. In processing VA's claim the insurer will take account of the fact that $560 has already been paid to the insured. This would probably result in VA receiving no payment from the insurer since the medigap coverage is often limited to the Medicare deductible. If, on the other hand, the hospital's bill is processed first, the insurer may pay the limit of its coverage, i.e., $560, to VA. Under current policy of the Veterans Health Services & Research Administration (VHS & RA), the payment would be applied to the third-party debt, leaving the veteran still liable to VA for the means test copayment. The veteran in this scenario would tend to believe that the payment by the insurer satisfied the veteran's obligation to VA.

2. While the question arose in the context of a medigap policy, the issue it raises comes into play whenever a Category C veteran has health insurance which could cover all or a part of the means test copayment, placing the veteran and VA in the position of competing for the same insurance proceeds. Discussions with both field and Central Office personnel involved in the medical care cost recovery (MCCR) program in the course of preparing this opinion indicates that it is this broader issue that requires clarification.

3. Both the means test and VA's third-party health insurance recovery authority were enacted as part of the same statute, the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272 (April 7, 1986). The two provisions were developed more or less independently, however, and there is little legislative history addressing the interface between them. In its report to the Committee on the Budget, U.S. House of Representatives, the House Veterans' Affairs Committee stated:

The Veterans Administration would not be authorized to bill a third-party payer for the cost of care covered by the deductible which a veteran is required to pay to the VA in order to receive needed care. However, a veteran who pays the deductible in order to receive inpatient or outpatient care would not be responsible for any additional amount which would be payable under the terms of his or her insurance policy. H.R.REP. No. 99-300, 99th Cong., 1st Sess. 789 (1985).

4. The exact import of this passage is unclear since the two sentences are not logically related. It would at least appear, however, that the Committee did not intend for VA to recover on its own behalf from the insurer the cost of care represented by the means test copayment.

5. The Senate Veterans' Affairs Committee, in its recommendations to the Committee on the Budget, stressed that the insurer was not relieved from any contractual obligations to the veteran because of the interplay of the two provisions:

Also, if such a veteran Category C is covered by a health-plan contract, the United States would be authorized to obtain reimbursement from the third party for the reasonable cost of care in excess of the amount charged the veteran. Whether and to what extent the veteran, in turn, would be entitled to have the third party pay the amount charged would be determined by the terms and conditions of the health-care contract. S.REP. No. 99-146, 99th Cong., 1st Sess. 576-577 (1985).

6. Again, this passage does not directly address the issue, but is indicative of an intent to permit the veteran to have the benefit of his or her health insurance to the extent that the means test copayment is covered by the policy. This interpretation is consistent with section 629(e) which provides that no veteran eligible for care may "be denied such care or services by reason of this section." To require a veteran to make an out-of-pocket payment when there is insurance, for which premiums have previously been paid, available to cover the means test copayment would place an additional condition of eligibility on those veterans subject to the means test who also have insurance. There is no indication in the statutory language or legislative history evidencing Congress' intention to treat this class of Category C veterans differently from those without insurance.

7. The foregoing demonstrates that the issue is not free from doubt. It could be argued that the basic purpose of both provisions is to collect funds for the Treasury and that, therefore, the interest of the Government should prevail over that of the veteran. The better view, in our judgment, however, is that in enacting section 629 Congress did not intend to prevent Category C veterans with health insurance from satisfying their means test obligations with the proceeds from their insurance. It could also be argued that, since a review of the statutes and legislative history fails to provide a clear answer, there is no legal issue but only one of policy. While we believe this is a legal issue, to the extent it is considered to be one of policy, the policy has been addressed in the Secretary's letter of October 10, 1989, to the Chairman, House Veterans' Affairs Committee which states that "where a 'Medigap' insurer pays VA an amount equal to the means test copayment, the veteran's obligation to pay VA will be considered satisfied."

8. We conclude, therefore, that, where a veteran has both a means test copayment obligation and health insurance, the insurance must be allowed to satisfy the copayment obligation to the extent of coverage. This is not to say, however, that all proceeds from insurance carriers are to be first applied to the means test debt until it is satisfied before any payment may be applied to the third-party debt. Some insurers view the means test copayment as an eligibility payment and not, therefore, subject to reimbursement. If that were the situation, all proceeds from the insurer should be applied to the third-party debt. Most health insurance policies also have deductibles and copayment provisions. A veteran's means test copayment debt should not be credited by the insurer's payments to VA until the insurance deductible or copayment has been "satisfied" by the veteran's payment to VA of as much of the means test obligation as corresponds to the applicable insurance deductible or copayment which is outstanding. Further, most health insurance covers only a percentage of hospital charges even after satisfaction of deductibles and copayments in the policy. To the extent that such a percentage factor is being applied, it should apply both to the veteran's means test debt and VA's claim for reimbursement. In order to make proper application of insurance proceeds, the VAMC will have to become aware of not only the policy provisions, but also the prior payment history on the policy. Hopefully, sufficient information will be forthcoming from the insurer in its explanation of medical benefits accompanying the payment to permit the VAMC to make the correct determination as to application of the proceeds.

9. In the situation which generated the request for an opinion involving a Medicare supplemental policy, the only coverage the policy provides may be an amount which happens to equal the means test copayment. If that is the case, receipt of that amount from the insurer should satisfy the veteran's Category C debt, and the health insurance bill should be adjusted to zero. It should be noted, however, that some medigap plans cover more than the Medicare deductible, in which case some additional payment from the insurer should be

forthcoming and applied to the third-party debt.

10. We believe this analysis is most consistent with the statutory scheme and incorporates basic principles of fairness. Its application may at first be difficult, however, and requires a departure from current VHS & RA procedures. We do not believe, therefore, that it should be applied retroactively, but rather should become effective only after implementing instructions are developed and made available to VA medical facilities.

HELD:

Where a Category C veteran also has health insurance, recovery from which is subject to 38 U.S.C. § 629 payments by the health insurer should be applied to satisfy the means test copayment debt to the extent that the insurance provides coverage, and the remainder should be applied to the third-party debt, with the third party claim being adjusted accordingly.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 13-90