



**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS DECISION ON
NON-SERVICE CONNECTED EMERGENCY CARE CLAIMS
ISSUE BRIEF
AUGUST 2016**

Background

On April 8, 2016, a U.S. Court of Appeals for Veterans Claims (CAVC) ruling invalidated a VA regulation governing reimbursement or payment for unauthorized emergency treatment of a Veteran's non-service-connected condition furnished by a non-VA provider. Prior to the ruling, VA's regulation barred reimbursement or payment when the Veteran has other health insurance (OHI), including Medicare and employee-sponsored and private health insurance, in addition to their VA health care benefits. The CAVC ruling contradicts VA's longstanding interpretation of the statutory authority and our business practices.

What is the impact of this ruling?

- The CAVC ruling impacts claims for reimbursement or payment of non-VA emergency treatment of Veterans' **non-service connected conditions if the Veterans also have OHI**. It also impacts related claims for reimbursement or payment of the costs of emergency transportation, which are dependent on VA making payment on the related emergency treatment claim.
- The CAVC ruling significantly expands a benefit without providing additional resources. Unless funds are appropriated for this purpose, implementing the decision will adversely affect resources available for medical services and hospital care for other enrolled Veterans.
- If the CAVC ruling is upheld, it means the way VA was processing claims for reimbursement or payment of Veterans' non-VA emergency treatment of non-service-connected conditions is no longer valid. Regulations need to be developed to determine the way these claims should be paid.
- If upheld, the ruling would require VA to pay claims that are currently denied today, resulting in an unbudgeted cost. As of August 2016, the high-end estimate for the first year of implementation is \$1.6 billion and the low-end estimate is \$529 million. These estimates may change with time and will increase if Veterans' reliance on non-VA emergency treatment grows in response to the ruling.

What does this mean for Veterans and Community Providers?

- Many claims for non-VA emergency treatment of non-service-connected conditions **will be held in a pending status and will not be paid**. At this time, VA is unable to state how long these claims will be held. This will affect the claims of Veterans with OHI that otherwise would be eligible for reimbursement. VA estimates it will hold approximately 6,000-7,000 claims per week.



- VA is notifying Community Providers and Veterans that they should submit claims to OHI plans to ensure timely filing deadlines are met while VA challenges the CAVC ruling. This should be done prior to submitting claims to VA.

How is VA responding?

- VA is taking steps to challenge the Court's ruling since it does not provide a comprehensive and sustainable solution to emergency care.
- **VA is advocating for comprehensive reforms** to improve all enrollees' access to care in the community as outlined in the *Plan to Consolidate Community Care Programs* as submitted to Congress in October 2015. The reforms identified in the *Plan* will assist in delivering a program that is easy to understand, simple to administer, and meets the needs of Veterans, community providers, and VA staff.
- VA is moving forward with developing regulations needed to implement the April 8, 2016, decision to ensure VA is able to quickly process affected claims if the ruling is upheld.
- VA is working closely with Veterans, Community Providers, Veterans Service Organizations, Congress, and other key stakeholders to help them understand the implications of the April 8, 2016, ruling and to keep them abreast of VA's actions.