

# Emergency Care in Non-VA Facilities

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It appears that there are a few RULES a veteran needs to follow to gain at least a modicum of a chance that VA will actually pick up the costs.

RULE 1: You must first be enrolled in the VA Health Care System. That is where you have turned in a VA Form 10-10EZ and been assigned a VA Priority Number 1 through 7. You will generally have also received a VA Photo Identification Card issued by a VA Medical Center. You do not need to have that card on your person, but having it is proof that you are in the VA Health Care System.

RULE 2: You must contact the YOUR OWN LOCAL VA HEALTH CARE NUMBER to inform the VA that you are in a non-VA facility receiving EMERGENCY treatment. You must contact the VA AS SOON AS POSSIBLE. I believe that is within 72 hours of your admission. But I also believe that NO SPECIFIC TIME LIMIT is stated, and it will be the VAs determination as to when you were first able to contact them whether they think you notified them fast enough or not! Leave nothing to chance! Contact them as soon as possible.

Who should you contact and where should you call? Ah! There is the problem. I initially had an 1-800-number posted. I now know that the number I had posted is ONLY for veterans who lived in Colorado, Montana, Utah and Wyoming. This is known as VISN 19. It is a geographical area referring to my own LOCAL VA HEALTH CARE SERVICES.

Each veteran must contact their own LOCAL VA HEALTH CARE FACILITIES when they are reporting emergency treatment received outside the VA System. At the VA Medical Center or CBOC, they will either take the information, transfer the call, or give the contact number to call.

The VA provides information about how to arrange for a non-VA hospital to care for you in an emergency. BUT they do not tell you how to contact them. When you find it, write that number down and keep it in your wallet. You will not find it on VA information pages.

When you do report in, you may need to leave a message. If at all possible, have a witness that can verify that you made the call at some specific time. But get back to them at the first opportunity and speak to someone live and in person.

The following information is taken directly from VA Information --- everything except the phone number you need to call.

At some time in your life, you may need urgent emergency care. This information explains what the VA might be able to do for you if you need emergency care at some place other than a VA Hospital. When it is not possible for you to go to a VA medical center, you should go to the nearest hospital that has an emergency room. If you are in an ambulance, the paramedics will usually take you to the closest emergency room. Here is what you should know.

**What is an emergency?**

A medical emergency is when you have an injury or illness that is so severe that without immediate treatment, the injury or illness threatens your health or life.

**How do I know my situation is an emergency?**

Use your best judgment. If you believe your health or life is in danger call 911 or go to any nearest emergency room.

**If I believe my life or health is in danger, do I need to call the VA before I call for an ambulance or go into an emergency room?**

NO. Call 911 or go to the nearest emergency room right away.

**Do I need to notify the VA after an ambulance takes me to an emergency room, or when I am treated and released?**

YES. You, your family, friends or hospital staff should contact the nearest VA medical center as soon as possible, preferably within 72 hours, so you are better aware of what service the VA may limit payment for. Provide the VA with information about your emergency event and services being provided to you. Ask the VA for guidance on how they will consider reimbursing these emergency charges on your behalf, so you can plan accordingly.

**YOU MUST CALL YOUR OWN LOCAL VA HEALTH CARE NUMBER.**

**WHERE DO YOU GET THAT NUMBER?**

From your local VA Hospital or Health Care facility!

**If the doctor then wants to admit me to the hospital, must I obtain advance approval from the VA?**

If the admission is an emergency, NO, although prompt notification of the VA is necessary, as soon as possible.

If the admission is not an emergency, and you have not obtained PRIOR CONSENT from the VA to use outside facilities, they will not reimburse your expenses!

**If a VA bed is available and I can be safely transferred, do I have to move to the VA hospital?**

YES. If you refuse to be transferred, the VA will not pay for any future care.

**If I am admitted to the hospital as a result of an emergency, how much will VA pay?**

This depends on your VA eligibility. The VA may pay all, some or none of the charges. Ask your local VA medical center's patient benefits counselor about what is allowed under non-VA emergency care programs for YOU:

- For service connected conditions
- For non-service-connected conditions

Find what YOUR OWN LOCAL VA HEALTH CARE NUMBER is for reporting Emergent Care!

Every veteran has a different phone number to call, and you must eventually talk with your own VA HEALTH CARE MEDICAL FACILITY.

There is no place I have found that provides the phone numbers for each VA medical center. NO, there is not ONE NUMBER that every veteran can call. You need to know what your own contact number is, especially if you are traveling. You will need to contact your local VA Health Care facility, whether that is a Medical Center or a CBOC. That will be the number you are supposed to call. It would be prudent to find this phone number NOW, ahead of time, so you will have it when and if you ever need it. You must be enrolled in the VA Health Care System in order to even be eligible for the possibility of having the VA pay for any Emergent Medical Care!

**Will I have to pay for any part of my emergency care?**

It is possible. Sometimes co-pays are required based on your VA enrollment. Sometimes the extent of health care services reimbursable by the VA are limited by federal law.

**Will VA pay for the ambulance and any possible emergency room charges if I leave the emergency room before being treated by a doctor?**

Probably not. If you leave the emergency room prior to being treated by a physician, the VA may not consider claims for that emergency event. You may be liable for some or all resulting ambulance and emergency room charges, regardless of your Veteran eligibility. Leaving the Emergency Room before treatment makes your hospital visit a NON-Emergency event.

**Does my enrollment in the VA Health Care System affect my eligibility for emergency care at VA expense?**

YES. Your local VA medical center benefits counselor can explain how enrollment (or other special status categories) affect your eligibility.

Find what YOUR OWN LOCAL VA HEALTH CARE NUMBER for reporting Emergent Care!

**If I have other insurance (TRICARE, Medicare, Medicaid, Blue Cross, etc.), will it affect whether claims for emergency services will be paid at VA expense?**

YES, it may. Your local VA medical centers benefits counselor can explain how other insurance can affect whether the VA can pay for your non-VA medical claims.

**Will VA pay for emergency care if I am in jail?**

NO. The VA is prohibited, by federal law, from paying for the medical claims of incarcerated veterans (or fugitive felons).

Find what your own VA Phone Number is for reporting Emergent Care!

**How long do I have to file a claim for reimbursement for emergency medical care?**

File your claim with the YOUR OWN VA Medical Center quickly. Time limits of 90 days usually apply. Contact your local VA medical centers patient benefits counselor for more information on the timely filing requirements for nonVA care programs. But this is AFTER you have notified the VA within 72 hours of the actual medical care you receive.

**Will VA pay for emergency care received outside the United States?**

YES, in certain cases. VA will only pay for emergency care outside the US if your emergency is related to a service-connected condition. For more information, contact the VA Health Administration Center at (877) 345-8179.

Don't forget. Your authorization comes from OUR OWN LOCAL VA HEALTH CARE Facility.

So, what I started off thinking I could simplify has suddenly become much more complicated. Maybe if Uncle Bob reads this, or has somebody point it out to him, perhaps he could simplify this. But I don't expect that to happen anytime soon.

An appeals court just concluded VA knowingly used an invalid regulation to justify denying payment for uncovered non-VA ER bills, since 2009.

In a recent court decision, the US Court of Appeals for Veterans Claims just held VA was violating federal law using an unlawful interpretation of statute. That statute required VA to pay for all uncovered costs related to veterans' emergency room (ER) services.

VA surreptitiously interpreted the statute to justify denial of payments to veterans with insurance that would cover part but not all of emergency room visits.

The interpretation resulted in veterans getting stuck with enormous bills following emergency room visits. According to the National Law Journal article, VA stuck veteran Richard Staab with uncovered portion of his bill of \$48,000. The interpretation VA used apparently penalized veterans with health insurance:

In December 2010, Staab suffered a heart attack and one or more strokes and was transported to a non-V.A. hospital where he underwent emergency open heart surgery. He was discharged in June 2011. Staab sought reimbursement of his expenses that were not covered by Medicare—approximately \$48,000. In December 2013, the Board of Veterans' Appeals denied Staab's request for reimbursement of the non-V.A. medical costs.

## **ER BILLS DECISION LANGUAGE**

“After Congress amended [38 U.S.C] section 1725 in 2009, however, the Secretary’s regulation became wholly inconsistent with the statute, and the Secretary declined to remedy this inconsistency,” Greenberg wrote.

“Congress intended that veterans be reimbursed for the portion of their emergency medical costs that is not covered by a third party insurer and for which they are otherwise personally liable, and because the regulation does not execute the language of the statute or the intent of Congress, it is invalid and will be set aside by the Court.”

READ IT: [38 USC 1725](#)

According to an attorney in the case, Bart Stichman, “This is a major win for veterans, and their families.” He continued, “This practice has violated federal law since at least 2009. The court’s ruling means the V.A. will have to amend the unlawful regulations it should have amended in 2009 and do right by these veterans.”

This is obviously not the first and only time VA has schemed against veterans by interpreting statutes in clear contradiction to the language of the statute.

What do you think will happen to the legal team that created the regulation?

Source: <http://www.nationallawjournal.com/id=1202754751024/Veterans-Affairs-Improperly-Rejected-Vets-Emergency-Medical-Reimbursements>

**Military Update:** A three-judge panel on the U.S. Court of Appeals for Veterans Claims has ruled unanimously that the Department of Veterans Affairs ignored “plain language” of a 2010 statute meant to protect VA-enrolled veterans from out-of-pocket costs when forced to use non-VA emergency medical care.

The panel ordered the Board of Veterans’ Appeals to vacate its decision to deny Air Force veteran Richard W. Staab roughly \$48,000 in health care costs he was forced to pay following open-heart surgery in December 2010. The board “failed to properly apply the statute and relied on an invalid regulation” to deny Staab’s claim, the court ruled.

The decision benefits only Staab, for now. But hundreds of other VA-enrolled veterans who had alternative health insurance, and so got stuck paying some of their outside emergency care costs since Feb. 1, 2010, when the ignored law took effect, have new legal ground on which to re-file claims for VA reimbursement, said Bart Stichman, one of Staab’s attorneys.

These vets should cite the appeals courts’ April 8 Staab v. McDonald decision to argue “clear and unmistakable error” in deciding previous claims, said Stichman, forcing VA claim adjudicators to determine if there was error.

Stichman also is joint executive director of the National Veterans Legal Services Program, a nonprofit veterans service organization that brought Staab’s case to the appeals court as it often does on critical benefit issues.

The court, in effect, agreed Staab had been victimized by VA's convoluted interpretation of a law regarding its obligation to cover non-VA emergency care costs when veterans have other health insurance, including Medicare.

VA long has maintained it is obligated to pay emergency costs only for veterans who have no alternative health coverage. The consequence of that logic is that VA-enrolled veterans are better off having no other insurance when a health emergency arises than in having some coverage.

For those without insurance, VA agrees it must cover all costs. For those with insurance, VA will cover no costs, forcing veterans to pay whatever expenses Medicare or their health insurance plans will not pay.

Recognizing how unfair that is, Congress voted in 2009 to clarify the law, specifically to "allow the VA to reimburse veterans for treatment in a non-VA facility if they have a third-party insurance that would pay a portion of the emergency care."

To be sure colleagues understood the purpose of the change, Sen. Daniel Akaka, then-chairman of the Senate Veterans Affairs Committee, made a floor speech that it would "modify current law so that a veteran who has outside insurance would be eligible for reimbursement in the event that the outside insurance does not cover the full amount of the emergency care."

The clarifying statute took effect in February 2010. Yet while rewriting regulations to implement the law, VA officials opted for language that would preserve their former interpretation. Reimbursements for emergency care would be allowed under the revised rule only if the "veteran has no coverage under a health-plan contract" for payment of such care.

In a notice of final rulemaking published April 20, 2012, VA reinforced the point, stating that any entitlement to care or services under an outside health plan, "even a partial one, bars eligibility" for VA reimbursement.

That was wrong, the appeals court found. The "plain language" of the revised statute, it wrote, shows Congress "intended VA to reimburse a veteran for that portion of expenses not covered by a health plan contract."

Given the clear meaning, the appeals court deemed the 2012 regulation invalid and ordered it set aside. It also remanded Staab's case to the appeals board to be re-adjudicated by "properly" applying the law.

Staab, 83, learned of the decision Monday.

"I thought it was great," he said in a phone interview

A resident of St. Cloud, Minn., Staab only enrolled in VA care a decade ago after a foot and ankle injury sustained while offloading cargo in the Pacific in 1953 worsened. The VA rated him 30-percent disabled.

Staab suffered his 2010 heart attack while helping his wife, who had multiple sclerosis, out of their specially equipped van. He recalled being unable to catch his breath and agreed to get in an ambulance only if someone would tend to his wife. He had emergency heart surgery and soon also a stroke that would require a long rehabilitation. He was six months in hospital and nursing home, learning to speak again, as medical bills piled up.

Because Medicare Part A covered only a portion of the rising costs, Staab went home months sooner than his doctors had advised. He forwarded unpaid bills to VA but it denied payment, explaining that because Medicare had paid some of the cost, VA couldn't cover what remained.

"I don't think that made any sense," Staab told me. He was forced to draw down his savings, but he did pay all his medical costs, what he estimated for the court totaled \$48,000.

"That puts a lot of strain on you," he recalled. His wife died last May.

Jacqueline M. Schuh, a former military attorney in St. Cloud, began to help Staab on a pro bono basis through three levels of administrative appeals. By the time the Board of Veterans' Appeals rejected their case, Stichman and the NVLSP also were involved. Stichman said he has three other cases before the appeals court that, based on the precedence now set by the three-judge panel, are also likely to be decided for the veteran.

"They could have taken any of them but picked Staab first. It's not uncommon that this [faulty regulation] is used as grounds for denial. As you can imagine, a lot of people are partly covered by some other insurance."

"Partly our job is to try to get word out to veterans who were denied in the past on this ground that there is a pathway" to reimbursement, Stichman added. "It's not a-100-percent-certain pathway. But if they file a claim challenging the previous denial based on clear and unmistakable error, then the VA is required to take a look...[T]here's a very good argument that the regs were clear and unmistakably wrong, given the forcefulness of the court's decision."

"I hope it will help a lot of people," Staab said.

The VA can appeal, Stichman said, but he suggested that would be an embarrassment for the department.

<https://militaryadvantage.military.com/2016/04/appeals-court-finds-the-va-wronged-vets-by-ignoring-2010-law/>