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Medical

Book I

Title 38, Parts 17, 46, 47, 51–53,
58–64, 70, 71, and 200

Supplement No. 103

Covering period of *Federal Register* issues
through January 1, 2017

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book I*

Code of Federal Regulations

Title 38, Parts 17, 46, 47, 51–53, 58–64, 70, 71, and 200

Medical

Supplement No. 103

5 January 2017

Covering the period of Federal Register issues
through January 1, 2017

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FILING INSTRUCTIONS

**Book I, Supplement No. 103
January 5, 2017**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
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I-17 to I-18	I-17 to I-18	Book I Lead Material
17.INDEX-1 to 17.INDEX-2	17.INDEX-1 to 17.INDEX-2	Part 17 Index
17.INDEX-7 to 17.INDEX-8	17.INDEX-7 to 17.INDEX-8	Part 17 Index
17.110-1 to 17.110-2	17.110-1 to 17.110-2	§17.110
17.410-2 to 17.500-1 (adding §17.415 in between)	17.410-2 to 17.500-1	§17.415

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HIGHLIGHTS

Book I, Supplement No. 103 January 5, 2017

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §17.100, you will see a note at the end of that section which reads: “Supplement *Highlights* references—37(1).” This means that paragraph 1 of the *Highlights* section in Supplement No. 37 contains information about the changes made in §17.100. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: Beginning 1 January 2000, supplements for this Book I will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 7 December 2016, the VA published an interim final rule, effective that same day, to amend its medical regulations concerning the copayment required for certain medications. This rulemaking freezes copayments at the current rate for veterans in priority groups 2 through 8 through February 26, 2017. Change:

- In §17.110, revised paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(2).

2. On 14 December 2016, the VA published a final rule (with comment period), effective that 13 January 2017, to permit full practice authority of three roles of VA advanced practice registered nurses (APRN) when they are acting within the scope of their VA employment. Change:

- Added §17.415.



17.273 Preauthorization 17.273-1
 17.274 Cost sharing 17.274-1
 17.275 Claim filing deadline..... 17.275-1
 17.276 Appeal/review process 17.276-1
 17.277 Third party liability/medical care cost recovery..... 17.277-1
 17.278 Confidentiality of records 17.278-1

Grants to the Republic of the Philippines

17.350 The program of assistance to the Philippines..... 17.350-1
 17.351 Grants for the replacement and upgrading of equipment at Veterans
 Memorial Medical Center..... 17.351-1
 17.352 Amounts and use of grant funds for the replacement and upgrading of equipment 17.352-1
 17.355 Awards procedures..... 17.355-1
 17.362 Acceptance of medical supplies as payment..... 17.362-1
 17.363 Length of stay..... 17.363-1
 17.364 Eligibility determinations..... 17.364-1
 17.365 Admission priorities..... 17.365-1
 17.366 Authorization of emergency admissions..... 17.366-1
 17.367 Republic of the Philippines to print forms..... 17.367-1
 17.369 Inspections 17.369-1
 17.370 Termination of payments 17.370-1

Hospital Care and Medical Services for Camp Lejeune Veterans and Families

17.400 Hospital care and medical services for Camp Lejeune veterans 17.400-1
 17.410 Hospital care and medical services for Camp Lejeune family members 17.410-1

Nursing Services

17.415 Full practice authority for advanced practice registered nurses 17.415-1

Confidentiality of Healthcare Quality Assurance Review Records

17.500 General..... 17.500-1
 17.501 Confidential and privileged documents 17.501-1
 17.502 Applicability of other statutes 17.502-1
 17.503 Improper disclosure..... 17.503-1
 17.504 Disclosure methods 17.504-1
 17.505 Disclosure authorities..... 17.505-1
 17.506 Appeal of decision by Veterans Health Administration to
 deny disclosure 17.506-1
 17.507 Employee responsibilities. 17.507-1
 17.508 Access to quality assurance records and documents within the agency..... 17.508-1
 17.509 Authorized disclosure: Non-Department of Veterans Affairs requests. 17.509-1
 17.510 Redisclosure..... 17.510-1
 17.511 Penalties for violations..... 17.511-1

VA Health Professional Scholarship Program

17.600 Purpose..... 17.600-1
17.601 Definitions..... 17.601-1
17.602 Eligibility. 17.602-1
17.603 Availability of scholarships. 17.603-1
17.604 Application for the scholarship program. 17.604-1
17.605 Selection of participants..... 17.605-1
17.606 Award procedures. 17.606-1
17.607 Obligated service..... 17.607-1
17.608 Deferment of obligated service. 17.608-1
17.609 Pay during period of obligated service..... 17.609-1
17.610 Failure to comply with terms and conditions of participation. 17.610-1
17.611 Bankruptcy. 17.611-1
17.612 Cancellation, waiver, or suspension of obligation. 17.612-1

Program for Repayment of Educational Loans for Certain VA Psychiatrists

17.640 Purpose..... 17.640-1
17.641 Definitions..... 17.641-1
17.642 Eligibility 17.642-1
17.643 Application for the program for the repayment of educational loans 17.643-1
17.644 Selection of participants..... 17.644-1
17.645 Award procedures 17.645-1
17.646 Obligated service..... 17.646-1
17.647 Failure to comply with terms and conditions of participation 17.647-1

Grants for Transportation of Veterans in Highly Rural Areas

17.700 Purpose and scope. 17.700-1
17.701 Definitions. 17.701-1
17.702 Grants—general. 17.702-1
17.703 Eligibility and application. 17.703-1
17.705 Scoring criteria and selection. 17.705-1
17.710 Notice of Fund Availability. 17.710-1
17.715 Grant agreements. 17.715-1
17.720 Payments under the grant. 17.720-1
17.725 Grantee reporting requirements. 17.725-1
17.730 Recovery of funds by VA..... 17.730-1

Transitional Housing Loan Program

17.800 Purpose. 17.800-1
17.801 Definitions. 17.801-1
17.802 Application provisions. 17.802-1
17.803 Order of consideration. 17.803-1
17.804 Loan approval criteria. 17.804-1
17.805 Additional terms of loans..... 17.805-1

Part 17 — Medical

Authority: Authority: 38 U.S.C. 501, and as noted in specific sections.

Sections 17.640 and 17.647 also issued under Pub. L. 114-2, sec. 4.

Sections 17.641 through 17.646 also issued under 38 U.S.C. 501(a) and Pub. L. 114-2, sec. 4.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402 and 7403.

Ed. Note: Nomenclature changes to Part 17 appear at 61 FR 7216, Feb. 27, 1996

— Section Title Index —

Aid to States for care of Veterans in State Homes

Aid for domiciliary care 17.194-1
 Aid for hospital care..... 17.196-1
 Amount of aid payable..... 17.197-1
 Approval of annexes and new facilities 17.192-1
 Audit of State homes..... 17.200-1
 Department of Veterans Affairs approval of eligibility required..... 17.198-1
 Filing applications..... 17.191-1
 Inspection of recognized State homes..... 17.199-1
 Prerequisites for payments to State homes 17.193-1
 Recognition of a State home 17.190-1

Automotive Equipment and Driver Training

Definition-adaptive equipment 17.157-1
 Eligibility for automobile adaptive equipment 17.156-1
 Limitations on assistance 17.158-1
 Minimum standards of safety and quality for automotive adaptive equipment..... 17.155-1
 Obtaining vehicles for special driver training courses 17.159-1

Autopsies

Autopsies 17.170-1

Breaking Appointments

Refusal of treatment by unnecessarily breaking appointments 17.100-1

Care During Certain Disasters and Emergencies

Provision of hospital care and medical services during certain disasters
 and emergencies under 38 U.S.C. 178517.86

Ceremonies

Services or ceremonies on Department of Veterans Affairs hospital or center reservations..... 17.112-1

Charges, Waivers, And Collections

Collection or recovery by VA for medical care or services provided or furnished to a veteran for a non-service connected disability 17.101-1
 Charges for care or services 17.102-1
 Referrals of compromise settlement offers 17.103-1
 Terminations and suspensions 17.104-1
 Waivers 17.105-1

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)—Medical Care for Survivors and Dependents of Certain Veterans

Appeal/review process 17.276-1
 Benefit limitations/exclusions..... 17.272-1
 Claim filing deadline..... 17.275-1
 Confidentiality of records 17.278-1
 Cost sharing 17.274-1
 Eligibility 17.271-1
 General provisions 17.270-1
 Preauthorization 17.273-1
 Third party liability/medical care cost recovery..... 17.277-1

Community Residential Care

Approval of community residential care facilities 17.63-1
 Approvals and provisional approvals of community residential care facilities 17.65-1
 Availability of information 17.72-1
 Definitions..... 17.62-1
 Eligibility 17.61-1
 Medical foster homes—general 17.73-1
 Notice and conduct of hearing 17.68-1
 Notice of noncompliance with VA standards 17.66-1
 Request for a hearing 17.67-1
 Revocation of VA approval 17.71-1
 Standards applicable to medical foster homes 17.74-1
 Waiver of opportunity for hearing 17.69-1
 Written decision following a hearing..... 17.70-1

Confidentiality of Healthcare Quality Assurance Review Records

Access to quality assurance records and documents within the agency..... 17.508-1
 Appeal of decision by Veterans Health Administration to deny disclosure 17.506-1

Outpatient Treatment

Eligibility for outpatient services	17.93-1
Mental health services.....	17.98-1
Outpatient care for research purposes	17.92-1
Outpatient medical services for Department of Veterans Affairs employees and others in emergencies	17.95-1
Outpatient medical services for military retirees and other beneficiaries	17.94-1
Medication prescribed by non-VA physicians	17.96-1
Priorities for medical services.....	17.99-1

Nursing Services

Full practice authority for advanced practice registered nurses	17.415-1
---	----------

**Payment and Reimbursement of the Expenses of Medical Services not
Previously Authorized**

Allowable rates and fees	17.128-1
Appeals	17.132-1
Claimants	17.123-1
Date of filing claims.....	17.127-1
Limitations on payment or reimbursement of the costs of emergency treatment not previously authorized.....	17.121-1
Payment for treatment dependent upon preference prohibited	17.130-1
Payment of abandoned claims prohibited	17.131-1
Payment or reimbursement for emergency treatment furnished by Non-VA providers to certain veterans with service-connected disabilities	17.120-1
Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization	17.122-1
Preparation of claims	17.124-1
Retroactive payments prohibited	17.129-1
Timely filing	17.126-1
Where to file claims	17.125-1

**Payment or Reimbursement for Emergency Services for Nonservice-
Connected Conditions in Non-VA Facilities**

Balance billing prohibited.....	17.1008-1
Decisionmakers.....	17.1006-1
Definitions.....	17.1001-1
Emergency transportation	17.1003-1
Filing claims.....	17.1004-1
Independent right of recovery	17.1007-1
Payment limitations	17.1005-1
Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities	17.1000-1
Substantive conditions for payment or reimbursement.....	17.1002-1

Program for Repayment of Educational Loans for Certain VA Psychiatrists

Purpose 17.640-1
 Definitions..... 17.641-1
 Eligibility 17.642-1
 Application for the program for the repayment of educational loans 17.643-1
 Selection of participants..... 17.644-1
 Award procedures 17.645-1
 Obligated service..... 17.646-1
 Failure to comply with terms and conditions of participation 17.647-1

Prosthetic, Sensory, and Rehabilitative Aids

Devices to assist in overcoming the handicap of deafness 17.152-1
 Equipment for blind veterans..... 17.154-1
 Invalid lifts for recipients of aid and attendance allowance or special
 monthly compensation 17.151-1
 Prosthetic and similar appliances..... 17.150-1
 Sensory-neural Aids..... 17.149-1
 Service dogs 17.148-1
 Training in the use of appliances 17.153-1

Protection of Patient Rights

Informed consent and advance health care planning 17.32-1
 Patients’ rights 17.33-1

Reconsideration of Denied Claims

Procedures..... 17.133-1

Reimbursement for Loss by Natural Disaster of Personal Effects of Hospitalized or Nursing Home Patients

Claims in cases of incompetent patients 17.115-1
 Conditions of custody 17.113-1
 Submittal of claim for reimbursement 17.114-1

Reimbursement to Employees for the Cost of Repairing or Replacing Certain Personal Property Damaged or Destroyed By Patients or Members

Adjudication of claims 17.116-1

Research-related Injuries

§17.110 Copayments for medication.

(a) *General.* This section sets forth requirements regarding copayments for medications provided to veterans by VA.

(b) *Copayments.*

(1) *Copayment amount.* Unless exempted under paragraph (c) of this section, a veteran is obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment).

(i) For the period from July 1, 2010, through February 26, 2017, the copayment amount for veterans in priority categories 2 through 6 of VA's health care system (see §17.36) is \$8.

(ii) For veterans in priority categories 7 and 8 of VA's health care system (see §17.36), the copayment amount from July 1, 2010, through February 26, 2017, is \$9.

(iii) The copayment amount for all affected veterans for each calendar year after February 26, 2017, will be established by using the prescription drug component of the Medical Consumer Price Index as follows: For each calendar year, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001 which was 304.8. The ratio so obtained will be multiplied by the original copayment amount of \$7. The copayment amount for the new calendar year will be this result, rounded down to the whole dollar amount.

Note to Paragraph (b)(1)(iii): Example for determining copayment amount. The ratio of the prescription drug component of the Medical Consumer Price Index for September 30, 2005, to the corresponding Index for September 30, 2001 (304.8) was 1.1542. This ratio, when multiplied by the original copayment amount of \$7 equals \$8.08, and the copayment amount beginning in calendar year 2006, rounded down to the whole dollar amount, was set at \$8.

(2) The total amount of copayments in a calendar year for a veteran enrolled in one of the priority categories 2 through 6 of VA's health care system (see §17.36) shall not exceed the cap established for the calendar year. During the period from January 1, 2010 through February 26, 2017, the cap will be \$960. If the copayment amount increases after December 31, 2012, the cap of \$960 shall be increased by \$120 for each \$1 increase in the copayment amount.

(3) *Information on copayment/cap amounts.* Current copayment and cap amounts are available at any VA Medical Center and on our Web site, <http://www.va.gov>. Notice of any increases to the copayment and corresponding increases to annual cap amount will be published in the *Federal Register*.

(4) For medications furnished through the Veterans Choice Program under §17.1500 through 17.1540, the copayment amount at the time the veteran fills the prescription is \$0. VA will determine and assess the veteran's copayment amount at the end of the billing process, but at no time will a veteran's copayment be more than the amount identified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section

(c) *Medication not subject to the copayment requirements.* The following are exempt from the copayment requirements of this section:

- (1) Medication for a veteran who has a service-connected disability rated 50% or more based on a service-connected disability or unemployability.
- (2) Medication for a veteran's service-connected disability.
- (3) Medication for a veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of VA pension which would be payable to such veteran if such veteran were eligible for pension under 38 U.S.C. 1521.
- (4) Medication authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, post-Persian Gulf War combat-exposed veterans, or Camp Lejeune veterans pursuant to §17.400.
- (5) Medication for treatment of sexual trauma as authorized under 38 U.S.C. 1720D.
- (6) Medication for treatment of cancer of the head or neck authorized under 38 U.S.C. 1720E.
- (7) Medications provided as part of a VA approved research project authorized by 38 U.S.C. 7303.
- (8) Medication for a veteran who is a former prisoner of war.
- (9) A veteran who VA determines to be catastrophically disabled, as defined in 38 CFR 17.36(e).
- (10) A veteran receiving care for psychosis or a mental illness other than psychosis pursuant to §17.109. (Authority: 38 U.S.C. 501, 1710, 1720D, 1722A, 1730A, Sec. 101, Pub. L. 113-146, 128 Stat. 1754)

[66 FR 63451, Dec. 6, 2001, as amended at 74 FR 69285, Dec. 31, 2009; 75 FR 32670, June 9, 2010; 75 FR 32672, June 9, 2010; 75 FR 54030, Sept. 3, 2010; 76 FR 9646, Feb. 22, 2011; 76 FR 52274, Aug. 22, 2011; 76 FR 78826, Dec. 20, 2011; 77 FR 76867, Dec. 31, 2012; 78 FR 28143, May 14, 2013; 78 FR 30768, May 23, 2013; 78 FR 79317, Dec. 30, 2013; 79 FR 57414, Sep. 24, 2014; 79 FR 63821, Oct. 27, 2014; 79 FR 65585, Nov. 5, 2014; 81 FR 88120, Dec. 7, 2016]

Supplement Highlights references: 53(1), 55(1), 57(1), 64(1), 66(2), 74(4), 77(1), 83(3), 86(2), 87(1), 88(2), 103(1).

payment or reimbursement must be received by VA no more than 2 years after the later of either the date of discharge from a hospital or the date that medical services were rendered;

(2) The Camp Lejeune family member's treating physician certifies that the claimed hospital care or medical services were provided for an illness or condition listed in § 17.400(d)(1), and provides information about any co-morbidities, risk factors, or other exposures that may have contributed to the illness or condition;

(3) VA makes the clinical finding, under VA clinical practice guidelines, that the illness or condition did not result from a cause other than the residence of the family member at Camp Lejeune;

(4) VA would be authorized to provide the claimed hospital care or medical services to a veteran under VA's medical benefits package in § 17.38;

(5) The Camp Lejeune family member or hospital care or medical service provider has exhausted without success all claims and remedies reasonably available to the family member or provider against a third party, including health-plan contracts; and

(6) Funds were appropriated to implement 38 U.S.C. 1787 in a sufficient amount to permit payment or reimbursement.

(e) *Payment or reimbursement amounts.* Payments or reimbursements under this section will be in amounts determined in accordance with this paragraph (e).

(1) If a third party is partially liable for the claimed hospital care or medical services, then VA will pay or reimburse the lesser of the amount for which the Camp Lejeune family member remains personally liable or the amount for which VA would pay for such care under §§ 17.55 and 17.56.

(2) If VA is the sole payer for hospital care and medical services, then VA will pay or reimburse in accordance with §§ 17.55 and 17.56, as applicable. (Authority: 38 U.S.C. 1787)

[79 FR 57414, Sep. 24, 2014]

Supplement *Highlights* reference: 86(3).

Nursing Services

§ 17.415 Full practice authority for advanced practice registered nurses.

(a) *Advanced practice registered nurse (APRN)*. For purposes of this section, an advanced practice registered nurse (APRN) is an individual who:

(1) Has completed a nationally-accredited, graduate-level educational program that prepares them for one of the three APRN roles of Certified Nurse Practitioner (CNP), Clinical Nurse Specialist (CNS), or Certified Nurse-Midwife (CNM);

(2) Has passed a national certification examination that measures knowledge in one of the APRN roles described in paragraph (a)(1) of this section;

(3) Has obtained a license from a State licensing board in one of three recognized APRN roles described in paragraph (a)(1) of this section; and

(4) Maintains certification and licensure as required by paragraphs (a)(2) and (3) of this section.

(b) *Full practice authority*. For purposes of this section, full practice authority means the authority of an APRN to provide services described in paragraph (d) of this section without the clinical oversight of a physician, regardless of State or local law restrictions, when that APRN is working within the scope of their VA employment.

(c) *Granting of full practice authority*. VA may grant full practice authority to an APRN subject to the following:

(1) Verification that the APRN meets the requirements established in paragraph (a) of this section; and

(2) Determination that the APRN has demonstrated the knowledge and skills necessary to provide the services described in paragraph (d) of this section without the clinical oversight of a physician, and is thus qualified to be privileged for such scope of practice.

(d) *Services provided by an APRN with full practice authority*.

(1) Subject to the limitations established in paragraph (d)(2) of this section, the full practice authority for each of the three APRN roles includes, but is not limited to, providing the following services:

(i) A CNP has full practice authority to:

(A) Take comprehensive histories, provide physical examinations and other health assessment and screening activities, diagnose, treat, and manage patients with acute and chronic illnesses and diseases;

(B) Order laboratory and imaging studies and integrate the results into clinical decision making;

(C) Prescribe medication and durable medical equipment;

(D) Make appropriate referrals for patients and families, and request consultations;

(E) Aid in health promotion, disease prevention, health education, and counseling as well as the diagnosis and management of acute and chronic diseases.

(ii) A CNS has full practice authority to provide diagnosis and treatment of health or illness states, disease management, health promotion, and prevention of illness and risk behaviors among individuals, families, groups, and communities within their scope of practice.

(iii) A CNM has full practice authority to provide a range of primary health care services to women, including gynecologic care, family planning services, preconception care (care that women veterans receive before becoming pregnant, including reducing the risk of birth defects and other problems such as the treatment of diabetes and high blood pressure), prenatal and postpartum care, childbirth, and care of a newborn, and treating the partner of their female patients for sexually transmitted disease and reproductive health, if the partner is also enrolled in the VA healthcare system or is not required to enroll.

(2) The full practice authority of an APRN is subject to the limitations imposed by the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and that APRN's State licensure on the authority to prescribe, or administer controlled substances, as well as any other limitations on the provision of VA care set forth in applicable Federal law and policy.

(e) Preemption of State and local law. To achieve important Federal interests, including but not limited to the ability to provide the same comprehensive care to veterans in all States under 38 U.S.C. 7301, this section preempts conflicting State and local laws relating to the practice of APRNs when such APRNs are working within the scope of their VA employment. Any State or local law, or regulation pursuant to such law, is without any force or effect on, and State or local governments have no legal authority to enforce them in relation to, activities performed under this section or decisions made by VA under this section.

[81 FR 90206, Dec. 14, 2016]

Supplement *Highlights* reference: 103(1).

Confidentiality of Healthcare: Quality Assurance Review Records

Authority: 38 U.S.C. 5705.

Source: §§17.500-17.511 appear at 59 FR 53355, Oct. 24, 1994,
unless otherwise noted.

§17.500 General.

(a) Section 5705, title 38, United States Code was enacted to protect the integrity of the VA's medical quality assurance program by making confidential and privileged certain records and documents generated by this program and information contained therein. Disclosure of quality assurance records and documents made confidential and privileged by 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511 may only be made in accordance with the provisions of 38 U.S.C. 5705 and those regulations.

(b) The purpose of the regulations in §§17.500 through 17.511 is to specify and provide for the limited disclosure of those quality assurance documents which are confidential under the provisions of 38 U.S.C. 5705.

(c) For purposes of the regulations in §§17.500 through 17.511, the VA's medical quality assurance program consists of systematic healthcare reviews carried out by or for VA for the purpose of improving the quality of medical care or improving the utilization of healthcare resources in VA medical facilities. These review activities may involve continuous or periodic data collection and may relate to either the structure, process, or outcome of health care provided in the VA.

(d) Nothing in the regulations in §§17.500 through 17.511 shall be construed as authority to withhold any record or document from a committee or subcommittee of either House of Congress or any joint committee or subcommittee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

(e) The regulations in §§17.500 through 17.511 do not waive the sovereign immunity of the United States, and do not waive the confidentiality provisions and disclosure restrictions of 38 U.S.C. 5705. (Authority: 38 U.S.C. 5705)