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Medical

Book I

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

Supplement No. 109

Covering period of *Federal Register* issues
through August 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. 109

5 August 2017

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

When **Book I** was originally prepared, it was current through final regulations published in the *Federal Register* of 15 January 2000. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page I-8 of Book I, *Medical*.

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page I-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page I-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page I-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book I, Supplement No. 109
August 5, 2017**

*Remove these
old pages*

*Add these
new pages*

*Section(s)
Affected*

**Do not file this supplement until you confirm that
all prior supplements have been filed**

17.62-1 to 17.64-1

17.62-1 to 17.64-1

§17.63

**Be sure to complete the
Supplement Filing Record (page I-9)
when you have finished filing this material.**

HIGHLIGHTS

Book I, Supplement No. 109 August 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 25 July 2017, the VA published a final rule effective 24 August 2017, to amend its regulations governing the approval of a community residential care facility (CRC). The final rule prohibits a CRC from employing an individual who has been convicted in a court of law of certain listed crimes within 7 years of conviction, or has had a finding within 6 months entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property. The CRC is required to conduct an individual assessment of suitability for employment for any conviction or finding outside either the 7 year or 6 month parameters. The CRCs is also required to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. The CRC must report and investigate any allegations of abuse or mistreatment. The CRC must also screen individuals who are not CRC residents, but have direct access to a veteran living in a CRC. In addition, amended is a rule regarding the maximum number of beds allowed in a resident's bedroom. Changes:

- In §17.63, added paragraphs (e)(1)(i) and (ii),
- In §17.63, revised paragraph (i),
- In §17.63, added paragraphs (j)(3) through (j)(9).

⌘

§17.62 Definitions.

For the purpose of §§17.61 through 17.72:

(a) The term *community residential care* means the monitoring, supervision, and assistance, in accordance with a statement of needed care, of the daily living activities of referred veterans in an approved home in the community by the facility's provider.

(b) The term *daily living activities* includes:

- (1) Walking;
- (2) Bathing, shaving, brushing teeth, combing hair;
- (3) Dressing;
- (4) Eating;
- (5) Getting in or getting out of bed;
- (6) Laundry;
- (7) Cleaning room;
- (8) Managing money;
- (9) Shopping;
- (10) Using public transportation;
- (11) Writing letters;
- (12) Making telephone calls;
- (13) Obtaining appointments;
- (14) Self-administration of medications;
- (15) Recreational and leisure activities; and
- (16) Other similar activities.

(c) The term *paper hearing* means review of the written evidence record by the hearing official.

(d) The term *oral hearing* means the in person testimony of representatives of a community residential care facility and of VA before the hearing official and the review of the written evidence of record by that official.

(e) The term *approving official* means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(f) The term *hearing official* means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility. (Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15 1989. Redesignated and amended at 61 FR 21965, 21966, May 13, 1996; 74 FR 63308, Dec. 3, 2009]

Supplement *Highlights* reference: 52(1)

§17.63 Approval of community residential care facilities.

The approving official may approve a community residential care facility, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, if that facility meets the following standards:

(a) *Health and safety standards.* The facility must:

(1) Meet all State and local regulations including construction, maintenance, and sanitation regulations;

(2) Meet the requirements in the applicable provisions of NFPA 101 and NFPA 101A (incorporated by reference, *see* §17.1) and the other publications referenced in those provisions. The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director;

(3) Have safe and functioning systems for heating and/or cooling, as needed (a heating or cooling system is deemed to be needed if VA determines that, in the county, parish, or similar jurisdiction where the facility is located, a majority of community residential care facilities or other extended care facilities have one), hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.

(4) Meet the following additional requirements, if the provisions for One and Two-Family Dwellings, as defined in NFPA 101, are applicable to the facility:

(i) Portable fire extinguishers must be installed, inspected, and maintained in accordance with NFPA 10 (incorporated by reference, *see* § 17.1); and

(ii) The facility must meet the requirements in section 33.7 of NFPA 101.

(b) [Reserved]

(c) *Interior plan.* The facility must:

(1) Have comfortable dining areas, adequate in size for the number of residents;

(2) Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents; and

(3) Maintain at least one functional toilet and lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.

(d) *Laundry service.* The facility must provide or arrange for laundry service.

(e) *Residents' bedrooms.* Residents' bedrooms must:

(1) Contain no more than four beds;

(i) Facilities approved before August 24, 2017 may not establish any new resident bedrooms with more than two beds per room;

(ii) Facilities approved after August 24, 2017 may not provide resident bedrooms containing more than two beds per room.

- (2) Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multiresident room; and
- (3) Contain a suitable bed for each resident and appropriate furniture and furnishings.

(f) *Nutrition*. The facility must:

(1) Provide a safe and sanitary food service that meets individual nutritional requirements and residents' preferences;

(2) Plan menus to meet currently recommended dietary allowances;

(g) *Activities*. The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs.

(h) *Residents' rights*. The facility must have written policies and procedures that ensure the following rights for each resident:

(1) Each resident has the right to:

(i) Be informed of the rights described in this section;

(ii) The confidentiality and nondisclosure of information obtained by community residential care facility staff on the residents and the residents' records subject to the requirements of applicable law;

(iii) Be able to inspect the residents' own records kept by the community residential care facility;

(iv) Exercise rights as a citizen; and

(v) Voice grievances and make recommendations concerning the policies and procedures of the facility.

(2) *Financial affairs*. Residents must be allowed to manage their own personal financial affairs, except when the resident has been restricted in this right by law. If a resident requests assistance from the facility in managing personal financial affairs the request must be documented.

(3) *Privacy*. Residents must:

(i) Be treated with respect, consideration, and dignity;

(ii) Have access, in reasonable privacy, to a telephone within the facility;

(iii) Be able to send and receive mail unopened and uncensored; and

(iv) Have privacy of self and possessions.

(4) *Work*. No resident will perform household duties, other than personal housekeeping tasks, unless the resident receives compensation for these duties or is told in advance they are voluntary and the patient agrees to do them.

(5) *Freedom of association*. Residents have the right to:

- (i) Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;
- (ii) Make contacts in the community and achieve the highest level of independence, autonomy, and interaction in the community of which the resident is capable;
- (iii) Leave and return freely to the facility, and
- (iv) Practice the religion of their own choosing or choose to abstain from religious practice.

(6) *Transfer.* Residents have the right to transfer to another facility or to an independent living situation.

(i) *Records.*

(1) The facility must maintain records on each resident in a secure place. Resident records must include a copy of all signed agreements with the resident. Resident records may be disclosed only with the permission of the resident; an authorized agent, fiduciary, or personal representative if the resident is not competent; or when required by law.

(2) The facility must maintain and make available, upon request of the approving VA official, records establishing compliance with paragraphs (j)(1) and (2) of this section; written policies and procedures required under paragraph (j)(3) of this section; and, emergency notification procedures.

(j) *Staff requirements.*

(1) Sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.

(2) The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(3) The community residential care provider must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(4) Except as provided in paragraph (j)(5)(ii) of this section, the community residential care provider must not employ individuals who--

(i) Have been convicted within 7 years by a court of law of any of the following offenses or their equivalent in a state or territory:

- (A) Murder, attempted murder, or manslaughter;
- (B) Arson;
- (C) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm;
- (D) Burglary;
- (E) Robbery;
- (F) Kidnapping;

- (G) Theft, fraud, forgery, extortion or blackmail;
- (H) Illegal use or possession of a firearm;
- (I) Rape, sexual assault, sexual battery, or sexual abuse;
- (J) Child or elder abuse, or cruelty to children or elders; or
- (K) Unlawful distribution or possession with intent to distribute a

controlled substance; or

(ii) Have had a finding entered within 6 months into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property.

(5) (i) If the conviction by a court of law of a crime enumerated in paragraph (j)(4)(i) of this section occurred greater than 7 years in the past, or a finding was entered into an applicable State registry as specified in paragraph (j)(4)(ii) of this section more than 6 months in the past, the community residential care provider must perform an individual assessment of the applicant or employee to determine suitability for employment. The individual assessment must include consideration of the following factors:

- (A) The nature of the job held or sought;
- (B) The nature and gravity of the offense or offenses;
- (C) The time that has passed since the conviction and/or completion of the sentence;
- (D) The facts or circumstances surrounding the offense or conduct;
- (E) The number of offenses for which the individual was convicted;
- (F) The employee or applicant's age at the time of conviction, or release from prison;
- (G) The nexus between the criminal conduct of the person and the job duties of the position;
- (H) Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- (I) The length and consistency of employment history before and after the offense or conduct; rehabilitation efforts, including education or training; and,
- (J) Employment or character references and any other information regarding fitness for the particular position.

(ii) An individual assessment must be performed to determine suitability for employment for any conviction defined in paragraph (j)(8)(iv), regardless of the age of the conviction.

(6) (i) The community residential care provider must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and

misappropriation of resident property are reported to the approving official immediately, which means no more than 24 hours after the provider becomes aware of the alleged violation; and to other officials in accordance with State law. The report, at a minimum, must include--

- (A) The facility name, address, telephone number, and owner;
- (B) The date and time of the alleged violation;
- (C) A summary of the alleged violation;
- (D) The name of any public or private officials or VHA program offices that have been notified of the alleged violations, if any;
- (E) Whether additional investigation is necessary to provide VHA with more information about the alleged violation;
- (F) The name of the alleged victim;
- (G) Contact information for the resident's next of kin or other designated family member, agent, personal representative, or fiduciary; and
- (H) Contact information for a person who can provide additional details at the community residential care provider, including a name, position, location, and phone number.

(ii) The community residential care provider must notify the resident's next of kin, caregiver, other designated family member, agent, personal representative, or fiduciary of the alleged incident concurrently with submission of the incident report to the approving official.

(iii) The community residential care provider must have evidence that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are documented and thoroughly investigated, and must prevent further abuse while the investigation is in progress. The results of all investigations must be reported to the approving official within 5 working days of the incident and to other officials in accordance with all other applicable law, and appropriate corrective action must be taken if the alleged violation is verified. Any corrective action taken by the community residential care provider as a result of such investigation must be reported to the approving official, and to other officials as required under all other applicable law.

(iv) The community residential care provider must remove all duties requiring direct resident contact with veteran residents from any employee alleged to have violated this paragraph (j) during the investigation of such employee.

(7) For purposes of this paragraph (j), the term “employee” includes a:

- (i) Non-VA health care provider at the community residential care facility;
- (ii) Staff member of the community residential care facility who is not a health care provider, including a contractor; and
- (iii) Person with direct resident access. The term “person with direct resident access” means an individual living in the facility who is not receiving services from the facility, who may have access to a resident or a resident's property, or may have one-on-one contact with a resident.

(8) For purposes of this paragraph (j), an employee is considered “convicted” of a criminal offense--

(i) When a judgment of conviction has been entered against the individual by a Federal, State, or local court, regardless of whether there is an appeal pending;

(ii) When there has been a finding of guilt against the individual by a Federal, State, or local court;

(iii) When a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(iv) When the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(9) For purposes of this paragraph (j), the terms “abuse” and “neglect” have the same meaning set forth in 38 CFR 51.90(b).

(k) *Cost of community residential care.*

(1) Payment for the charges of community residential care is not the responsibility of the United States Government or VA.

(2) The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.

(3) The charges for community residential care must be reasonable:

(i) For residents in a community residential care facility as of June 14, 1989 the rates charged for care are pegged to the facility’s basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year;

(ii) For community residential care facilities approved after July 31, 1987, the rates for care shall not exceed 110 percent of the average rate for approved facilities in that State as of March 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year.

(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3)(i) through (ii) of this section upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency, if the approving official determines that the cost of care for the resident will be greater than the average cost of care for other residents, or if the resident chooses to pay more for the care provided at a facility which exceeds VA standards. (Authority: 38 U.S.C. 1730)

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0844.)

[54 FR 20842, May 15, 1989, as amended at 54 FR 22754, May 26, 1989. Redesignated at 61 FR 21965, May 13, 1996, as amended at 61 FR 63720, Dec. 2, 1996; 74 FR 63308, Dec. 3, 2009; 76 FR 10248, Feb. 24, 2011; 82 FR 34415, July 25, 2017]

Supplement *Highlights* reference: 52(1), 61(1), 109(1).

§17.64 [Reserved]

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996; removed and reserved at 74 FR 63308, Dec. 3, 2009]

Supplement *Highlights* reference: 52(1)