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Medical

Book I

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

Supplement No. 116

Covering period of *Federal Register* issues
through July 1, 2018

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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. 116

5 July 2018

Covering the period of Federal Register issues
through July 1, 2018

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**Book I, Supplement No. 116
July 5, 2018**

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HIGHLIGHTS

Book I, Supplement No. 116 July 5, 2018

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 5 June 2018, the VA published an interim final rule effective that same day, to amend its regulations that govern programs benefitting homeless veterans to implement a new statutory requirement to establish a new grant program that will provide case management services to improve the retention of housing by veterans who were previously homeless and are transitioning to permanent housing and to veterans who are at risk of becoming homeless. The grant program established by this interim final rule will be an essential part of VA's attempts to eliminate homelessness among the veteran population. Change:

- Added Part 61, Subpart G (§§61.90 through 61.98).

2. On 25 June 2018, the VA published a final rule effective 25 July 2018, to amend its medical regulations related to hospital care and medical services in foreign countries. We simplified and clarified the scope of these regulations, address medical services provided to eligible veterans in the Republic of the Philippines, and removed provisions related to grants to the Republic of the Philippines that are no longer supported by statutory authority. VA also amends its medical regulations related to filing claims for reimbursement of medical expenses incurred for VA care not previously authorized. Change:

- Revised §17.35,
- Revised §17.125,
- Removed §§17.140, 17.141, 17.350 through 17.352, 17.355, 17.362 through 17.367, 17.369 and 17.370.

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Part 17 — Medical

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

Section 17.35 is also issued under 38 U.S.C. 1724

Section 17.38 is also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Section 17.125 is also issued under 38 U.S.C. 7304

Section 17.169 is also issued under 38 U.S.C. 1712C.

Sections 17.380, 17.390 and 17.412 are also issued under sec. 260, Pub. L. 114-223, 130 Stat. 857.

Section 17.410 is also issued under 38 U.S.C. 1787.

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

Sections 17.640 and 17.647 are also issued under sec. 4, Pub. L. 114-2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Pub. L. 114-2, 129 Stat. 30.

Section 17.417 also issued under 38 U.S.C. 1701 (note), 1709A, 1712A (note), 1722B, 7301, 7330A, 7401-7403, 7406 (note).

Section 17.655 also issued under 38 U.S.C. 501(a), 7304, 7405.

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

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Tentative Eligibility Determinations

§17.34 Tentative eligibility determinations.

Subject to the provisions of §§17.36 through 17.38, when an application for hospital care or other medical services, except outpatient dental care, has been filed which requires an adjudication as to service connection or a determination as to any other eligibility prerequisite which cannot immediately be established, the service (including transportation) may be authorized without further delay if it is determined that eligibility for care probably will be established. Tentative eligibility determinations under this section, however, will only be made if:

(a) *In emergencies.* The applicant needs hospital care or other medical services in emergency circumstances,

(b) *Based on discharge.* The application is filed within 6 months after date of discharge under conditions other than dishonorable, and for a veteran who seeks eligibility based on a period of service that began after September 7, 1980, the veteran must meet the applicable minimum service requirements under 38 U.S.C. 5303A. Authority: (38 U.S.C. 501, 5303A)

[36 FR 6586, Apr. 24, 1970. Redesignated at 61 FR 21965, May 13, 1996. Amended at 64 FR 54212, Oct. 6, 1999; 78 FR 28142, May 14, 2013]

Supplement *Highlights* references: 37(1), 77(1).

Hospital or Nursing Home Care and Medical Services in Foreign Countries

§17.35 Hospital care and medical services in foreign countries.

(a) Under the VA Foreign Medical Program, VA may furnish hospital care and outpatient services to any veteran outside of the United States, without regard to the veteran's citizenship:

(1) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability;

(2) If the care and services are furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care and services for the reasons enumerated in Sec. 17.47(i)(2).

(b) Under the Foreign Medical Program, the care and services authorized under paragraph (a) of this section are available in the Republic of the Philippines to a veteran who meets the requirements of paragraph (a) of this section. VA may also provide outpatient services to a veteran referenced in paragraph (a)(1) in the VA outpatient clinic in Manila for the treatment of such veteran's service-connected conditions within the limits of the clinic. Non-service connected conditions of a veteran who has a service-connected disability may be treated within the limits of the VA outpatient clinic in Manila.

(c) Claims for payment or reimbursement for services not previously authorized by VA under this section are governed by §§17.123-17.127 and 17.129-17.132.

[55 FR 11370, Mar. 28, 1990. Redesignated at 61 FR 21965, May 13, 1996; 74 FR 30228, June 25, 2009; 83 FR 29448, June 25, 2018]

Supplement *Highlights* references: 48(1), 116(2)

§17.123 Claimants.

A claim for payment or reimbursement of services not previously authorized may be filed by the veteran who received the services (or his/her guardian) or by the hospital, clinic, or community resource which provided the services, or by a person other than the veteran who paid for the services.

[39 FR 1844, Jan. 15, 1974, as amended at 45 FR 53807, Aug. 13, 1980. Redesignated at 61 FR 21966, May 13, 1996]

§17.124 Preparation of claims.

Claims for costs of services not previously authorized shall be on such forms as shall be prescribed and shall include the following:

(a) The claimant shall specify the amount claimed and furnish bills, vouchers, invoices, or receipts or other documentary evidence establishing that such amount was paid or is owed, and

(b) The claimant shall provide an explanation of the circumstances necessitating the use of community medical care, services, or supplies instead of Department of Veterans Affairs care, services, or supplies, and

(c) The claimant shall furnish such other evidence or statements as are deemed necessary and requested for adjudication of the claim.

[33 FR 19011, Dec. 20, 1968, as amended at 39 FR 1844, Jan. 15, 1974. Redesignated at 61 FR 21966, May 13, 1996]

§17.125 Where to file claims.

Generally, VA must preauthorize VA payment for health care services provided in the community when such care is provided in a State as that term is defined in 38 U.S.C. 101(20).

(a) Where VA payment for such services has not been authorized in advance, claims for payment for such health care services provided in a State should be submitted to the VA medical facility nearest to where those services were provided.

(b) Claims for payment for hospital care and outpatient services authorized under Sec. 17.35(a) and provided in Canada must be submitted to Veterans Affairs Canada, Foreign Countries Operations Unit, 2323 Riverside Dr., 2nd Floor, Ottawa, Ontario, Canada K1A 0P5.

(c) All other claims for payment for hospital care and outpatient services authorized under Sec. 17.35(a) and provided outside a State must be submitted to the Foreign Medical Program, P.O. Box 469061, Denver, CO 80246-9061.

[33 FR 19011, Dec. 20, 1968, as amended at 39 FR 1844, Jan. 15, 1974; 45 FR 53807, Aug. 18, 1980; 51 FR 8673, Mar. 13, 1986. Redesignated and amended at 61 FR 21966, 21967, May 13, 1996; 74 FR 30228, June 25, 2009; 83 FR 29448, June 25, 2018]

Supplement *Highlights* reference: 116(2)

Delegations of Authority

§17.142 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.

The Under Secretary for Health is delegated authority to enter into

(a) Sharing agreements authorized under 38 U.S.C. 8153 and §17.240;

(b) Contracts with schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Department of Veterans Affairs health care facilities (including, but not limited to, services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel); and

(c) When a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 8153 for medical and ancillary services. The authority under this section generally will be exercised by approval of proposed contracts or agreements negotiated at the health care facility level. Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in 48 CFR 801.670-3. All such contracts and agreements will be negotiated pursuant to 48 CFR chapters 1 and 8. (Authority: 38 U.S.C. 512, 7409, 8153)

[45 FR 6938, Jan. 31, 1980. Redesignated at 61 FR 21966, May 13, 1996, as amended at 62 FR 17072, Apr. 9, 1997; 79 FR 54616, Sep. 12, 2014; 83 FR 29449, June 25, 2018]

Supplement *Highlights* references: 86(1), 116(2)

Next Section is §17.148

Prosthetic, Sensory, and Rehabilitative Aids

§17.148 Service dogs.

(a) *Definitions.* For the purposes of this section:

Service dogs are guide or service dogs prescribed for a disabled veteran under this section.

(b) *Clinical requirements.* VA will provide benefits under this section to a veteran with a service dog only if:

(1) The veteran is diagnosed as having a visual, hearing, or substantial mobility impairment; and

(2) The VA clinical team that is treating the veteran for such impairment determines based upon medical judgment that it is optimal for the veteran to manage the impairment and live independently through the assistance of a trained service dog. Note: If other means (such as technological devices or rehabilitative therapy) will provide the same level of independence, then VA will not authorize benefits under this section.

(3) For the purposes of this section, substantial mobility impairment means a spinal cord injury or dysfunction or other chronic impairment that substantially limits mobility. A chronic impairment that substantially limits mobility includes but is not limited to a traumatic brain injury that compromises a veteran's ability to make appropriate decisions based on environmental cues (i.e., traffic lights or dangerous obstacles) or a seizure disorder that causes a veteran to become immobile during and after a seizure event.

(c) *Recognized service dogs.* VA will recognize, for the purpose of paying benefits under this section, the following service dogs:

(1) The dog and veteran must have successfully completed a training program offered by an organization accredited by Assistance Dogs International or the International Guide Dog Federation, or both (for dogs that perform both service- and guide-dog assistance). The veteran must provide to VA a certificate showing successful completion issued by the accredited organization that provided such program.

(2) Dogs obtained before September 5, 2012 will be recognized if a guide or service dog training organization in existence before September 5, 2012 certifies that the veteran and dog, as a team, successfully completed, no later than September 5, 2013, a training program offered by that training organization. The veteran must provide to VA a certificate showing successful completion issued by the organization that provided such program. Alternatively, the veteran and dog will be recognized if they comply with paragraph (c)(1) of this section.

§§17.350 through 17.370 [Removed].

§ 17.380 In vitro fertilization treatment.

- (a) (1) In vitro fertilization may be provided when clinically appropriate to--
- (i) A veteran who has a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment; and,
 - (ii) The spouse of such veteran, as provided in §17.412.
- (2) For the purposes of this section, “a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment” means, for a male veteran, a service-connected injury or illness that prevents the successful delivery of sperm to an egg; and, for a female veteran with ovarian function and a patent uterine cavity, a service-connected injury or illness that prevents the egg from being successfully fertilized by sperm.
- (3) In vitro fertilization treatment will be provided under this section when clinically appropriate and to the same extent such treatment is provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in the April 3, 2012, memorandum issued by the Assistant Secretary of Defense for Health Affairs on the subject of “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued by the Department of Defense to implement such policy, including any limitations on the amount of such benefits available to such a member.
- (b) Authority to provide in vitro fertilization treatment to covered veterans under this section expires September 30, 2018.

[82 FR 6275, Jan. 19, 2017; as amended at 82 FR 11153, Feb. 21, 2017]

Supplement *Highlights* references: 104(3), 105(1).

Part 61

VA Homeless Providers Grant and Per Diem Program

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2013, 2061, 2064.

Source: 78 Fed. Reg. 12604, February 25, 2013, unless otherwise indicated.

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§61.82 Participant fees for supportive housing.

(a) Each participant of supportive housing may be required to pay a participant fee in an amount determined by the recipient, except that such participant fee may not exceed 30 percent of the participant's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments; nor may it exceed the program's set maximum rate or the HUD Fair Market Rent for that type of housing and its location, whichever is less. The participant fee determination and collection process/procedures should be documented in the grant recipient's operating procedures to ensure consistency, fairness, and accuracy of fees collected. The participant's monthly income includes all income earned by or paid to the participant.

(b) Retroactive benefit payments from any source to program participants, for the purpose of this part, may be considered income in the month received and therefore may be used in calculating the participant fee for that month.

(c) Participant fees may be used for costs of operating the supportive housing or to assist supportive housing residents' move to permanent housing, and must have a therapeutic benefit.

(d) In addition to a participant fee, recipients may charge residents reasonable fees for extracurricular services and activities (extracurricular fee) that participants are not required to receive under the terms of the grant award, are not paid for by VA per diem, or provided by VA. Extracurricular fees must be voluntary on the part of the participant.

(e) In projects funded under this part where participants sign agreements, VA treats the costs associated with participant eviction to be as unallowable.

(f) Use of participant agreements.

(1) Participant agreements must be between the grant recipient of record and the program participant.

(2) Participant agreements must be part of a therapeutic plan to increase self-determination and responsibility.

(3) Participant agreements must include a clause that allows program participants the ability to break the lease or program agreement without penalty for medical or clinical necessity.

(4) Participant agreements may not be used to exclude homeless veterans with little or no income from the program.

(5) Participant agreements and conditions must be fully disclosed to potential participants and acknowledged in writing by both parties.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

[78 FR 12617, Feb. 25, 2013]

Supplement *Highlights* reference: 75(1)

§61.90 Grant for case management services--program.

(a) *General.* VA may award grants for case management services to non-profit organizations and State, local and tribal governments for the provision of case management services to improve the retention of housing by veterans who were previously homeless and are transitioning to permanent housing and to veterans who are at risk of becoming homeless. (For purposes of this program, the term “tribal government” means an entity described in paragraph (2) of the definition of “public entity” in 38 CFR 61.1.) The goals of the grant program are: The maintenance of permanent housing by a veteran following discharge from homeless residential services, a reduction in recidivism, and an increase in exits to permanent housing. These grant funds may not be used for veterans who are receiving case management services from permanent supportive housing programs (e.g. Housing and Urban Development--VA Supportive Housing) or rapid re-housing/homeless prevention programs (e.g. Supportive Services for Veterans Families (SSVF)).

(b) *Case management services.* Case management services include, but are not limited to, the following:

- (1) Making home visits by the case manager to monitor housing stability;
- (2) Providing or coordinating educational activities related to meal planning, tenant responsibilities, the use of public transportation, community resources, financial management, and the development of natural supports;
- (3) Making referrals to needed services, such as mental health, substance use disorder, medical, and employment services; and
- (4) Participating in case conferencing with other service providers who are working with the veteran.

(c) *Time limit.* Case management services may be provided for a particular veteran for up to 6 months, unless VA receives and approves a written request for additional time before the 6-month time limit expires.

[83 FR 25918, June 5, 2018]

Supplement *Highlights* reference: 116(1)

§61.92 Grant for case management services--application and rating criteria.

(a) *General requirements.* When funds are available for grants for case management services authorized under §§61.90 through 61.98, VA will publish a Notice of Fund Availability (NOFA) in the *Federal Register* in accordance with §61.3. The applicant must meet all of the following requirements or the application will be rejected without further consideration:

(1) The applicant must submit an application and comply with the application requirements identified in the NOFA, e.g., complete all parts of the correct form and include all information requested in the NOFA.

(2) Include a signed Application for Federal Assistance (SF 424) that contains the applicant's Employer Identification Number or Taxpayer Identification Number (EIN/TIN). All non-profit applicants must provide their Internal Revenue Service 501(c)(3) or (19) determination letter, which includes the EIN/TIN contained in the application. Applicants that apply under a group EIN/TIN must be identified by the parent EIN/TIN as a member or sub-unit of the parent EIN/TIN and provide supporting documentation.

(3) The application must be received before the deadline established in the NOFA.

(4) The applicant must be a nonprofit organization or a State, local, or tribal government.

(5) The activities for which assistance is requested must be eligible for funding under §§61.90-61.98.

(6) The applicant must agree to comply with the requirements of §§61.90 through 61.98 and demonstrate the capacity to do so.

(7) The applicant must not have an outstanding obligation to VA that is in arrears, or have an overdue or unsatisfactory response to an audit.

(8) The applicant must not have been notified by VA as being in default.

(b) *Rating criteria.* To be eligible for a case management grant, an applicant must receive at least 750 points (out of a possible 1000) and must receive points under paragraphs (c) through (f) of this section.

(c) *Project plan.* VA will award up to 400 points based on the demonstration and quality of the following:

(1) The process used for deciding which veterans are referred and accepted for case management services.

(2) How, when, and by whom the progress of participants who are receiving case management services toward meeting their individual goals will be monitored, evaluated, and documented. This monitoring includes, but is not limited to, a description of how home visits would be provided and the general purpose and frequency anticipated of the home visits.

(3) How the participant's system of natural supports would be assessed and developed.

(4) How crisis intervention services will be coordinated, as needed, to promote the maintenance of permanent housing, access to medical care, mental health or substance use disorder treatment.

(5) How the applicant will provide education to case management participants, as needed, in the areas of tenant rights and responsibilities, rental/lease agreements, landlords rights and responsibilities, and budgeting.

(6) How case management services will be phased out.

(d) *Ability of the applicant to develop and operate a project.* VA will award up to 200 points based on the extent to which the applicant demonstrates the necessary staff and organizational experience to develop and operate the proposed project, based on the following:

(1) Staffing plan for the project that reflects the appropriate professional staff, both administrative and clinical;

(2) Experience of staff, or if staff is not yet hired, position descriptions and expectations of time to hire;

(3) Applicant's previous experience assessing and providing for the housing needs of formerly homeless veterans;

(4) Applicant's previous experience in providing case management services to assist persons in maintaining permanent housing;

(5) Applicant's previous experience in coordinating crisis intervention services, including medical, mental health, and substance use disorder services.

(6) Applicant's experience in working with local landlords as part of providing housing support services.

(7) Historical documentation of past performance both with VA and non-VA projects, including those from other Federal, state and local agencies, and audits by private or public entities.

(e) *Need.* VA will award up to 150 points based on the extent to which the applicant demonstrates:

(1) Substantial unmet need for formerly homeless veterans who have exited homeless transitional housing or residential services and are in need of time limited case management to maintain permanent housing. Demonstration of need must be based on reliable data from reports or other data gathering systems that directly support claims made; and

(2) An understanding of the formerly homeless population to be served and its supportive service needs.

(f) *Completion confidence.* VA will award up to 50 points based on the review panel's confidence that the applicant has effectively demonstrated the case management services project will be completed as described in the application. VA may use historical program documents demonstrating the applicant's past performance, including those from other Federal, state and local agencies, as well as audits by private or public entities in determining confidence scores.

(g) *Coordination with other programs.* VA will award up to 200 points based on the extent to which the applicant demonstrates that it has coordinated with Federal, state, local, private, and other entities serving homeless persons or persons at risk for homelessness in the planning and operation of the case management services project. Such entities include, but are not limited to, shelters, transitional housing, Public Housing Authorities, health care or social service providers, providers funded through Federal initiatives, local planning coalitions or provider associations, or other program providers relevant to the needs of formerly homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical facility of jurisdiction or VA regional office of jurisdiction in their area. VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that:

(1) They are part of an ongoing community-wide planning process within the framework described in this section, which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans (e.g. Continuum of Care);

(2) They have consulted directly with the closest VA medical facility and other providers within the framework described in this section regarding coordination of services for project participants; and

(3) They have coordinated with the closest VA medical facility their plan to assure access to health care, case management, and other care services.

(Approved by the Office of Management and Budget under control number 2900-XXXX.)

[83 FR 25918, June 5, 2018]

Supplement *Highlights* reference: 116(1)

[Reserved]

§61.94 Grant for case management services--selection of grantees.

(a) *Award priority.* Grants for case management services will be awarded in order of priority as follows:

(1) VA will give extra priority to grants for case management services to applications from operational Grant and Per Diem funded organizations that have given up per diem or special need funding and converted their transitional housing to permanent housing. In order to obtain this extra priority, organizations must provide documentation showing that their permanent housing meets the quality housing standards established under section 8(o)(8)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(8)(B)).

(2) VA will give priority to applications from organizations that demonstrate a capability to provide case management services, particularly organizations that are successfully providing or have successfully provided transitional housing services using grants provided by VA under 38 U.S.C. 2012 and 2061.

(3) Applications from other organizations without a Grant and Per Diem grant that seek to provide time limited case management to formerly homeless veterans who have exited VA transitional housing or other VA homeless residential treatment services to permanent housing.

(b) *Higher award priority.* Within each of the three priorities in paragraph (a) of this section, an application with more points using the rating criteria in §61.92(b) will be given a higher priority for a grant award.

[83 FR 25918, June 5, 2018]

Supplement *Highlights* reference: 116(1)

§61.96 Grant for case management services--awards.

(a) *Funding.* Grants for case management services will be offered from the current Grant and Per Diem Program budget and will be limited annually by VA's funding availability and commitments to existing programs.

(b) *Use of grant funds for administrative costs.* Grant funds may be used for the following administrative purposes

- (1) Case management staff;
- (2) Transportation for the case manager;
- (3) Cell phones and computers to facilitate home visits and other case management activities associated with the grant; and
- (4) Office furniture for the use of the case management staff.

(c) *Awards.* VA will execute an agreement and make payments to the grantee in accordance with the award and funding actions applicable to the Grant and Per Diem Program as described in §61.61.

[83 FR 25918, June 5, 2018]

Supplement *Highlights* reference: 116(1)

§61.98 Grant for case management services--requirements and oversight.

VA will oversee grants for case management services to ensure that each grantee operates its program in accordance with §§61.90 through 61.98. VA's oversight responsibilities include reviewing and responding to requests from grantees for extensions to the otherwise applicable maximum 6-month time limit. Grantees must also comply with the requirements of 38 CFR 61.65; 61.67(d) and 61.67(e); and 61.80(c), (g), (h), (i), (n), (o), (p), and (q). VA may disapprove of case management services provided by the grantee if VA determines that they are of unacceptable quality in which case grant funds may not be used to pay for them.

[83 FR 25918, June 5, 2018]

Supplement *Highlights* reference: 116(1)

End of Part 61