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Medical

Book I

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

Supplement No. 123

Covering period of *Federal Register* issues through August 1, 2019

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GENERAL INSTRUCTIONS

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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. 123

5 August 2019

Covering the period of Federal Register issues
through August 1, 2019

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.

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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.

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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new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.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. 123
August 5, 2019

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.INDEX-1 to 17.INDEX-2	17.INDEX-1 to 17.INDEX-2	Part 17 Index
17.60-1 to 17.74-6	17.60-1 to 17.74-6	§§17.61, 17.62, 17.63, 17.64 through 17.74

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

HIGHLIGHTS

Book I, Supplement No. 123
August 5, 2019

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 15 July 2019, the VA published a final rule effective 14 August 2019, to adopt as final, with changes, a proposed rule amending its regulation governing standards applicable to a community residential care facility (CRC) approved by VA. This rule also addresses the amount that a veteran may be charged for residence in a CRC and how VA determines whether that rate is appropriate. The cost of community residential care is financed by the veteran's own resources, and the resident or an authorized personal representative and a representative of the CRC must agree upon the charge and payment procedures for community residential care. VA reviews and has approval authority over this agreement. The rule amends and updates the criteria VA uses to determine whether the rate for care charged to a veteran residing in an approved CRC is appropriate, clarifying how VA determines whether a CRC rate should be approved, consistent with current VA practice. In addition, this rulemaking defines in regulation the level of care that must be provided to a veteran residing in a CRC. Changes:

- In §17.61 revised paragraph (b),
- Revised §17.62,
- In §17.63, added paragraph (b) and revised paragraph (k), and
- Removed the statutory citations at the end on §§17.64 through 17.74.

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. 1703.
Section 17.46 is also issued under 38 U.S.C. 1710.
Section 17.52 is also issued under 38 U.S.C. 1701, 1703, 1710, 1712, and 3104.
Section 17.55 is also issued under 38 U.S.C. 513, 1703, and 1728.
Section 17.56 is also issued under 38 U.S.C. 1703 and 1728.
Sections 17.61 through 17.74, 38 U.S.C. 501, and as noted in specific sections.
Section 17.105 is also issued under 38 U.S.C. 501, 1721, 1722A, 1724, and 1725A.
Section 17.108 is also issued under 38 U.S.C. 501, 1703, 1710, 1725A, and 1730A.
Section 17.110 is also issued under 38 U.S.C. 501, 1703, 1710, 1720D, 1722A, and 1730A.
Section 17.111 is also issued under 38 U.S.C. 101(28), 501, 1701(7), 1703, 1710, 1710B, 1720B, 1720D, and 1722A.
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 and §236, div. J, Pub. L 115-141, 132 Stat. 348.
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.
Sections 17.4000 through 17.4040 also issued under 38 U.S.C. 1703, 1703B, and 1703C.
Section 17.4100 et seq. is also issued under 38 U.S.C. 1703A.
Section 17.4600 is also issued under 38 U.S.C. 1725A.
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

Authority of Health Care Providers to Practice in VA

§17.60 Extensions of community nursing home care beyond six months.

Directors of health care facilities may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond six months when the need for nursing home care continues to exist and

(a) Arrangements for payment of such care through a public assistance program (such as Medicaid) for which the veteran has applied, have been delayed due to unforeseen eligibility problems which can reasonably be expected to be resolved within the extension period, or

(b) The veteran has made specific arrangements for private payment for such care, and

(1) Such arrangements cannot be effectuated as planned because of unforeseen, unavoidable difficulties, such as a temporary obstacle to liquidation of property, and

(2) Such difficulties can reasonably be expected to be resolved within the extension period; or

(c) The veteran is terminally ill and life expectancy has been medically determined to be less than six months.

(d) In no case may an extension under paragraph (a) or (b) of this section exceed 45 days. (Authority: 38 U.S.C. 501, 1720(a))

[53 FR 13121, Apr. 21, 1988. Resdesignated at 61 FR 21965, May 13, 1996]

Community Residential Care

Source: 54 FR 20842, May 15, 1989, unless otherwise noted.

§17.61 Eligibility.

VA health care personnel may assist a veteran by referring such veteran for placement in a privately or publicly-owned community residential care facility if:

(a) At the time of initiating the assistance:

(1) The veteran is receiving VA medical services on an outpatient basis or VA medical center, domiciliary, or nursing home care; or

(2) Such care or services were furnished the veteran within the preceding 12 months;

(b) The veteran does not need hospital or nursing home care but is unable to live independently because of medical (including psychiatric) conditions and has no suitable family resources to provide needed monitoring supervision, and any necessary assistance in the veteran's activities of daily living and instrumental activities of daily living; and

(c) The facility has been approved in accordance with §17.63 of this part.

[54 FR 20842 May 15 1989. Redesignated and amended at 61 FR 21965 21966, May 13 1996; 84 FR 33696, July 15, 2019]

Supplement *Highlights* reference: 123(1)

§17.62 Definitions.

For the purpose of § § 17.61 through 17.72:

Activities of daily living means basic daily tasks an individual performs as part of self-care which may be used as a measurement of the functional status of a person including: Walking; bathing, shaving, brushing teeth, combing hair; dressing; eating; getting in or getting out of bed; and toileting.

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.

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

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.

Instrumental activities of daily living are tasks that are not necessary for fundamental functioning, but allow an individual to live independently in a community. Instrumental activities of daily living include: Housekeeping and cleaning room; meal preparation; taking medications; laundry; assistance with transportation; shopping--for groceries, clothing or other items; ability to use the telephone; ability to manage finances; writing letters; and obtaining appointments.

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.

Paper hearing means a review of the written evidence of record by the hearing official.

[54 FR 20842, May 15 1989. Redesignated and amended at 61 FR 21965, 21966, May 13, 1996; 74 FR 63308, Dec. 3, 2009; 84 FR 33697, July 15, 2019]

Supplement *Highlights* references: 52(1), 123(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) *Level of care*. The community residential care facility must provide the resident, at a minimum, a base level of care to include room and board; nutrition consisting of three meals per day and two snacks, or as required to meet special dietary needs; laundry services; transportation (either provided or arranged) to VA and healthcare appointments; and accompanying the resident to appointments if needed; 24-hour supervision, if indicated; and care, supervision, and assistance with activities of daily living and instrumental activities of daily living. In those cases where the resident requires more than a base level of care, the medically appropriate level of care must be provided.

(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 cost of community residential care should reflect the cost of providing the base level of care as defined in paragraph (b) of this section.

(3) 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. Any agreement between the resident or an authorized personal representative and the community residential care facility must be approved by the approving official. The charge for care in a community residential care facility must be reviewed annually by the facility and VA, or as required due to changes in care needs.

(4) The charges for community residential care must be reasonable and comparable to the current average rate for residential care in the State or Region for the same level of care provided to the resident. Notwithstanding, any year to year increase in the charge for care in a community residential care facility for the same level of care may not exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year. In establishing an individual residential rate, consideration should be given to the level of care required and the individual needs of the resident. The approving official may approve a rate:

(i) Lower than the current average rate for residential care in the State or Region for the same level of care if the community residential care facility and the resident or

authorized personal representative agreed to such rate, provided such lower rate does not result in a lower level of care than the resident requires;

(ii) higher than the current average rate for residential care in the State or Region for the same level of care if the community residential care facility and the resident or authorized personal representative agreed to such rate, and the higher rate is related to the individual needs of the resident which exceed the base level of care as defined in paragraph (b) of this section. Examples of services which exceed the base level of care include, but are not limited to, handling disbursement of funds solely at the request of the resident; fulfilling special dietary requests by the resident or family member; accompanying the resident to an activity center; assisting in or providing scheduled socialization activities; supervision of an unsafe smoker; bowel and bladder care; intervention related to behavioral issues; and transportation other than for VA and healthcare appointments.

(5) The approving official may approve a deviation from the requirements of paragraph (k)(4) of this section if the resident chooses to pay more for care at a facility which exceeds the base level of care as defined in paragraph (b) of this section notwithstanding the resident's needs.

(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; 84 FR 33697, July 15, 2019]

Supplement *Highlights* reference: 52(1), 61(1), 109(1), 123(1).

[Reserved]

§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)

§17.65 Approvals and provisional approvals of community residential care facilities.

(a) An approval of a facility meeting all of the standards in 38 CFR 17.63 based on the report of a VA inspection and any findings of necessary interim monitoring of the facility shall be for a 12-month period.

(b) The approving official, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, may provide a community residential care facility with a provisional approval if that facility does not meet one or more of the standards in 38 CFR 17.63, provided that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and VA agree to a plan of correcting the deficiencies in a specified amount of time. A provisional approval shall not be for more than 12 months and shall not be for more time than VA determines is reasonable for correcting the specific deficiencies.

(c) An approval may be changed to a provisional approval or terminated under the provisions of §§17.66 through 17.71 because of a subsequent failure to meet the standards of §17.63 and a provisional approval may be terminated under the provisions of §§17.66 through 17.71 based on failure to meet the plan of correction or failure otherwise to meet the standards of §17.63. (Authority: 38 U.S.C. 1730)

(d) (1) VA may waive one or more of the standards in 38 CFR 17.63 for the approval of a particular community residential care facility, provided that a VA safety expert certifies that the deficiency does not endanger the life or safety of the residents; the deficiency cannot be corrected as provided in paragraph (b) of this section for provisional approval of the community residential care facility; and granting the waiver is in the best interests of the veteran in the facility and VA's community residential care program. In order to reach the above determinations, the VA safety expert may request supporting documentation from the community residential care facility.

(2) In those instances where a waiver is granted, the subject standard is deemed to have been met for purposes of approval of the community residential care facility under paragraphs (a) or (b) of this section. The waiver and date of issuance will be noted on each annual survey of the facility as long as the waiver remains valid and in place.

(3) A waiver issued under this section remains valid so long as the community residential care facility operates continuously under this program without a break. VA may, on the recommendation of an approving official, rescind a waiver issued under this section if a VA inspector determines that there has been a change in circumstances and that the deficiency can now be corrected, or a VA safety expert finds that the deficiency jeopardizes the health and safety of residents.

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996. Amended at 74 FR 63308, Dec. 3, 2009; 78 FR 32126; May 29, 2013; 84 FR 33697, July 15, 2019]

Supplement *Highlights* references: 52(1), 77(2), 123(1).

Reserved

§17.66 Notice of noncompliance with VA standards.

If the hearing official determines that an approved community residential care facility does not comply with the standards set forth in §17.63 of this part, the hearing official shall notify the community residential care facility in writing of:

(a) The standards which have not been met;

(b) The date by which the standards must be met in order to avoid revocation of VA approval;

(c) The community residential care facility's opportunity to request an oral or paper hearing under §17.67 of this part before VA approval is revoked; and

(d) The date by which the hearing official must receive the community residential care facility's request for a hearing, which shall not be less than 10 calendar days and not more than 20 calendar days after the date of VA notice of noncompliance, unless the hearing official determines that noncompliance with the standards threatens the lives of community residential care residents in which case the hearing official must receive the community residential care facility's request for an oral or paper hearing within 36 hours of receipt of VA notice.

[54 FR 20842, May 18, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996; 78 FR 32126, May 29, 2013; 84 FR 33697, July 15, 2019]

Supplement *Highlights* reference: 77(2), 123(1).

§17.67 Request for a hearing.

The community residential care facility operator must specify in writing whether an oral or paper hearing is requested. The request for the hearing must be sent to the hearing official. Timely receipt of a request for a hearing will stay the revocation of VA approval until the hearing official issues a written decision on the community residential care facility's compliance with VA standards. The hearing official may accept a request for a hearing received after the time limit, if the community residential care facility shows that the failure of the request to be received by the hearing official's office by the required date was due to circumstances beyond its control.

[54 FR 20842, May 15, 1989. Redesignated at 61 FR 21965, May 13, 1996; 84 FR 33697, July 15, 2019]

Supplement *Highlights* reference: 123(1).

§17.68 Notice and conduct of hearing.

(a) Upon receipt of a request for an oral hearing, the hearing official shall:

(1) Notify the community residential care facility operator of the date, time, and location for the hearing; and

(2) Notify the community residential care facility operator that written statements and other evidence for the record may be submitted to the hearing official before the date of the hearing. An oral hearing shall be informal. The rules of evidence shall not be followed. Witnesses shall testify under oath or affirmation. A recording or transcript of every oral hearing shall be made. The hearing official may exclude irrelevant, immaterial, or unduly repetitious testimony.

(b) Upon the receipt of a community residential care facility's request for a paper hearing, the hearing official shall notify the community residential care facility operator that written statements and other evidence must be submitted to the hearing official by a specified date in order to be considered as part of the record.

(c) In all hearings, the community residential care facility operator and VA may be represented by counsel.

[54 FR 20842, May 15, 1989. Redesignated at 61 FR 21965, May 13, 1996; 84 FR 33697, July 15, 2019]

§17.69 Waiver of opportunity for hearing.

If representatives of a community residential care facility which receive a notice of noncompliance under §17.66 of this part fail to appear at an oral hearing of which they have been notified or fail to submit written statements for a paper hearing in accordance with §17.68 of this part, unless the hearing official determines that their failure was due to circumstances beyond their control, the hearing official shall:

(a) Consider the representatives of the community residential care facility to have waived their opportunity for a hearing; and,

(b) Revoke VA approval of the community residential care facility and notify the community residential care facility of this revocation.

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996; 84 FR 33697, July 15, 2019]

§17.70 Written decision following a hearing.

(a) The hearing official shall issue a written decision within 20 days of the completion of the hearing. An oral hearing shall be considered completed when the hearing ceases to receive in person testimony. A paper hearing shall be considered complete on the date by which written statements must be submitted to the hearing official in order to be considered as part of the record.

(b) The hearing official's determination of a community residential care facility's noncompliance with VA standards shall be based on the preponderance of the evidence.

(c) The written decision shall include:

(1) A statement of the facts;

(2) A determination whether the community residential care facility complies with the standards set forth in §17.63 of this part; and

(3) A determination of the time period, if any, the community residential care facility shall have to remedy any noncompliance with VA standards before revocation of VA approval occurs.

(d) The hearing official's determination of any time period under paragraph (c)(3) of this section shall consider the safety and health of the residents of the community residential care facility and the length of time since the community residential care facility received notice of the noncompliance.

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996; 84 FR 33697, July 15, 2019]

§17.71 Revocation of VA approval.

(a) If a hearing official determines under §17.70 of this part that a community residential care facility does not comply with the standards set forth in §17.63 of this part and determines that the community residential care facility shall not have further time to remedy the noncompliance, the hearing official shall revoke approval of the community residential care facility and notify the community residential care facility of this revocation.

(b) Upon revocation of VA approval, VA health care personnel shall:

(1) Cease referring veterans to the community residential care facility;
and,

(2) Notify any veteran residing in the community residential care facility of the facility's disapproval and request permission to assist in the veteran's removal from the facility. If a veteran has a person or entity authorized by law to give permission on behalf of the veteran, VA health care personnel shall notify that person or entity of the community residential care facility's disapproval and request permission to assist in removing the veteran from the community residential care facility.

(c) If the hearing official determines that a community residential care facility fails to comply with the standards set forth in §17.63 of this part and determines that the community residential care facility shall have an additional time period to remedy the noncompliance, the hearing official shall review at the end of the time period the evidence of the community residential care facility's compliance with the standards which were to have been met by the end of that time period and determine if the community residential care facility complies with the standards. If the community residential care facility fails to comply with these or any other standards, the procedures set forth in §§17.66-17.71 of this part shall be followed.

[54 FR 20842, Mar. 15, 1989. Redesignated and amended at 61 FR 21965, 21961, May 13, 1996; 84 FR 33697, July 15, 2019]

§17.72 Availability of information.

VA standards will be made available to other Federal. State and local agencies charged with the responsibility of licensing. or otherwise regulating or inspecting community residential care facilities.

[54 FR 20842, May 15, 1989. Redesignated at 61 FR 21965, May 13, 1996; 84 FR 33697, July 15, 2019]

§17.73 Medical foster homes—general.

(a) *Purpose.* Through the medical foster home program, VA recognizes and approves certain medical foster homes for the placement of veterans. The choice to become a resident of a medical foster home is a voluntary one on the part of each veteran. VA's role is limited to referring veterans to approved medical foster homes. When a veteran is placed in an approved home, VA will provide inspections to ensure that the home continues to meet the requirements of this part, as well as oversight and medical foster home caregiver training. If a medical foster home does not meet VA's criteria for approval, VA will not refer any veteran to the home or provide any of these services. VA may also provide certain medical benefits to veterans placed in medical foster homes, consistent with the VA program in which the veteran is enrolled.

(b) *Definitions.* For the purposes of this section and §17.74:

Labeled means that the equipment or materials have attached to them a label, symbol, or other identifying mark of an organization recognized as having jurisdiction over the evaluation and periodic inspection of such equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance.

Medical foster home means a private home in which a medical foster home caregiver provides care to a veteran resident and:

(i) The medical foster home caregiver lives in the medical foster home;

(ii) The medical foster home caregiver owns or rents the medical foster home; and

(iii) There are not more than three residents receiving care (including veteran and non-veteran residents).

Medical foster home caregiver means the primary person who provides care to a veteran resident in a medical foster home.

Placement refers to the voluntary decision by a veteran to become a resident in an approved medical foster home.

Veteran resident means a veteran residing in an approved medical foster home who meets the eligibility criteria in paragraph (c) of this section.

(c) *Eligibility.* VA health care personnel may assist a veteran by referring such veteran for placement in a medical foster home if:

(1) The veteran is unable to live independently safely or is in need of nursing home level care;

(2) The veteran must be enrolled in, or agree to be enrolled in, either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home; and

(3) The medical foster home has been approved in accordance with paragraph (d) of this section.

(d) *Approval of medical foster homes.* Medical foster homes will be approved by a VA Medical Foster Homes Coordinator based on the report of a VA inspection and on any findings of necessary interim monitoring of the medical foster home, if that home meets the standards established in §17.74. The approval process is governed by the process for approving community residential care facilities under §§17.65 through 17.72 except as follows:

(1) Where §§17.65 through 17.72 reference §17.63.

(2) Because VA does not physically place veterans in medical foster homes, VA also does not assist veterans in moving out of medical foster homes as we do for veterans in other community residential care facilities under §17.72(d)(2); however, VA will assist such veterans in locating an approved medical foster home when relocation is necessary.

(e) *Duties of Medical foster home caregivers.* The medical foster home caregiver, with assistance from relief caregivers, provides a safe environment, room and board, supervision, and personal assistance, as appropriate for each veteran.

[77 FR 5189, Feb. 2, 2012; as amended at 84 FR 33697, July 15, 2019]

Supplement *Highlights* references: 67(1), 123(1).

§17.74 Standards applicable to medical foster homes.

(a) *General.* A medical foster home must:

(1) Meet all applicable state and local regulations, including construction, maintenance, and sanitation regulations.

(2) Have safe and functioning systems for heating, hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation. Ventilation for cook stoves is not required.

(3) Except as otherwise provided in this section, meet the applicable provisions of chapters 1 through 11 and 24, and section 33.7 of NFPA 101 (incorporated by reference, see §17.1), and the other codes and chapters identified in this section, as applicable. Existing buildings or installations that do not comply with the installation provisions of the codes or standards referenced in paragraph (b)(1) through (5), (b)(8), and (b)(10) of §17.1 shall be permitted to be continued in service, provided that the lack of conformity with these codes and standards does not present a serious hazard to the occupants.

(b) *Community residential care facility standards applicable to medical foster homes.* Medical foster homes must comply with §17.63(c), (d), (f), (h), (j) and (k).

(c) *Activities.* The facility must plan and facilitate appropriate recreational and leisure activities.

(d) *Residents' bedrooms.* Each veteran resident must have a bedroom:

(1) With a door that closes and latches;

(2) That contains a suitable bed and appropriate furniture; and

(3) That is single occupancy, unless the veteran agrees to a multi-occupant bedroom.

(e) *Windows.* VA may grant provisional approval for windows used as a secondary means of escape that do not meet the minimum size and dimensions required by chapter 24 of NFPA 101 (incorporated by reference, see §17.1) if the windows are a minimum of 5.0 square feet (and at least 20 inches wide and at least 22 inches high). The secondary means of escape must be brought into compliance with chapter 24 no later than 60 days after a veteran resident is placed in the home.

(f) *Special locking devices.* Special locking devices that do not comply with section 7.2.1.5 of NFPA 101 (incorporated by reference, see §17.1) are permitted where the clinical needs of the veteran resident require specialized security measures and with the written approval of:

(1) The responsible VA clinician; and

(2) The VA fire/safety specialist or the Director of the VA Medical Center of jurisdiction.

(g) *Smoke and carbon monoxide (CO) detectors and smoke and CO alarms.* Medical foster homes must comply with this paragraph (g) no later than 60 days after the first veteran is placed in the home. Prior to compliance, VA inspectors will provisionally approve a medical foster home for the duration of this 60-day period if the medical foster home mitigates risk through the use of battery-operated single station alarms, provided that the alarms are installed before any veteran is placed in the home.

(1) Smoke detectors or smoke alarms must be provided in accordance with sections 24.3.4.1.1 or 24.3.4.1.2 of NFPA 101 (incorporated by reference, see §17.1); section 24.3.4.1.3 of NFPA 101 will not be used. In addition, smoke alarms must be interconnected so that the operation of any smoke alarm causes an alarm in all smoke alarms within the medical foster home. Smoke detectors or smoke alarms must not be installed in the kitchen or any other location subject to causing false alarms.

(2) CO detectors or CO alarms must be installed in any medical foster home with a fuel-burning appliance, fireplace, or an attached garage, in accordance with NFPA 720 (incorporated by reference, see §17.1).

(3) Combination CO/smoke detectors and combination CO/smoke alarms are permitted.

(4) Smoke detectors and smoke alarms must initiate a signal to a remote supervising station to notify emergency forces in the event of an alarm.

(5) Smoke and/or CO alarms and smoke and/or CO detectors, and all other elements of a fire alarm system, must be inspected, tested, and maintained in accordance with NFPA 72 (incorporated by reference, see §17.1) and NFPA 720 (incorporated by reference, see §17.1).

(h) *Sprinkler systems.*

(1) If a sprinkler system is installed, it must be inspected, tested, and maintained in accordance with NFPA 25 (incorporated by reference, see §17.1), unless the sprinkler system is installed in accordance with NFPA 13D (incorporated by reference, see §17.1). If a sprinkler system is installed in accordance with NFPA 13D, it must be inspected annually by a competent person.

(2) If sprinkler flow or pressure switches are installed, they must activate notification appliances in the medical foster home, and must initiate a signal to the remote supervising station.

(i) *Fire extinguishers.* At least one 2-A:10-B:C rated fire extinguisher must be visible and readily accessible on each floor, including basements, and must be maintained in accordance

with the manufacturer's instructions. Portable fire extinguishers must be inspected, tested, and maintained in accordance with NFPA 10 (incorporated by reference, see §17.1).

(j) *Emergency lighting.* Each occupied floor must have at least one plug-in rechargeable flashlight, operable and readily accessible, or other approved emergency lighting. Such emergency lighting must be tested monthly and replaced if not functioning.

(k) *Fireplaces.* A non-combustible hearth, in addition to protective glass doors or metal mesh screens, is required for fireplaces. Hearths and protective devices must meet all applicable state and local fire codes.

(l) *Portable heaters.* Portable heaters may be used if they are maintained in good working condition and:

(1) The heating elements of such heaters do not exceed 212 degrees Fahrenheit (100 degrees Celsius);

(2) The heaters are labeled; and

(3) The heaters have tip-over protection.

(m) *Oxygen safety.* Any area where oxygen is used or stored must not be near an open flame and must have a posted “No Smoking” sign. Oxygen cylinders must be adequately secured or protected to prevent damage to cylinders. Whenever possible, transfilling of liquid oxygen must take place outside of the living areas of the home.

(n) *Smoking.* Smoking must be prohibited in all sleeping rooms, including sleeping rooms of non-veteran residents. Ashtrays must be made of noncombustible materials.

(o) *Special/other hazards.*

(1) Extension cords must be three-pronged, grounded, sized properly, and not present a hazard due to inappropriate routing, pinching, damage to the cord, or risk of overloading an electrical panel circuit.

(2) Flammable or combustible liquids and other hazardous material must be safely and properly stored in either the original, labeled container or a safety can as defined by NFPA 30 (incorporated by reference, see §17.1).

(p) *Emergency egress and relocation drills.* Operating features of the medical foster home must comply with section 33.7 of NFPA 101 (incorporated by reference, see §17.1), except that section 33.7.3.6 of NFPA 101 does not apply. Instead, VA will enforce the following requirements:

(1) Before placement in a medical foster home, the veteran will be clinically evaluated by VA to determine whether the veteran is able to participate in emergency egress and relocation drills. Within 24 hours after arrival, each veteran resident must be shown how to

respond to a fire alarm and evacuate the medical foster home, unless the veteran resident is unable to participate.

(2) The medical foster home caregiver must demonstrate the ability to evacuate all occupants within three minutes to a point of safety outside of the medical foster home that has access to a public way, as defined in NFPA 101 (incorporated by reference, see §17.1).

(3) If all occupants are not evacuated within three minutes or if a veteran resident is either permanently or temporarily unable to participate in drills, then the medical foster home will be given a 60-day provisional approval, after which time the home must have established one of the following remedial options or VA will terminate the approval in accordance with §17.65.

(i) The home is protected throughout with an automatic sprinkler system in accordance with section 9.7 of NFPA 101 (incorporated by reference, see §17.1) and whichever of the following apply: NFPA 13 (incorporated by reference, see §17.1); NFPA 13R (incorporated by reference, see §17.1); or NFPA 13D (incorporated by reference, see §17.1).

(ii) Each veteran resident who is permanently or temporarily unable to participate in a drill or who fails to evacuate within three minutes must have a bedroom located at the ground level with direct access to the exterior of the home that does not require travel through any other portion of the residence, and access to the ground level must meet the requirements of the Americans with Disabilities Act. The medical foster home caregiver's bedroom must also be on ground level.

(4) The 60-day provisional approval under paragraph (p)(3) of this section may be contingent upon increased fire prevention measures, including but not limited to prohibiting smoking or use of a fireplace. However, each veteran resident who is temporarily unable to participate in a drill will be permitted to be excused from up to two drills within one 12-month period, provided that the two excused drills are not consecutive, and this will not be a cause for VA to not approve the home.

(5) For purposes of paragraph (p), the term *all occupants* means every person in the home at the time of the emergency egress and relocation drill, including non-residents.

(q) *Records of compliance with this section.* The medical foster home must comply with §17.63(i) regarding facility records, and must document all inspection, testing, drills and maintenance activities required by this section. Such documentation must be maintained for 3 years or for the period specified by the applicable NFPA standard, whichever is longer. Documentation of emergency egress and relocation drills must include the date, time of day, length of time to evacuate the home, the name of each medical foster home caregiver who participated, the name of each resident, whether the resident participated, and whether the resident required assistance.

(r) *Local permits and emergency response.* Where applicable, a permit or license must be obtained for occupancy or business by the medical foster home caregiver from the local building or business authority. When there is a home occupant who is incapable of self-preservation, the

local fire department or response agency must be notified by the medical foster home within 7 days of the beginning of the occupant's residency.

(s) *Equivalencies.* Any equivalencies to VA requirements must be in accordance with section 1.4.3 of NFPA 101 (incorporated by reference, see §17.1), and must be approved in writing by the appropriate Veterans Health Administration, Veterans Integrated Service Network (VISN) Director. A veteran living in a medical foster home when the equivalency is granted or who is placed there after it is granted must be notified in writing of the equivalencies and that he or she must be willing to accept such equivalencies. The notice must describe the exact nature of the equivalency, the requirements of this section with which the medical foster home is unable to comply, and explain why the VISN Director deemed the equivalency necessary. Only equivalencies that the VISN Director determines do not pose a risk to the health or safety of the veteran may be granted. Also, equivalencies may only be granted when technical requirements of this section cannot be complied with absent undue expense, there is no other nearby home which can serve as an adequate alternative, and the equivalency is in the best interest of the veteran.

(t) *Cost of medical foster homes.*

(1) Payment for the charges to veterans for the cost of medical foster home care is not the responsibility of the United States Government.

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

(3) The charges for medical foster home care must be comparable to prices charged by other assisted living and nursing home facilities in the area based on the veteran's changing care needs and local availability of medical foster homes. (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0777.) (Authority: 38 U.S.C. 501, 1730)

[77 FR 5189, Feb. 2, 2012; as amended at 80 FR 44862, July 28, 2015; 84 FR 33697, July 15, 2019]

Supplement *Highlights* references: 67(1), 93(2), 123(1).

Next Section is §17.80

Reserved