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

Medical

Veterans Benefits Administration

Supplement No. 79

Covering period of *Federal Register* issues
through September 1, 2013

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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

Veterans Benefits Administration

Supplement No. 79

5 September 2013

Covering the period of Federal Register issues
through September 1, 2013

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FILING INSTRUCTIONS

**Book I, Supplement No. 79
September 5, 2013**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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58.INDEX-1 to 58.18-4	58.INDEX-1 to 58.INDEX-2	Part 58 (removed)

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HIGHLIGHTS

Book I, Supplement No. 79 September 5, 2013

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 20 August 2013 the VA published a final rule effective 19 September 2013, to amend its VA Health Professional Scholarship Program (HPSP) regulations. VA is also establishing regulations for a new program, the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP). Changes:

- Revised §17.600 through §17.612; and
- Added §17.625 through §17.636.

2. On 21 August 2013 the VA published a final rule effective that same day, to make technical changes to remove from its regulations a series of forms related to VA payments for care provided to veterans at State homes. Official forms are not required to be reproduced in the Code of Federal Regulations (CFR), and all VA forms are more readily available on VA Web sites. Changes:

- In §51.30, revised paragraph (c),
- In §51.43, revised paragraphs (a), (b) and (f),
- In §51.210, revised paragraphs (c)(8) through (c)(11),
- In §52.30, revised paragraph (c),
- In §52.40, revised paragraphs (a)(3) and (a)(5),
- In §52.210, revised paragraphs (c)(8) through (c)(11), and
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§17.510 Redisclosure.

No person or entity to whom a quality assurance record or document has been disclosed under §17.508 or §17.509 shall make further disclosure of such record or document except as provided for in 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511. (Authority: 38 U.S.C. 5705)

§17.511 Penalties for violations.

Any person who knows that a document or record is a confidential and privileged quality assurance document or record described in §§17.500 through 17.511 and willfully discloses such confidential and privileged quality assurance record or document or information contained therein, except as authorized by 38 U.S.C. 5705 or the regulations in §§17.500 through 17.511, shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of each subsequent offense. (Authority: 38 U.S.C. 5705)

Next Section is §17.600

VA Health Professional Scholarship Program

Authority: 38 U.S.C. 7601–7619, 7633, 7634 and 7636.

§17.600 Purpose.

The purpose of §§17.600 through 17.612 is to establish the requirements for the award of scholarships under the VA Health Professional Scholarship Program (HPSP) to students pursuing a course of study leading to a degree in certain health care occupations, listed in 38 U.S.C. 7401(1) and (3), to assist in providing an adequate supply of such personnel for VA. The HPSP allows VA to provide scholarship awards to facilitate recruitment and retention of employees in several hard-to-fill health care occupations.

(Authority: 38 U.S.C. 7601(b))

[55 FR 40170. Oct. 2, 1990; as amended at 78 FR 51069, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.601 Definitions.

The following definitions apply to §§17.600 through 17.636:

Acceptable level of academic standing means the level at which a participant may continue to attend school under the standards and practices of the school at which a participant is enrolled in a course of study for which an HPSP or VIOMPSP scholarship was awarded.

Acceptance agreement means a signed legal document between VA and a participant of the HPSP or VIOMPSP that specifies the obligations of VA and the participant upon acceptance to the HPSP or VIOMPSP. An acceptance agreement must incorporate by reference, and cannot be inconsistent with, §§17.600 through 17.612 (for HPSP agreements) or §§17.626 through 17.636 (for VIOMPSP agreements), and must include:

- (1) A mobility agreement.
- (2) Agreement to accept payment of the scholarship.
- (3) Agreement to perform obligated service.

(4) Agreement to maintain enrollment and attendance in the course of study for which the scholarship was awarded, and to maintain an acceptable level of academic standing.

Affiliation agreement means a legal document that enables the clinical education of trainees at a VA or non-VA medical facility. An affiliation agreement is required for all education or training that involves direct patient contact, or contact with patient information, by trainees from a non-VA institution.

Citizen of the United States means any person born, or lawfully naturalized, in the United States, subject to its jurisdiction and protection, and owing allegiance thereto.

Credential means the licensure, registration, certification, required education, relevant training and experience, and current competence necessary to meet VA's qualification standards for employment in certain health care occupations.

Degree represents the successful completion of the course of study for which a scholarship was awarded.

(1) HPSP. For the purposes of the HPSP, VA recognizes the following degrees: a doctor of medicine; doctor of osteopathy; doctor of dentistry; doctor of optometry; doctor of podiatry; or an associate, baccalaureate, master's, or doctorate degree in another health care discipline needed by VA.

(2) VIOMPSP. For the purposes of the VIOMPSP, VA recognizes a bachelor's, master's, education specialist or doctorate that meets the core curriculum and supervised practice requirements in visual impairment and blindness.

Full-time student means an individual who meets the requirements for full time attendance as defined by the school in which they are enrolled.

HPSP means the VA Health Professional Scholarship Program authorized by 38 U.S.C. 7601 through 7619.

Mobility agreement means a signed legal document between VA and a participant of the HPSP or VIOMPSP, in which the participant agrees to accept assignment at a VA facility selected by VA where he or she will fulfill the obligated service requirement. A mobility agreement must be included in the participant's acceptance agreement. Relocation to another geographic location may be required.

Obligated service means the period of time during which the HPSP or VIOMPSP participant must be employed by VA in a full-time clinical occupation for which the degree prepared the participant as a requirement of the acceptance agreement.

Part-time student

(1) *HPSP*. For the purposes of the HPSP, part-time student means an individual who is a VA employee, and who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

(2) *VIOMPSP*. For the purposes of the VIOMPSP, part-time student means an individual who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

Participant or scholarship program participant means an individual whose application to the HPSP or VIOMPSP has been approved, whose acceptance agreement has been consummated by VA, and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of such agreement.

Required fees means those fees which are charged by the school to all students pursuing a similar curriculum in the same school.

Scholarship Program means the VA Health Professional Scholarship Program (HPSP) authorized by 38 U.S.C. 7601 through 7619.

School means an academic institution that is accredited by a body or bodies recognized for accreditation by the U.S. Department of Education or by the Council for Higher Education Accreditation (CHEA), and that meets the following requirements:

(1) For the purposes of the HPSP, offers a course of study leading to a degree in a health care service discipline needed by VA.

(2) For the purposes of the VIOMPSP, offers a course of study leading to a degree in visual impairment or orientation and mobility.

School year means for purposes of the HPSP and its stipend payment, and the VIOMPSP, all or part of the 12-month period that starts on the date the participant begins school as a full-time student.

Secretary means the Secretary of Veterans Affairs or designee.

State means one of the several States, Territories and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

Under Secretary for Health means the Under Secretary for Health of the Department of Veterans Affairs or designee.

VA means the Department of Veterans Affairs.

VA employee means an individual permanently employed by VA. A VA employee does not include an individual who is employed temporarily or on a contractual basis.

VA health care facility means a VA medical center, independent outpatient clinic, domiciliary, nursing home (community living center), residential treatment program, and any of a variety of community based clinics (including community based outpatient clinics, rural health resource centers, primary care telehealth clinics, and Vet Centers), consolidated mail outpatient pharmacies, and research centers.

VIOMPSP means the Visual Impairment and Orientation and Mobility Professional Scholarship Program authorized by 38 U.S.C. 7501 through 7505.

(Authority: 38 U.S.C. 301, 7501(a)(1), 7504, 7602(a), 7604(1)(B), 7633)

[47 FR 10810, Mar. 12, 1982, as amended at 48 FR 37399, Aug. 18, 1983; 54 FR 28674, July 7, 1989; 55 FR 40170, Oct. 2, 1990; 61 FR 21969, May 13, 1996; 78 FR 51069, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.602 Eligibility for the HPSP.

(a) To be eligible for a scholarship under this program an applicant must:

- (1) Be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State;
- (2) Be pursuing a degree annually designated by the Secretary for participation in the Scholarship Program; (Authority: 38 U.S.C. 7602(a)(1), 7612(b)(1))
- (3) Be in a discipline or program annually designated by the Secretary for participation in the Scholarship Program;
- (4) Be a citizen of the United States; and
- (5) Submit an application to participate in the Scholarship Program together with a signed contract.
- (6) Clinical tours. An applicant for a scholarship under the HPSP must agree to perform clinical tours while enrolled in the course of education or training for which the scholarship is provided. VA will determine the assignments and locations of the clinical tour. (Authority: 38 U.S.C. 7618(b))

(b) To be eligible for a scholarship as a part-time student under this program, an applicant must satisfy requirements of paragraph (a) of this section and in addition must:

- (1) Be a full-time VA employee permanently assigned to a VA health care facility at the time of application and on the date when the scholarship is awarded;
- (2) Remain a VA employee for the duration of the scholarship award. (Authority: 38 U.S.C. 7612(c)(3)(B))

(c) Any applicant who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study is ineligible to receive a scholarship under the Department of Veterans Affairs Scholarship Program. (Authority: 38 U.S.C. 7602(b))

(Approved by the Office of Management and Budget under control number 2900-0352)

[47 FR 10810, Mar. 12, 1982, as amended at 48 FR 37399, Aug. 18, 1983; 54 FR 28674, July 7, 1989; 78 FR 51070, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.603 Availability of HPSP scholarships.

(a) General. A HPSP scholarship will be awarded only when necessary to assist VA in alleviating shortages or anticipated shortages of personnel in the health professions stated in paragraph (b) of this section. VA will determine the existence of shortage of personnel in accordance with specific criteria for each health care profession. VA has the authority to establish the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(b) Qualifying fields of education. VA will grant HPSP scholarships in a course of study in those disciplines or programs where recruitment is necessary for the improvement of health care of veterans. Those disciplines or programs are listed in 38 U.S.C. 7401(1) and (3).

(Authority: 38 U.S.C. 7401(1), (3), 7612(b)(2), 7612(b)(4), and 7603(b)(1))

[54 FR 28674, July 7, 1989, as amended at 61 FR 21969, May 13, 1996; 78 FR 51070, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.604 Application for the HPSP.

An applicant for the HPSP must submit an accurate and complete application, including a signed written acceptance agreement.

(Authority: 38 U.S.C. 7612(c)(1)(B))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0793.)

[47 FR 10810, Mar. 12, 1982; as amended at 78 FR 51070, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.605 Selection of participants.

(a) *General.* In deciding which HPSP application to approve, VA will first consider applications submitted by applicants entering their final year of education or training and applicants who previously received HPSP scholarships and who meet the conditions of paragraph (f) of this section. Except for paragraph (f) of this section, applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection. In selecting participants to receive awards as part-time students, VA may, at VA's discretion: (Authority: 38 U.S.C. 7612(b)(5))

(1) Award scholarships geographically to part-time students so that available scholarships may be distributed on a relatively equal basis to students working throughout the VA health care system, and/or

(2) Award scholarships on the basis of retention needs within the VA health care system. (Authority: 38 U.S.C. 7603(d))

(b) *Selection.* In evaluating and selecting participants, the Secretary will take into consideration those factors determined necessary to assure effective participation in the Scholarship Program. The factors may include, but not be limited to:

- (1) Work/volunteer experience, including prior health care employment and Department of Veterans Affairs employment;
- (2) Faculty and employer recommendations;
- (3) Academic performance; and
- (4) Career goals. (Authority: 38 U.S.C. 7633)

(c) *Selection of part-time students.* Factors in addition to those specified in paragraph (b) of this section, which may be considered in awarding scholarships to part-time students may include, but are not limited to:

- (1) Length of service of a VA employee in a health care facility;
- (2) Honors and awards received from VA, and other sources;
- (3) VA work performance evaluation;
- (4) A recommendation for selection for a part-time scholarship from a VA Medical District. (Authority: 38 U.S.C. 7452(d)(1))

(d) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

(e) *Duration of scholarship award.* Subject to the availability of funds for the Scholarship Program, the Secretary will award a participant a full-time scholarship under these regulations for a period of from 1 to 4 school years and a participant of a part-time scholarship for a period of 1 to 6 school years. (Authority: 38 U.S.C. 7612(c)(1)(A) and 7614(3))

(f) *Continuation awards.* Subject to the availability of funds for the Scholarship Program and selection, the Secretary will award a continuation scholarship for completion of the degree for which the scholarship was awarded if:

(1) The award will not extend the total period of Scholarship Program support beyond 4 years for a full-time scholarship, and beyond 6 years for a part-time scholarship; and

(2) The participant remains eligible for continued participation in the Scholarship Program. (Authority: 38 U.S.C. 7603(d))

(Approved by the Office of Management and Budget under control number 2900 0352)

[48 FR 37399, Aug. 18, 1983, as amended at 54 FR 28674, July 7, 1989; 78 FR 51070, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.606 Award procedures.*(a) Amount of scholarship.*

(1) A scholarship award will consist of (i) tuition and required fees (ii) other educational expenses, including books and laboratory equipment. and (iii) except as provided in paragraph (a)(2) of this section, a monthly stipend, for the duration of the scholarship award. All such payments to scholarship participants are exempt from Federal taxation. (Authority: 38 U.S.C. 7636)

(2) No stipend may be paid to a participant who is a full-time VA employee.

(3) The Secretary may determine the amount of the stipend paid to participants, whether part-time students or full-time students, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 7613(b).

(4) In the case of a part-time student who is a part-time employee, the maximum stipend, if more than a nominal stipend is paid, will be reduced in accordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant.

(5) A full stipend may be paid only for the months the part-time student is attending classes. (Authority: 38 U.S.C. 7614(2))

(6) The Secretary may make arrangements with the school in which the participant is enrolled for the direct payment of the amount of tuition and or reasonable educational expenses on the participant's behalf. (Authority: 38 U.S.C. 7613(c))

(7) A participant's eligibility for a stipend ends at the close of the month in which degree requirements are met.

(b) Leave-of-absence, repeated course work. The Secretary may suspend scholarship payments to or on behalf of a participant if the school (1) approves a leave-of-absence for the participant for health, personal, or other reasons, or (2) requires the participant to repeat course work for which the Secretary previously has made payments under the Scholarship Program. Additional costs relating to the repeated course work will not be paid under this program. Any scholarship payments suspended under this section will be resumed by the Secretary upon notification by the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is proceeding as a full-time student in the course of study for which the scholarship was awarded. (Authority: 38 U.S.C. 7633)

[48 FR 37400, Aug. 18, 1983, as amended at 55 FR 40170, Oct. 2, 1990]

§17.607 Obligated service.

(a) *General.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Secretary. (Authority: 38 U.S.C. 7616(a))

(b) *Beginning of service*

(1) (i) *Date of employment.* Except as provided in paragraph (b)(2) of this section, a participant's obligated service will begin on the date VA appoints the participant as a full-time VA employee in a clinical occupation for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant becomes licensed in a State or becomes certified, whichever is later. VA will actively assist and monitor participants to ensure State licenses or certificates are obtained in a minimal amount of time following graduation. If a participant fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(ii) *Notification.* VA will notify the participant of the work assignment and its location no later than 60 days before the date on which the participant must begin work.

(iii) *VA mentor.* VA will ensure that the participant is assigned a mentor who is employed at the same facility where the participant performs his or her obligated service at the commencement of such service. (Authority: 38 U.S.C. 7616(b), 7616(c), 7618(a))

(c) *Duration of service*

(1) *Full-time student.* A participant who attended school as a full-time student will agree to serve as a full-time clinical employee in the Veterans Health Administration for 1 calendar year for each school year or part thereof for which a scholarship was awarded, but for no less than 2 years.

(2) *Part-time student.* Obligated service to VA for a participant who attended school as a part-time student must be satisfied by full-time clinical employment. The period of obligated service will be reduced from that which a full-time student must serve under paragraph (c)(1) of this section in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student who is pursuing the same degree; however, the period of obligated service will not be for less than 1 year. (Authority: 38 U.S.C. 7612(c)(1)(B), 7612(c)(3)(A), 7618(c))

(d) *Location for service.* VA reserves the right to make final decisions on the location for service obligation. A participant who receives a scholarship as a full-time student must be willing to relocate to another geographic location to carry out his or her service obligation according to the participant's mobility agreement. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized, if there is a vacant position which will satisfy the individual's mobility agreement at that facility. (Authority: 38 U.S.C. 7616(a))

(e) *Creditability of advanced clinical training.* No period of advanced clinical training will be credited toward satisfying the period of obligated service incurred under the Scholarship Program. (Authority: 38 U.S.C. 7616(b)(3)(A)(ii))

[47 FR 10810, Mar. 12, 1982, as amended at 48 FR 37400, Aug. 18, 1983; 54 FR 28675, July 7, 1989; 78 FR 51070, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.608 Deferment of obligated service.

(a) *Request for deferment.* A participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Secretary may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training. (Authority: 38 U.S.C. 7616(a)(A)(i))

(b) *Deferment requirements.* Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an Affiliation Agreement with a Department of Veterans Affairs health care facility, and such training will be undertaken in a Department of Veterans Affairs health-care facility. (Authority: 38 U.S.C. 7616(b)(4))

(c) *Additional service obligation.* A participant who has requested and received deferment for approved advanced clinical training may, at the time of approval of such deferment and at the discretion of the Secretary and upon the recommendation of the Under Secretary for Health, incur an additional period of obligated service:

(1) At the rate of one-half of a calendar year for each year of approved clinical training (or a proportionate ratio thereof) if the training is in a specialty determined to be necessary to meet health care requirements of the Veterans Health Administration; Department of Veterans Affairs; or

(2) At the rate of three-quarters of a calendar year for each year of approved graduate training (or a proportionate ratio thereof) if the training is in a medical specialty determined not to be necessary to meet the health care requirements of the Veterans Health Administration. Specialties necessary to meet the health care requirements of the Veterans Health Administration will be prescribed periodically by the Secretary when, and if, this provision for an additional period of obligated service is to be used. (Authority: 38 U.S.C. 7616(b)(4)(B))

(d) *Altering deferment.* Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Secretary's written approval of the alteration. (Authority: 38 U.S.C. 7633)

(e) *Beginning of service after deferment.* Any participant whose period of obligated service has been deferred under paragraph (a) or (b) of this section must begin the obligated service effective on the date of appointment under title 38 in full-time clinical practice in an assignment or location in a Department of Veterans Affairs health care facility as determined by the Secretary. The assignment will be made by the Secretary within 120 days prior to or no later than 30 days following the completion of the requested graduate training for which the deferment was granted. Travel and relocation regulations will apply. (Authority: 38 U.S.C. 7616(b)(2))

[47 FR 10810, Mar. 12, 1982; 47 FR 13523, Mar. 31, 1982, as amended at 54 FR 28675, July 7, 1989; 61 FR 21969, May 13, 1996]

§17.609 Pay during period of obligated service.

The initial appointment of physicians for obligated service will be made in a grade commensurate with qualifications as determined in section 7404(b)(1) of title 38 U.S.C. A physician serving a period of obligated service is not eligible for incentive special pay during the first three years of such obligated service. A physician may be paid primary special pay at the discretion of the Secretary upon the recommendation of the Under Secretary for Health. (Authority: Pub. L. 96-330, Sec. 202; 38 U.S.C. 7431-7440)

[47 FR 10810, Mar. 12, 1982, as amended at 54 FR 28676, July 7, 1989; 61 FR 21969, May 13, 1996]

§17.610 Failure to comply with terms and conditions of participation.

(a) If a participant, other than one described in paragraph (b) of this section fails to accept payment or instructs the school not to accept payment of the scholarship provided by the Secretary, the participant must, in addition to any service or other obligation incurred under the contract, pay to the United States the amount of \$1,500 liquidated damages. Payment of this amount must be made within 90 days of the date on which the participant fails to accept payment of the scholarship award or instructs the school not to accept payment. (Authority: 38 U.S.C. 7617(a))

(b) If a participant:

- (1) Fails to maintain an acceptable level of academic standing;
- (2) Is dismissed from the school for disciplinary reasons;
- (3) Voluntarily terminates the course of study or program for which the scholarship was awarded including in the case of a full-time student, a reduction of course load from full-time to part-time before completing the course of study or program;
- (4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or (Authority: 38 U.S.C. 7617(b)(4))
- (5) Is a part-time student and fails to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued; the participant must instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under the written contract executed in accordance with §17.602. Payment of this amount must be made within 1 year from the date academic training terminates unless a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness. (Authority: 38 U.S.C. 7617(b))

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

$$A = 3 * \phi * [(t-s) / t]$$

in which:

“A” is the amount the United States is entitled to recover;

“ ϕ ” is the sum of the amounts paid to or on behalf of the applicant and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

“t” is the total number of months in the applicant’s period of obligated service;
and

“s” is the number of months of the period of obligated service served by the participant.

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary. (Authority: 38 U.S.C. 7617(c)(1)(2))

(Approved by the Office of Management and Budget under control number 2900-0352)

[47 FR 10810, Mar. 12, 1982; 47 FR 13523, Mar. 31, 1982, as amended at 48 FR 37400, Aug. 18, 1983; 54 FR 28676, July 7, 1989; 54 FR 46611, Nov. 6, 1989; 61 FR 24237, May 14, 1996]

§17.611 Bankruptcy.

Any payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due. This section applies to participants in the HPSP and the VIOMPSP. (Authority: 38 U.S.C. 7505(d), 7634(c))

[47 FR 10810, Mar. 12, 1982; as amended at 78 FR 51071, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.612 Cancellation, waiver, or suspension of obligation.*(a) General.*

(1) This section applies to participants in the HPSP or the VIOMPSP.

(2) Any obligation of a participant for service or payment will be cancelled upon the death of the participant.. (Authority: 38 U.S.C. 7634(a))

(b) Waivers or suspensions.

(1) A participant may seek a waiver or suspension of the obligated service or payment obligation incurred under this program by submitting a written request to VA setting forth the basis, circumstances, and causes which support the requested action. Requests for waivers or suspensions must be submitted to VA no later than 1 year after the date VA notifies the participant that he or she is in breach of his or her acceptance agreement. A participant seeking a waiver or suspension must comply with requests for additional information from VA no later than 30 days after the date of any such request.

(i) *Waivers.* A waiver is a permanent release by VA of the obligation either to repay any scholarship funds that have already been paid to or on behalf of the participant, or to fulfill any other acceptance agreement requirement. If a waiver is granted, then the waived amount of scholarship funds may be considered taxable income.

(ii) *Suspensions.* VA may approve an initial request for a suspension for a period of up to 1 year. A suspension may be extended for one additional year, after which time the participant will be in breach of his or her acceptance agreement. If a suspension is approved:

(A) VA will temporarily discontinue providing any scholarship funds to or on behalf of the participant while the participant's scholarship is in a suspended status; or

(B) VA will temporarily delay the enforcement of acceptance agreement requirements.

(2) The Secretary may waive or suspend any service or payment obligation incurred by a participant whenever compliance by the participant (i) is impossible, due to circumstances beyond the control of the participant or (ii) whenever the Secretary concludes that a waiver or suspension of compliance would be in the best interest of the Department of Veterans Affairs. (Authority: 38 U.S.C. 7634(b))

(c) Compliance by a participant with a service or payment obligation will be considered impossible due to circumstances beyond the control of the participant if the Secretary determines, on the basis of such information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in permanent inability to perform the service or other activities which would be necessary to comply with the obligation.

(d) Waivers or suspensions of service or payment obligations, when not related to paragraph (c) of this section, and when considered in the best interest of the Department of Veterans Affairs, will be determined by the Secretary on an individual basis. (Authority: 38 U.S.C. 7634(b))

(e) Eligibility to reapply for award. Any previous participant of any federally sponsored scholarship program who breached his or her acceptance agreement or similar agreement in such scholarship program is not eligible to apply for a HPSP or VIOMPSP. This includes participants who previously applied for, and received, a waiver under this section.

(f) Finality of decisions. Decisions to approve or disapprove waiver requests are final and binding determinations. Such determinations are not subject to reconsideration or appeal. (Authority: 38 U.S.C. 7505(c), 7634(a), 7634(b))

[47 FR 10810, Mar. 12, 1982; as amended at 78 FR 51071, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

Next Section is §17.625

**Visual Impairment and Orientation and Mobility
Professional Scholarship Program**

§17.625 Purpose

The purpose of §§17.625 through 17.636 is to establish the requirements for the award of scholarships under the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP) to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility. The scholarship is designed to increase the supply of qualified Blind Rehabilitation Specialists and Blind Rehabilitation Outpatient Specialists available to VA. The scholarship will be publicized throughout educational institutions in the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to historically black colleges and universities. (Authority: 38 U.S.C. 7501)

[78 FR 51071, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.626 Definitions

For the definitions that apply to §§17.625 through 17.636, see §17.601. (Authority: 38 U.S.C. 501)

[78 FR 51071, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.627 Eligibility for the VIOMPSP

(a) *General.* To be eligible for the VIOMPSP, an applicant must meet the following requirements:

- (1) Be unconditionally accepted for enrollment or currently enrolled in a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree (a program in which an individual becomes certified in two of the three professional certifications offered by the Academy for Certification of Visual Rehabilitation and Education Professionals) at an accredited educational institution that is in a State;
- (2) Be a citizen of the United States; and
- (3) Submit an application to participate in the VIOMPSP, as described in §17.629.

(b) *Obligated service to another entity.* Any applicant who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study is ineligible to receive a VIOMPSP scholarship.

(Authority: 38 U.S.C. 7501(a), 7502(a), 7504(3))

[78 FR 51072, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.628 Availability of VIOMPSP scholarships

VA will make awards under the VIOMPSP only when VA determines it is necessary to assist in alleviating shortages or anticipated shortages of personnel in visual impairment or orientation and mobility programs. VA's determination of the number of VIOMPSP scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and/or part-time students, is subject to the availability of appropriations. (Authority: 38 U.S.C. 7501(a), 7503(c)(2))

[78 FR 51072, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.629 Application for the VIOMPSP

(a) *Application-general.* Each individual desiring a VIOMPSP scholarship must submit an accurate and complete application, including a signed written acceptance agreement.

(b) *VA's duties.* VA will notify applicants prior to acceptance in the VIOMPSP of the following information:

(1) A fair summary of the rights and liabilities of an individual whose application is approved by VA and whose acceptance agreement is consummated by VA; and

(2) Full description of the terms and conditions that apply to participation in the VIOMPSP and service in VA. (Authority: 38 U.S.C. 501(a), 7502(a)(2))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0793.)

[78 FR 51072, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.630 Selection of VIOMPSP participants

(a) *General.* In deciding which VIOMPSP applications to approve, VA will first consider applications submitted by applicants entering their final year of education or training. Applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection.

(b) *Selection criteria.* In evaluating and selecting participants, VA will take into consideration those factors determined necessary to assure effective participation in the VIOMPSP. These factors will include, but are not limited to, the following:

- (1) Academic performance;
- (2) Work/volunteer experience, including prior rehabilitation or health care employment and VA employment;
- (3) Faculty and employer recommendations; or
- (4) Career goals.

(c) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

(d) *Duration of VIOMPSP award.* VA will award a VIOMPSP scholarship for a period of time equal to the number of years required to complete a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree. The number of years covered by an individual scholarship award will be based on the number of school years that the participant has yet to complete his or her degree at the time the VIOMPSP scholarship is awarded. Subject to the availability of funds, VA will award the VIOMPSP as follows:

(1) *Full-time scholarship.* A full-time scholarship is awarded for a minimum of 1 school year to a maximum of 4 school years;

(2) *Part-time scholarships.* A part-time scholarship is awarded for a minimum of 1 school year to a maximum of 6 school years. (Authority: 38 U.S.C. 7504(3))

[78 FR 51072, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.631 Award procedures*(a) Amount of scholarship.*

(1) A VIOMPSP scholarship award will not exceed the total tuition and required fees for the program of study in which the applicant is enrolled. All such payments to scholarship participants are exempt from Federal taxation.

(2) The total amount of assistance provided under the VIOMPSP for an academic year to an individual who is a full-time student may not exceed \$15,000.00.

(3) The total amount of assistance provided under the VIOMPSP for an academic year to a participant who is a part-time student shall bear the same ratio to the amount that would be paid under paragraph (a)(2) of this section if the participant were a full-time student as the coursework carried by the participant to full-time coursework.

(4) The total amount of assistance provided to an individual may not exceed \$45,000.00.

(5) In the case of an individual enrolled in a program of study leading to a dual degree described in §17.627(a)(1), such tuition and fees will not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree.

(6) Financial assistance may be provided to an individual under the VIOMPSP to supplement other educational assistance to the extent that the total amount of educational assistance received by the individual during an academic year does not exceed the total tuition and fees for such academic year.

(7) VA will make arrangements with the school in which the participant is enrolled to issue direct payment for the amount of tuition or fees on behalf of the participant.

(b) Repeated course work. Additional costs relating to the repeated course work will not be paid under this program. VA will resume any scholarship payments suspended under this section upon notification by the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is pursuing the course of study for which the VIOMPSP was awarded. (Authority: 38 U.S.C. 7503, 7504(3))

[78 FR 51072, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.632 Obligated service

(a) *General provision.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a full-time clinical VA employee in the rehabilitation practice of the participant's discipline in an assignment or location determined by VA.

(b) *Beginning of service.* A participant's obligated service will begin on the date on which the participant obtains any required applicable credentials and when appointed as a full-time clinical VA employee in a position for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant obtains any required applicable credentials, whichever is later. If a participant fails to obtain his or her degree, or fails to obtain any required applicable credentials within 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(c) *Duration of service.* The participant will agree to serve as a full-time clinical VA employee for 3 calendar years which must be completed no later than 6 years after the participant has completed the program for which the scholarship was awarded and received a degree referenced in §17.627(a)(1).

(d) *Location and assignment of obligated service.* VA reserves the right to make final decisions on the location and assignment of the obligated service. A participant who receives a scholarship must agree as part of the participant's mobility agreement that he or she is willing to accept the location and assignment where VA assigns the obligated service. Geographic relocation may be required.

(e) *Creditability of advanced clinical training.* No period of advanced clinical training will be credited towards satisfying the period of obligated service incurred under the VIOMPSP. (Authority: 38 U.S.C. 7504(2)(D), 7504(3))

[78 FR 51072, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.633 Deferment of obligated service

Deferment of obligated service under the VIOMPSP is treated in the same manner as deferment of obligated service under the HPSP under §17.608. (Authority: 38 U.S.C. 7504(3))

[78 FR 51073, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.634 Failure to comply with terms and conditions of participation

(a) *Participant refuses to accept payment of the VIOMPSP.* If a participant, other than one described in paragraph (b) of this section, refuses to accept payment or instructs the school not to accept payment of the VIOMPSP scholarship provided by VA, the participant must, in addition to any obligation incurred under the agreement, pay to the United States the amount of \$1,500 in liquidated damages. Payment of this amount must be made no later than 90 days from the date that the participant fails to accept payment of the VIOMPSP or instructs the school not to accept payment.

(b) *Participant fails to complete course of study or does not obtain certification.* A participant described in paragraphs (b)(1) through (4) of this section must, instead of otherwise fulfilling the terms of his or her acceptance agreement, pay to the United States an amount equal to all VIOMPSP funds awarded under the acceptance agreement. Payment of this amount must be made no later than 1 year after the date that the participant meets any of the criteria described in paragraphs (b)(1) through (4) of this section, unless VA determines that a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness. A participant will pay such amount if one of the following criteria is met:

- (1) The participant fails to maintain an acceptable level of academic standing;
- (2) The participant is dismissed from the school for disciplinary reasons;
- (3) The participant, for any reason, voluntarily terminates the course of study or program for which the scholarship was awarded including a reduction of course load from full-time to part-time before completing the course of study or program; or
- (4) The participant fails to become certified in the discipline for which the degree prepared the participant, if applicable, no later than 180 days after the date such person becomes eligible to apply for certification.

(c) *Participant fails to perform all or any part of their service obligation.*

(1) Participants who breach their agreements by failing to begin or complete their service obligation, for any reason, including the loss, revocation, suspension, restriction, or limitation of required certification, and other than provided for under paragraph (b) of this section, must repay the portion of all VIOMPSP funds paid to or on behalf of the participant, adjusted for the service that they provided. To calculate the unearned portion of VIOMPSP funds, subtract the number of months of obligated service rendered from the total months of obligated service owed, divide the remaining months by the total obligated service, then multiply by the total amount of VIOMPSP funds paid to or on behalf of the participant. The following formula may be used in determining the unearned portion:

$A = P((t-s)/t)$ in which

“A” is the amount the United States is entitled to recover;

“P” is the amounts paid under the VIOMPSP, to or on behalf of the participant;

“t” is the total number of months in the participant's period of obligated service; and

“s” is the number of months of obligated service rendered.

(2) The amount that the United States is entitled to recover will be paid no later than 1 year after the date the applicant failed to begin or complete the period of obligated service, as determined by VA. (Authority: 38 U.S.C. 7505(a), 7505(b))

[78 FR 51073, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.635 Bankruptcy

Bankruptcy under the VIOMPSP is treated in the same manner as bankruptcy for the HPSP under §17.611. (Authority: 38 U.S.C. 7505(c), 7505(d))

[78 FR 51073, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.636 Cancellation, waiver, or suspension of obligation

Cancellation, waiver, or suspension procedures under the VIOMPSP are the same as those procedures for the HPSP under §17.612. (Authority: 38 U.S.C. 7505(c))

[78 FR 51073, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

Next Section is §17.700

§51.30 Recognition and certification.

(a) (1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a recommendation from the director of the VA medical center of jurisdiction regarding whether, based on a VA survey, the facility and facility management meet or do not meet the standards of subpart D of this part. The recognition survey will be conducted only after the new facility either has at least 21 residents or has a number of residents that consist of at least 50 percent of the new bed capacity of the new facility.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and facility management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical care center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or facility management does not meet one or more of the standards in subpart D, that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the facility, the State official authorized to oversee the operations of the State home, the VA Network Director (10N 1-22), Chief Network Officer (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) of the certification, provisional certification, or noncertification.

(b) Once a facility has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or facility management does not meet the standards of subpart D. Recognition of a facility will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and facility management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the facility that have a bearing on compliance with any of the requirements of this part (including any reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home facility management must submit to the director a completed VA Form 10-3567, Staffing Profile, which is available at any VA medical center and at <http://www.va.gov/forms>. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If, during the process for recognition and certification, the director of the VA medical center of jurisdiction recommends that the State home facility or facility management does not meet the standards of this part or if, after recognition and certification have been granted, the director of the VA medical center of jurisdiction determines that the State home facility or facility management does not meet the standards of this part, the director will notify the State home facility in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N 1-22), the Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care (114). The letter will include the reasons for the recommendation or decision and indicate that the State has the right to appeal the recommendation or decision.

(e) The State must submit the appeal to the Under Secretary for Health in writing, within 30 days of receipt of the notice of the recommendation or decision regarding the failure to meet the standards. In its appeal, the State must explain why the recommendation or determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous recommendation or determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision (or not grant recognition and certification and not pay per diem if the appeal occurs during the recognition process). The decision of the Under Secretary for Health will constitute a final decision that may be appealed to the Board of Veterans' Appeals (see 38 U.S.C. 7104 and 7105 and 38 CFR Part 20). The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of VA medical center of jurisdiction will immediately report this to the VA Network Director (10N 1-22), Chief Network Officer (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) and State official authorized to oversee operations of the State home. (Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0160.)

[65 FR 968, Jan. 6, 2000, as amended at 74 FR 19432, Apr. 29, 2009; as amended at 78 FR 51675, Aug. 21, 2013]

Supplement *Highlights* references: 47(1), 79(2).

§51.42 Drugs and medicines for certain veterans.

(a) In addition to per diem payments under §51.40 of this part, the Secretary shall furnish drugs and medicines to a facility recognized as a State home as may be ordered by prescription of a duly licensed physician as specific therapy in the treatment of illness or injury for a veteran receiving care in a State home, if:

(1) The veteran:

(i) Has a singular or combined rating of less than 50 percent based on one or more service-connected disabilities and is in need of such drugs and medicines for a service-connected disability; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability, or

(2) The veteran:

(i) Has a singular or combined rating of 50 or 60 percent based on one or more service-connected disabilities and is in need of such drugs and medicines; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability.

(b) VA may furnish a drug or medicine under paragraph (a) of this section only if the drug or medicine is included on VA's National Formulary, unless VA determines a non-Formulary drug or medicine is medically necessary.

(c) VA may furnish a drug or medicine under paragraph (a) of this section by having the drug or medicine delivered to the State home in which the veteran resides by mail or other means determined by VA. (Authority: 38 U.S.C. 101, 501, 1710, 1741-1744)

[74 FR 19432, Apr. 29, 2009]

Supplement *Highlights* reference: 47(1)

§51.43 Per diem and drugs and medicines—principles.

(a) As a condition for receiving payment of per diem under this part, the State home must submit to the VA medical center of jurisdiction for each veteran a completed VA Form 10-10EZ, Application for Medical Benefits (or VA Form 10-10EZR, Health Benefits Renewal Form, if a completed Form 10-10EZ is already on file at VA), and a completed VA Form 10-10SH, State Home Program Application for Care—Medical Certification. These VA Forms, which are available at any VA medical center and at <http://www.va.gov/vaforms>, must be submitted at the time of admission, with any request for a change in the level of care (domiciliary, hospital care or adult day health care), and any time the contact information has changed. If the facility is eligible to receive per diem payments for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the veteran was admitted to the facility if the completed forms are received within 10 days after admission.

(b) VA pays per diem on a monthly basis. To receive payment, the State must submit to the VA medical center of jurisdiction a completed VA Form 10-5588, State Home Report and Statement of Federal Aid Claimed, which is available at any VA medical center and at <http://www.va.gov/forms>.

(c) Per diem will be paid under §§51.40 and 51.41 for each day that the veteran is receiving care and has an overnight stay. Per diem also will be paid when there is no overnight stay if the facility has an occupancy rate of 90 percent or greater. However, these payments will be made only for the first 10 consecutive days during which the veteran is admitted as a patient for any stay in a VA or other hospital (a hospital stay could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care. Occupancy rate is calculated by dividing the total number of patients in the nursing home or domiciliary by the total recognized nursing home or domiciliary beds in that facility.

(d) Initial per diem payments will not be made until the Under Secretary for Health recognizes the State home. However, per diem payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(e) The daily cost of care for an eligible veteran's nursing home care for purposes of §§51.40(a)(1) and 51.41(b)(2) consists of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of residents at the nursing home. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments."

(f) As a condition for receiving drugs and medicines under this part, the State must submit to the VA medical center of jurisdiction a completed VA Form 10-0460 for each eligible veteran, which is available at any VA medical center and at <http://www.va.gov/forms>. The corresponding prescriptions described in §51.42 also should be submitted to the VA medical center of jurisdiction. (Authority: 38 U.S.C. 101, 501, 1710, 1741-1744)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0091 and 2900-0160.)

[74 FR 19432, Apr. 29, 2009; as amended at 77 FR 59230, Sep. 27, 2012; 78 FR 18240, Mar. 26, 2013; 78 FR 51675, Aug. 21, 2013]

Supplement *Highlights* references: 47(1), 73(1), 79(2).

Next Section is §51.50

§51.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran needs nursing home care and the veteran is within one of the following categories:

- (a) Veterans with service-connected disabilities;
- (b) Veterans who are former prisoners of war;
- (c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;
- (d) Veterans who receive disability compensation under 38 U.S.C. 1151;
- (e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;
- (f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C. 1151;
- (g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);
- (h) Veterans of the Mexican border period or of World War I;
- (i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C. 1710(e);
- (j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g). (Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

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- (8) Annual certification from the responsible State Agency showing compliance with Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112) (VA Form 10-0143A, which is available at any VA medical center and at <http://www.va.gov/forms>);
- (9) Annual certification for Drug-Free Workplace Act of 1988 (VA Form 10-0143 , which is available at any VA medical center and at <http://www.va.gov/forms>);
- (10) Annual certification regarding lobbying in compliance with Public Law 101-121 (VA Form 10-0144, which is available at any VA medical center and at <http://www.va.gov/forms>); and
- (11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 as incorporated in Title 38 CFR 18.1-18.3 (VA Form 10-0144A, which is available at any VA medical center and at <http://www.va.gov/forms>).

(d) *Percentage of Veterans.* The percent of the facility residents eligible for VA nursing home care must be at least 75 percent veterans except that the veteran percentage need only be more than 50 percent if the facility was constructed or renovated solely with State funds. All non-veteran residents must be spouses of veterans, or parents any of whose children died while serving in the Armed Forces of the United States.

(e) *Management Contract Facility.* If a facility is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time onsite basis.

(f) *Licensure.* The facility and facility management must comply with applicable State and local licensure laws.

(g) *Staff qualifications.*

(1) The facility management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(h) *Use of outside resources.*

(1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility management must have that service furnished to residents by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the facility management assumes responsibility for:

- (i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and
- (ii) The timeliness of the services.

(i) *Medical director.*

(1) The facility management must designate a primary care physician to serve as medical director.

(2) The medical director is responsible for:

- (i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;
- (ii) Directing and coordinating medical care in the facility;
- (iii) Helping to arrange for continuous physician coverage to handle medical emergencies;
- (iv) Reviewing the credentialing and privileging process;
- (v) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the administrator; and
- (vi) Monitoring employees' health status and advising the administrator on employee-health policies.

(j) *Credentialing and Privileging.* Credentialing is the process of obtaining, verifying, and assessing the qualifications of a health care practitioner, which may include physicians, podiatrists, dentists, psychologists, physician assistants, nurse practitioners, licensed nurses to provide patient care services in or for a health care organization. Privileging is the process whereby a specific scope and content of patient care services are authorized for a health care practitioner by the facility management, based on evaluation of the individual's credentials and performance.

(1) The facility management must uniformly apply credentialing criteria to licensed practitioners applying to provide resident care or treatment under the facility's care.

(2) The facility management must verify and uniformly apply the following core criteria: current licensure; current certification, if applicable, relevant education, training, and experience; current competence; and a statement that the individual is able to perform the services he or she is applying to provide.

(3) The facility management must decide whether to authorize the independent practitioner to provide resident care or treatment, and each credentials file must indicate that these criteria are uniformly and individually applied.

(4) The facility management must maintain documentation of current credentials for each licensed independent practitioner practicing within the facility.

(5) When reappointing a licensed independent practitioner, the facility management must review the individual's record of experience.

(6) The facility management systematically must assess whether individuals with clinical privileges act within the scope of privileges granted.

(k) *Required training of nursing aides.*

(s) *Compliance with Federal, State, and local laws and professional standards.* The facility management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (Title 31, Section 7501, *et seq.*) and the Cash Management Improvement Acts of 1990 and 1992 (Public Laws 101-453 and 102-589, see 31 USC 3335, 3718, 3720A, 6501, 6503)

(t) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other Federal laws and regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993, Public Law 93-112; Drug-Free Workplace Act of 1988, 38 CFR part 48; section 319 of Public Law 101-121; Title VI of the Civil Rights Act of 1964, 38 CFR 18.1-18.3. Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(u) *Intermingling.* A building housing a facility recognized as a State home for providing nursing home care may only provide nursing home care in the areas of the building recognized as a State home for providing nursing home care.

(v) *VA Management of State Veterans Homes.* Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing nursing home care. (Authority: 38 U.S.C. 101, 501, 1710, 1741-1743, 8135; Pub. L. 111-246)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0160.)

[65 FR 968, Jan. 6, 2000, as amended at 72 FR 30243, May 31, 2007; 74 FR 19432, 19434, Apr. 29, 2009; 76 FR 52275, Aug. 22, 2011; 78 FR 51675, Aug. 21, 2013]

Supplement *Highlights* references: 38(1), 47(1), 64(2), 79(2).

End of Part 51

Reserved

Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes**§52.10 Per diem based on recognition and certification.**

VA will pay per diem to a State for providing adult day health care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility management meet the standards of subpart D of this part. (Authority: 38 U.S.C. 101, 501, 1741-1743)

§52.20 Application for recognition based on certification.

To apply for recognition and certification of a State home for adult day health care, a State must:

(a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;

(b) Allow VA to survey the facility as set forth in §52.30(c); and

(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part. (Authority: 38 U.S.C. 101, 501, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

Next Section is §52.30

§52.30 Recognition and certification.

(a) (1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction, regarding whether the facility and program management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the program, the State official authorized to oversee operations of the State home, the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and program management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or program management does not meet one or more of the standards in subpart D of this part, that the deficiencies do not jeopardize the health or safety of the residents, and that the program management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the program, the State official authorized to oversee the operations of the State home, the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the certification, provisional certification, or noncertification.

(b) Once a program has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or program management does not meet the standards of subpart D of this part. Recognition of a program will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and program management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the program that have a bearing on compliance with any of the requirements of this part (including any reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home adult day care health program management must submit to the director a completed VA Form 10-3567, “Staffing Profile”, which is available at any VA medical center and at <http://www.va.gov/forms>. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses;

pharmacists; dietitians; rehabilitation therapists; social workers; and representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or program management does not meet the standards of this part, the director will notify the State home program manager in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N1-22), the Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit an appeal to the Under Secretary for Health in writing within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the State home facility or program management does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition at the State home facility that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), and State official authorized to oversee operations of the State home. (Authority: 38 U.S.C. 101, 501, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

[67 FR 660, Jan. 7, 2002; as amended at 78FR 51675, Aug. 21, 2013]

Supplement *Highlights* Reference: 79(2).

Next Section is §52.40

Subpart C—Per Diem Payments**§52.40 Monthly payment.**

(a) (1) During Fiscal Year 2002, VA will pay monthly one-half of the total cost of each eligible veteran's adult day health care for each day the veteran is in a facility recognized as a State home for adult day health care, not to exceed \$34.64 per diem.

(2) Per diem will be paid only for a day that the veteran is under the care of the facility at least six hours. For purposes of this paragraph a day means:

(i) Six hours or more in one calendar day; or

(ii) Any two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10-5588, "State Home Report and Statement of Federal Aid Claimed." This form is available at any VA medical center and at <http://www.va.gov/forms>.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms: 10-10EZ, "Application for Medical Benefits", and 10-10SH, "State Home Program Application for Care—Medical Certification", at the time of enrollment and with any request for a change in the level of care (nursing home, domiciliary or hospital care). These forms are available at any VA medical center and at <http://www.va.gov/forms>. If the program is eligible to receive per diem payments for adult day health care for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph (a)(5), except that VA will pay per diem from the day on which the veteran was enrolled in the program if VA receives the completed forms within 10 days after enrollment.

(b) For determining "the one-half of the total cost" under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circulars are available at the addresses in 5 CFR 1310.3). (Authority: 38 U.S.C. 101, 501, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

[67 FR 660, Jan. 7, 2002; as amended at 78 FR 51675, Aug. 21, 2013]

Supplement *Highlights* Reference: 79(2).

Next Section is §52.50

(c) *Required information.* The program management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current:

(1) The copy of the legal and administrative action establishing the State-operated facility (e.g., State laws);

(2) Site plan of facility and surroundings;

(3) Legal title, lease, or other document establishing the right to occupy the facility;

(4) Organizational charts and the operational plan of the adult day health care program;

(5) The number of the staff by category indicating full-time, part-time and minority designation, annually;

(6) The number of adult day health care participants who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities, annually;

(7) Annual State Fire Marshall's report;

(8) Annual certification from the responsible State home showing compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (VA Form 10-0143A, which is available at any VA medical center and at <http://www.va.gov/forms>);

(9) Annual certification for Drug-Free Workplace Act of 1988 (41 U.S.C. 701-707) (VA Form 10-0143, which is available at any VA medical center and at <http://www.va.gov/forms>);

(10) Annual certification regarding lobbying in compliance with 31 U.S.C. 1352 (VA Form 10-0144, which is available at any VA medical center and at <http://www.va.gov/forms>);

(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) as effectuated in 38 CFR part 18 (VA Form 10-0144A, which is available at any VA medical center and at <http://www.va.gov/forms>);

(d) *Percentage of veterans.* At least 75 percent of the program participants must be eligible veterans except that the veteran percentage need only be more than 50 percent if the facility was acquired, constructed, or renovated solely with State funds. All non-veteran participants must be veteran-related family members or gold star parents of veterans.

(e) *Management contract facility.* If a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility. The

State employee may also monitor other levels of care at a colocated facility, but must monitor the adult day health care facility and any colocated facility on a full-time onsite basis.

(f) *Licensure.* The facility and program management must comply with applicable State and local licensure laws.

(g) *Staff qualifications.*

(1) The program management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements. Professional disciplines involved in participant care must include registered nurses, program assistants, physicians, social workers, rehabilitation therapists, dietitians, and therapeutic activity therapists and pharmacists. Other disciplines may be considered depending upon the participant and/or program needs.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(3) The staff-participant ratio must be sufficient in number and skills (at least one staff to 4 to 6 participants) to ensure compliance with the standards of this part. There must be at least two responsible persons (paid staff members) at the adult day health care center at all times when there are two or more participants in attendance.

(4) Persons counted in the staff to participant ratio must spend at least 70 percent of their time in direct service with participants.

(5) All professional team members will serve in the role of case manager for designated participants.

(6) All personnel, paid and volunteer, will be provided appropriate training to maintain the knowledge and skills required for the participant needs.

(h) *Use of outside resources.*

(1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the program management must have that service furnished to participants by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the program management assumes responsibility for:

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a program; and

(ii) The timeliness of the services.

(i) *Medical director.*

(1) The program management must provide a primary care physician to serve as medical director and a consultant to the interdisciplinary program team.

(2) The medical director is responsible for:

- (i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;
- (ii) Directing and coordinating medical care in the program;
- (iii) Ensuring continuous physician coverage to handle medical emergencies;
- (iv) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the adult day health care program administrator; and
- (v) Monitoring employees' health status and advising the program administrator on employee health policies.

(3) The medical director may also provide hands-on assessment and/or treatment if authorized by the participant's primary care provider. In programs where a medical director is available to act as a member of the team and authorizes care, information concerning the care provided must be shared with the primary care physician who continues to provide the ongoing medical care.

(4) The program management must have written procedures for handling medical emergencies. The procedures must include, at least:

- (i) Procedures for notification of the family;
- (ii) Procedures for transportation arrangements;
- (iii) Provision for an escort, if necessary; and
- (iv) Procedures for maintaining a portable basic emergency information file for each participant that includes:
 - (A) Hospital preference;
 - (B) Physician of record and telephone number;
 - (C) Emergency contact (family);

- (D) Insurance information;
- (E) Medications/allergies;
- (F) Current diagnosis and history; and
- (G) Photograph for participant identification.

(j) *Required training of program assistants.*

(1) Program assistants must have a high school diploma, or the equivalent, and must have at least one year of experience in working with adults in a health care setting. Program assistants also must complete the National Adult Day Services Association training course or complete equivalent training.

(2) The program management must not use any individual working in the program as a program assistant whether permanent or not unless:

(i) That individual is competent to provide appropriate services; and

(ii) That individual has completed training or is certified by the National Adult Day Services Association as a certified Program Assistant in Adult Day Services.

(3) Verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must verify that the individual has successfully completed a training and competency evaluation program. Facilities must follow up to ensure that such an individual actually becomes certified, if available in the State.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes may include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(6) Regular in-service education. The program management must complete a performance review of every nurse aide or program assistant at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must:

- (i) Be sufficient to ensure the continuing competence of nurse aides or program assistants, but must be no less than 12 hours per year;
- (ii) Address areas of weakness as determined in program assistants' performance reviews and address the special needs of participants as determined by the program staff; and
- (iii) For program assistants or nurse aides providing services to individuals with cognitive impairments, address the care of the cognitively impaired.

(k) *Proficiency of program assistants.* The program management must ensure that program assistants or nurse aides are able to demonstrate competency in skills and techniques necessary to care for participants' needs, as identified through participant assessments, and described in the plan of care.

(l) *Laboratory and radiology results.* The program management must:

(1) Obtain laboratory or radiology results from the participant's primary physician to support the needs of its participants.

(2) Assist the participant and/or family/caregiver in making transportation arrangements to and from the source of laboratory or radiology services, if the participant needs assistance.

(3) File in the participant's clinical record laboratory or radiology reports that are dated and contain the name and address of the testing laboratory or radiology service.

(m) *Participant records.*

(1) The facility management must maintain clinical records on each participant in accordance with accepted professional standards and practices that are:

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.

(2) Clinical records must be retained for:

- (i) The period of time required by State law; or
- (ii) Five years from the date of discharge if there is no requirement in State law.

(3) The program management must safeguard clinical record information against loss, destruction, or unauthorized use.

(4) The program management must keep confidential all information contained in the participant's records, regardless of the form or storage method of the records, except when release is required by:

- (i) Transfer to another health care institution;
- (ii) Law;
- (iii) A third-party payment contract;
- (iv) The participant; or
- (v) The participant's legal representative.

(5) The clinical record must contain:

- (i) Sufficient information to identify the participant;
- (ii) A record of the participant's assessments;
- (iii) The plan of care and services provided;
- (iv) The results of any pre-enrollment screening conducted by the State;
and
- (v) Progress notes.

(n) *Quality assessment and assurance.*

(1) Program management must maintain a quality improvement program and a quality improvement committee consisting of:

- (i) A registered nurse;
- (ii) A medical director designated by the program; and
- (iii) At least three other members of the program's staff.

(2) The quality improvement committee:

- (i) Must implement a quality improvement plan for the evaluation of its operation and services and review and revise annually; and

- (ii) Must meet at least quarterly to identify quality of care issues; and
- (iii) Must develop and implement appropriate plans of action to correct identified quality deficiencies; and
- (iv) Must ensure that identified quality deficiencies are corrected within an established time period.

(3) The VA Under Secretary for Health may not require disclosure of the records of such committee unless such disclosure is related to the compliance with the requirements of this section.

(o) *Disaster and emergency preparedness.*

(1) The program management must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, bomb threats, and missing participants.

(2) The program management must train all employees in emergency procedures when they begin to work in the program, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(p) *Transfer procedure.*

(1) The program management must have in effect a written transfer procedure that reasonably assures that:

(i) Participants will be transferred from the adult day health care program to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by a physician; and

(ii) Medical and other information needed for care and treatment of participants will be exchanged between the institutions.

(2) The transfer must be with a hospital sufficiently close to the adult day health care program to make transfer feasible.

(q) *Compliance with Federal, State, and local laws and professional standards.* The program management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (31 U.S.C. 7501, *et seq.*) and the Cash Management Improvement Acts of 1990 and 1992 (31 U.S.C. 3335, 3718, 3720A, 6501, 6503).

(r) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this subpart, the program must meet the applicable provisions of other Federal laws and regulations, including but not limited to, those pertaining to nondiscrimination

on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993 (29 U.S.C. 794); Drug-Free Workplace Act of 1988 (41 U.S.C. 701-707); restrictions regarding lobbying (31 U.S.C. 1352); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(s) *Intermingling*. A facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care.

(t) *VA management of State veterans homes*. Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing adult day health care. (Authority: 38 U.S.C. 101, 501, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

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Supplement *Highlights* References: 79(2).

Next Section is §52.220

Part 58

[Removed and Reserved]

[Reserved]