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Title 38, Parts 17, 46, 47, 51–53,  
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*Medical*

**Veterans Benefits Administration**

Supplement No. 76

Covering period of *Federal Register* issues  
through May 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. 76

5 May 2013

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

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## FILING INSTRUCTIONS

**Book I, Supplement No. 76  
May 5, 2013**

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I-17 to I-18	I-17 to I-18	Book I Lead Material
17.INDEX-5 to 17.INDEX-10	17.INDEX-5 to 17.INDEX-10	Part 17 Index
17.611-1 to 17.611-2	17.611-1 to 17.611-2	§17.611
(none)	17.700-1 to 17.730-1	§17.700 through §17.730
51.43-2 to 51.50-1	51.43-2 to 51.50-1	§51.43
59.3-1 to 59.20-1	59.3-1 to 59.20-1	§59.5
59.50-1 to 59.50-4	59.50-1 to 59.50- <u>6</u>	§59.50

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# HIGHLIGHTS

## Book I, Supplement No. 76 May 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 2 April 2013 the VA published a final rule effective 2 May 2013, to amend its regulations to establish a new program to provide grants to eligible entities to assist veterans in highly rural areas through innovative transportation services to travel to VA medical centers, and to otherwise assist in providing transportation services in connection with the provision of VA medical care to these veterans, in compliance with section 307 of title III of the Caregivers and Veterans Omnibus Health Services Act of 2010. This final rule establishes procedures for evaluating grant applications under the new grant program, and otherwise administering the new grant program. Change:

- Added §§17.700 through 17.730.

2. On 10 April 2013 the VA published an interim final rule effective that same day, to amend its regulation on the prioritization of State applications for VA grants for the construction or acquisition of State home facilities that furnish domiciliary, nursing home, or adult day health care to veterans. Changes:

- Revised §59.5; and
- Revised §59.50.



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

**Grants to the Republic of the Philippines**

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

**Confidentiality of Healthcare Quality Assurance Review Records**

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

**VA Health Professional Scholarship Program**

17.600 Purpose..... 17.600-1  
 17.601 Definitions..... 17.601-1  
 17.602 Eligibility. .... 17.602-1  
 17.603 Availability of scholarships. .... 17.603-1  
 17.604 Application for the scholarship program. .... 17.604-1



Maximum number of nursing home beds for veterans by State .....	17.211-1
Preapplication phase .....	17.219-1
Recapture provisions.....	17.215-1
Scope of grants program .....	17.212-1
State home hospital program .....	17.218-1

### **Grants for Transportation of Veterans in Highly Rural Areas**

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

### **Grants to the Republic of the Philippines**

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

### **Health Care Benefits for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects**

Definitions.....	17.901-1
Medical records.....	17.905-1
Payment .....	17.903-1
Preauthorization .....	17.902-1
Review and appeal process .....	17.904-1
Spina bifida-provision of health care .....	17.900-1

### **Hospital, Domiciliary and Nursing Home Care**

Priorities for Outpatient Medical Services and Inpatient Hospital Care.....	17.49-1
Compensated Work Therapy/Transitional Residences program.....	17.48-1
Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care .....	17.47-1
Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.....	17.46-1
Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).....	17.44-1
Hospital care for research purposes .....	17.45-1
Persons entitled to hospital or domiciliary care .....	17.43-1

### **Hospital or Nursing Home Care and Medical Services in Foreign Countries**

Hospital care and medical services in foreign countries.....	17.35-1
--	---------

### **Outpatient Treatment**

Eligibility for outpatient services .....	17.93-1
Mental health services.....	17.98-1
Outpatient care for research purposes .....	17.92-1
Outpatient medical services for Department of Veterans Affairs employees and others in emergencies .....	17.95-1
Outpatient medical services for military retirees and other beneficiaries .....	17.94-1
Prescriptions filled .....	17.96-1
Prescriptions in Alaska, and territories and possessions.....	17.97-1
Priorities for medical services.....	17.99-1

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

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

Retroactive payments prohibited ..... 17.129-1  
 Timely filing ..... 17.126-1  
 Where to file claims ..... 17.125-1

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

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

**Prosthetic, Sensory, and Rehabilitative Aids**

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

**Protection of Patient Rights**

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

**Reconsideration of Denied Claims**

Procedures ..... 17.133-1

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

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

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

Adjudication of claims ..... 17.116-1

**Research-related Injuries**

Treatment of research-related injuries to human subjects..... 17.85-1

**Sharing of Medical Facilities, Equipment, and Information**

Contingency backup to the Department of Defense..... 17.230-1

Coordination of programs with Department of Health and  
Human Services ..... 17.242-1

Sharing medical information services..... 17.241-1

Sharing specialized medical resources..... 17.240-1

**Tentative Eligibility Determinations**

Tentative eligibility determinations ..... 17.34-1

**Transitional Housing Loan Program**

Additional terms of loans..... 17.805-1

Application provisions ..... 17.802-1

Definitions..... 17.801-1

Loan approval criteria ..... 17.804-1

Order of consideration ..... 17.803-1

Purpose ..... 17.800-1

**Updating Fire Safety Standards**

Incorporation by reference ..... 17.1-1

**Use of Community Nursing Home Care Facilities**

Extensions of community nursing home care beyond six months ..... 17.60-1

Use of community nursing homes ..... 17.57-1

**Use of Department of Defense, Public Health Service or Other Federal Hospitals**

Emergency use of Department of Defense, Public Health Service or other Federal hospitals ..... 17.51-1

Use of Department of Defense, Public Health Service, or other Federal hospitals with beds allocated to the Department of Veterans Affairs ..... 17.50-1

**Use of Public or Private Hospitals**

Hospital care and medical services in non-VA facilities ..... 17.52-1

Limitations on use of public or private hospitals ..... 17.53-1

Necessity for prior authorization..... 17.54-1

Payment for authorized public or private hospital care ..... 17.55-1

VA payment for inpatient and outpatient health care professional services at non-departmental facilities and other medical charges associated with non-VA outpatient care ..... 17.56-1

**Use of Services of Other Federal Agencies**

Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract ..... 17.80-1

Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities ..... 17.82-1

Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities..... 17.81-1

Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation ..... 17.83-1

**VA Health Professional Scholarship Program**

Application for the scholarship program ..... 17.604-1

Availability of scholarships ..... 17.603-1

Award procedures ..... 17.606-1

Bankruptcy ..... 17.611-1

Cancellation, waiver, or suspension of obligation ..... 17.612-1

Deferment of obligated service ..... 17.608-1

Definitions..... 17.601-1

Eligibility ..... 17.602-1

Failure to comply with terms and conditions of participation ..... 17.610-1

Obligated service..... 17.607-1

Pay during period of obligated service..... 17.609-1  
 Purpose ..... 17.600-1  
 Selection of participants..... 17.605-1

**Veterans Canteen Service**

Delegation of authority ..... 17.180-1

**Vocational Training and Health-Care Eligibility Protection for Pension Recipients**

Medical care for veterans receiving vocational training under  
 38 U.S.C. chapter ..... 17.90-1  
 Protection of health-care eligibility..... 17.91-1



**§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. (Authority: 38 U.S.C. 7634(c))

[47 FR 10810, Mar. 12, 1982]

**§17.612 Cancellation, waiver, or suspension of obligation.**

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

(b) (1) A participant may seek a waiver or suspension of the service or payment obligation incurred under this program by written request to the Secretary setting forth the basis, circumstances, and causes which support the requested action. The Secretary may approve an initial request for a suspension for a period of up to 1 year. A renewal of this suspension may also be granted.

(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. (Authority: 38 U.S.C. 7634(b))

(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))

[47 FR 10810, Mar. 12, 1982]

*Next Section is §17.700*

Reserved

**§17.700 Purpose and scope.**

This section establishes the Grants for Transportation of Veterans in Highly Rural Areas program. Under this program, the Department of Veterans Affairs (VA) provides grants to eligible entities to assist veterans in highly rural areas through innovative transportation services to travel to VA medical centers, and to otherwise assist in providing transportation services in connection with the provision of VA medical care to these veterans.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19593, Apr. 2, 2013]

**§17.701 Definitions.**

For the purposes of §§17.700-17.730 and any Notice of Fund Availability issued pursuant to such sections:

*Applicant* means an eligible entity that submits an application for a grant announced in a Notice of Fund Availability.

*Eligible entity* means:

- (1) A Veterans Service Organization, or
- (2) A State veterans service agency.

*Grantee* means an applicant that is awarded a grant under this section.

*Highly rural area* means an area consisting of a county or counties having a population of less than seven persons per square mile.

*Notice of Fund Availability* means a Notice of Fund Availability published in the *Federal Register* in accordance with § 17.710.

*Participant* means a veteran in a highly rural area who is receiving transportation services from a grantee.

*Provision of VA medical care* means the provision of hospital or medical services authorized under sections 1710, 1703, and 8153 of title 38, United States Code.

*State veterans service agency* means the element of a State government that has responsibility for programs and activities of that government relating to veterans benefits.

*Subrecipient* means an entity that receives grant funds from a grantee to perform work for the grantee in the administration of all or part of the grantee's program.

*Transportation services* means the direct provision of transportation, or assistance with providing transportation, to travel to VA medical centers and other VA or non-VA facilities in connection with the provision of VA medical care.

*Veteran* means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

*Veterans Service Organization* means an organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38, United States Code. (Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19594, Apr. 2, 2013]

**§17.702 Grants—general.**

(a) *One grant per highly rural area.* VA may award one grant per fiscal year to a grantee for each highly rural area in which the grantee provides transportation services. Transportation services may not be simultaneously provided by more than one grantee in any single highly rural area.

(b) *Maximum amount.* Grant amounts will be specified in the Notice of Funding Availability, but no grant will exceed \$50,000.

(c) *No matching requirement.* A grantee will not be required to provide matching funds as a condition of receiving such grant.

(d) *Veterans will not be charged.* Transportation services provided to veterans through utilization of a grant will be free of charge.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19594, Apr. 2, 2013]

**§17.703 Eligibility and application.**

(a) *Eligible entity.* The following may be awarded a grant:

(1) A Veterans Service Organization.

(2) A State veterans service agency.

(b) *Initial application.* To apply for an initial grant, an applicant must submit to VA a complete grant application package, as described in the Notice of Fund Availability.

(c) *Renewal application.* Grantees may apply for one renewal grant per fiscal year, after receiving an initial grant, if the grantee's program will remain substantially the same. The grantee must submit to VA a complete renewal application as described in the Notice of Fund Availability.

(d) *Subrecipients.* Grantees may provide grant funds to other entities, if such entities are identified as subrecipients in grant applications to perform work for grantees in the administration of all or part of grantees' programs.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19594, Apr. 2, 2013]

*Next Section is §17.705*

**§17.705 Scoring criteria and selection.**

(a) *Initial grant scoring.* Applications will be scored using the following selection criteria:

(1) VA will award up to 40 points based on the program's plan for successful implementation, as demonstrated by the following:

(i) Program scope is defined, and applicant has specifically indicated the mode(s) or method(s) of transportation services to be provided by the applicant or identified subrecipient.

(ii) Program budget is defined, and applicant has indicated that grant funds will be sufficient to completely implement the program.

(iii) Program staffing plan is defined, and applicant has indicated that there will be adequate staffing for delivery of transportation services according to the program's scope.

(iv) Program timeframe for implementation is defined, and applicant has indicated that the delivery of transportation services will be timely.

(2) VA will award up to 30 points based on the program's evaluation plan, as demonstrated by the following:

(i) Measurable goals for determining the success of delivery of transportation services.

(ii) Ongoing assessment of paragraph (a)(2)(i), with a means of adjusting the program as required.

(3) VA will award up to 20 points based on the applicant's community relationships in the areas to receive transportation services, as demonstrated by the following:

(i) Applicant has existing relationships with state or local agencies or private entities, or will develop such relationships, and has shown these relationships will enhance the program's effectiveness.

(ii) Applicant has established past working relationships with state or local agencies or private entities which have provided transportation services similar to those offered by the program.

(4) VA will award up to 10 points based on the innovative aspects of the program, as demonstrated by the following:

(i) How program will identify and serve veterans who otherwise would be unable to obtain VA medical care through conventional transportation resources.

(ii) How program will use new or alternative transportation resources.

(b) *Initial grant selection.* VA will use the following process to award initial grants:

(1) VA will rank those applications that receive at least the minimum amount of total points and points per category set forth in the Notice of Fund Availability. The applications will be ranked in order from highest to lowest scores.

(2) VA will use the applications' ranking as the basis for awarding grants. VA will award grants for the highest ranked applications for which funding is available.

(c) *Renewal grant scoring.* Renewal applications will be scored using the following selection criteria:

(1) VA will award up to 55 points based on the success of the grantee's program, as demonstrated by the following:

(i) Application shows that the grantee or identified subrecipient provided transportation services which allowed participants to be provided medical care timely and as scheduled.

(ii) Application shows that participants were satisfied with the transportation services provided by the grantee or identified subrecipient, as described in the Notice of Fund Availability.

(2) VA will award up to 35 points based on the cost effectiveness of the program, as demonstrated by the following:

(i) The grantee or identified subrecipient administered the program on budget.

(ii) Grant funds were utilized in a sensible manner, as interpreted by information provided by the grantee to VA under § 17.725(a)(1) through (a)(7).

(3) VA will award up to 15 points based on the extent to which the program complied with:

(i) The grant agreement.

(ii) Applicable laws and regulations.

(d) *Renewal grant selection.* VA will use the following process to award renewal grants:

(1) VA will rank those applications that receive at least the minimum amount of total points and points per category set forth in the Notice of Fund Availability. The applications will be ranked in order from highest to lowest scores.

(2) VA will use the applications' ranking as the basis for awarding grants. VA will award grants for the highest ranked applications for which funding is available.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19594, Apr. 2, 2013]

*Next Section is §17.710*

**§17.710 Notice of Fund Availability.**

When funds are available for grants, VA will publish a Notice of Fund Availability in the *Federal Register*. The notice will identify:

- (a) The location for obtaining grant applications;
- (b) The date, time, and place for submitting completed grant applications;
- (c) The estimated amount and type of grant funding available;
- (d) The length of term for the grant award;
- (e) The minimum number of total points and points per category that an applicant or grantee must receive in order for a supportive grant to be funded;
- (f) The timeframes and manner for payments under the grant; and
- (g) Those areas identified by VA to be the “highly rural areas” in which grantees may provide transportation services funded under this rule.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19595, Apr. 2, 2013]

*Next Section is §17.715*

**§17.715 Grant agreements.**

(a) *General.* After a grantee is awarded a grant in accordance with § 17.705(b) or § 17.705(d), VA will draft a grant agreement to be executed by VA and the grantee. Upon execution of the grant agreement, VA will obligate the approved amount to the grantee. The grant agreement will provide that:

(1) The grantee must operate the program in accordance with the provisions of this section and the grant application.

(2) If a grantee's application identified a subrecipient, such subrecipient must operate the program in accordance with the provisions of this section and the grant application.

(3) If a grantee's application identified that funds will be used to procure or operate vehicles to directly provide transportation services, the following requirements must be met:

(i) Title to the vehicles must vest solely in the grantee or identified subrecipient, or with leased vehicles in an identified lender.

(ii) The grantee or identified subrecipient must, at a minimum, provide motor vehicle liability insurance for the vehicles to the same extent they would insure vehicles procured with their own funds.

(iii) All vehicle operators must be licensed in a U.S. State or Territory to operate such vehicles.

(iv) Vehicles must be safe and maintained in accordance with the manufacturer's recommendations.

(v) Vehicles must be operated in accordance with applicable Department of Transportation regulations concerning transit requirements under the Americans with Disabilities Act.

(b) *Additional requirements.* Grantees and identified subrecipients are subject to the following additional requirements:

(1) State veterans service agencies and identified subrecipients in the grant agreement are subject to the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments under 38 CFR part 43, as well as to OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, and 2 CFR parts 25 and 170, if applicable.

(2) Veterans Service Organizations and identified subrecipients in the grant agreement are subject to the Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations under 38 CFR part 49, as well as to OMB Circular A-122, Cost Principles for Non-Profit Organizations, codified at 2 CFR part 230, and 2 CFR parts 25 and 170, if applicable.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19595, Apr. 2, 2013]

*Next Section is §17.720*

**§17.720 Payments under the grant.**

Grantees are to be paid in accordance with the timeframes and manner set forth in the Notice of Fund Availability.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19595, Apr. 2, 2013]

*Next Section is §17.725*

**§17.725 Grantee reporting requirements.**

(a) *Program efficacy.* All grantees who receive either an initial or renewed grant must submit to VA quarterly and annual reports which indicate the following information:

- (1) Record of time expended assisting with the provision of transportation services.
- (2) Record of grant funds expended assisting with the provision of transportation services.
- (3) Trips completed.
- (4) Total distance covered.
- (5) Veterans served.
- (6) Locations which received transportation services.
- (7) Results of veteran satisfaction survey.

(b) *Quarterly fiscal report.* All grantees who receive either an initial or renewal grant must submit to VA a quarterly report which identifies the expenditures of the funds which VA authorized and obligated.

(c) *Program variations.* Any changes in a grantee's program activities which result in deviations from the grant agreement must be reported to VA.

(d) *Additional reporting.* Additional reporting requirements may be requested by VA to allow VA to fully assess program effectiveness.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

[78 FR 19595, Apr. 2, 2013]

**Supplement *Highlights* reference:** 76(1)

*Next Section is §17.730*

**§17.730 Recovery of funds by VA.**

(a) *Recovery of funds.* VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover grant funds, and grantee will then have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds.

(b) *Prohibition of further grants.* When VA determines action will be taken to recover grant funds from the grantee, the grantee is then prohibited from receipt of any further grant funds.

(Authority: Sec. 307, Pub. L. 111-163; 38 U.S.C. 501)

**Supplement *Highlights* reference:** 76(1)

[78 FR 19595, Apr. 2, 2013]

*Next Section is §17.800*

(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. This form is set forth in full at §58.18 of this chapter. 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]

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

*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)

*Next Section is §51.60*

### **§59.3 Federal Application Identifier.**

Once VA has provided the State representative with a Federal Application Identifier Number for a project, the number must be included on all subsequent written communications to VA from the State, or its agent, regarding a request for a grant for that project under this part. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

### **§59.4 Decisionmakers, notifications, and additional information.**

The decisionmaker for decisions required under this part will be the Director, Capital Asset Management and Support, unless specified to be the Secretary or other VA official. The VA decisionmaker will provide written notice to affected States of approvals, denials, or requests for additional information under this part. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

### **§59.5 Submissions of information and documents to VA.**

All submissions of information and documents required to be presented to VA must be made, unless otherwise specified under this part, to the Director, Capital Asset Management and Support (10NA5), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

**Supplement *Highlights* reference:** 76(2)

[78 FR 21265, Apr. 10, 2013]

### **§59.10 General requirements for a grant.**

For a State to obtain a grant under this part and grant funds, its initial application for the grant must be approved under §59.20, and the project must be ranked sufficiently high on the priority list for the current fiscal year so that funding is available for the project. It must meet the additional application requirements in §59.60, and it must meet all other requirements under this part for obtaining a grant and grant funds. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

*Next Section is §59.20*

**§59.20 Initial application requirements.**

(a) For a project to be considered for inclusion on the priority list in §59.50 of this part for the next fiscal year, a State must submit to VA an original and one copy of a completed VA Form 10-0388-1 and all information, documentation, and other forms specified by VA Form 10-0388-1 (these forms are available on the internet Web sites provided in §59.170 of this part).

(b) The Secretary, based on the information submitted for a project pursuant to paragraph (a) of this section, will approve the project for inclusion on the priority list in §59.50 of this part if the submission includes all of the information requested under paragraph (a) of this section and if the submission represents a project that, if further developed, could meet the requirements for a grant under this part.

(c) The items requested under paragraph (a) of this section must be received by VA no later than April 15 in order for VA to include the application on the priority list for the award of grants during the next fiscal year. *See* §59.50, Priority List.

(d) If a State representative believes that VA may not award a grant to the State for a grant application during the current fiscal year and wants to ensure that VA includes the application on the priority list for the next fiscal year, the State representative must, prior to April 15 of the current fiscal year,

(1) Request VA to include the application in those recommended to the Secretary for inclusion on the priority list, and

(2) Send any updates to VA. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0661)

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008; 77 FR 10665, Feb. 23, 2012]

**Supplement *Highlights* references:** 43(2), 67(2).

*Next Section is §59.30*

**§59.50 Priority list.**

(a) The Secretary will make a list prioritizing the applications that were received on or before April 15 and that were approved under §59.20 of this part. Except as otherwise provided in this section, applications will be prioritized from the highest to the lowest in the following order:

(1) *Priority group 1.* An application from a State that has made sufficient funds available for the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State (such as subsequent issuance of bonds) to make such funds available for the project. To meet this criteria, the State must provide to VA a letter from an authorized State budget official certifying that the State funds are, or will be, available for the project, so that if VA awards the grant, the project may proceed without further State action to make such funds available (such as further action to issue bonds). If the certification is based on an Act authorizing the project and making available the State's matching funds for the project, a copy of the Act must be submitted with the certification.

(i) *Priority group 1—subpriority 1.* An application for a life or safety project, which means a project to remedy a condition, or conditions, at an existing facility that have been cited as threatening to the lives or safety of one or more of the residents or program participants in the facility by a VA safety office, VA engineering office, or other VA office with responsibility for life and safety inspections; a State or local government agency (including a Fire Marshal); or an accrediting institution (including the Joint Commission on Accreditation of Healthcare Organizations). Unless an addition or replacement of building utility systems or features is necessary to remedy a cited threat to the lives or safety of residents and program participants, this priority group does not include applications for the addition or replacement of building utility systems or features; such applications will be prioritized in accordance with the criteria in subpriority group 5 of priority group 1. An application may be included in this subpriority group only if all of the funds requested would be used for a life or safety project; or, if the estimated cost of the life or safety project is under \$400,000.00, and the majority of the funds requested would be used for such a project. Projects in this subpriority group will be further prioritized in the following order:

- (A) Seismic;
- (B) Building construction;
- (C) Egress;
- (D) Building compartmentalization (e.g., smoke barrier, fire walls);
- (E) Fire alarm/detection;
- (F) Security;
- (G) Asbestos/hazardous materials; and
- (H) All other projects (e.g., nurse call systems, patient lifts).

(ii) *Priority group 1—subpriority 2.* An application from a State that has not previously applied for a grant under 38 U.S.C. 8131–8137 for construction or acquisition of a State nursing home.

(iii) *Priority group 1—subpriority 3.* An application for construction or acquisition of a nursing home or domiciliary from a State that has a great need for the beds that the State, in that application, proposes to establish.

(iv) *Priority group 1—subpriority 4.* An application from a State for renovations to a State Home facility other than renovations that would be included in subpriority group 1 of priority group 1. Projects will be further prioritized in the following order:

(A) Adult day health care renovation and construction of a new adult day health care facility that replaces an existing facility;

(B) Nursing home renovation (e.g., patient privacy) and construction of a new nursing home that replaces an existing nursing home;

(C) Code compliance under the Americans with Disabilities Act;

(D) Building systems and utilities (e.g., electrical; heating, ventilation, and air conditioning (HVAC); boiler; medical gasses; roof; elevators);

(E) Clinical-support facilities (e.g., for dietetics, laundry, rehabilitation therapy); and

(F) General renovation/upgrade (e.g., warehouse, storage, administration/office, multipurpose).

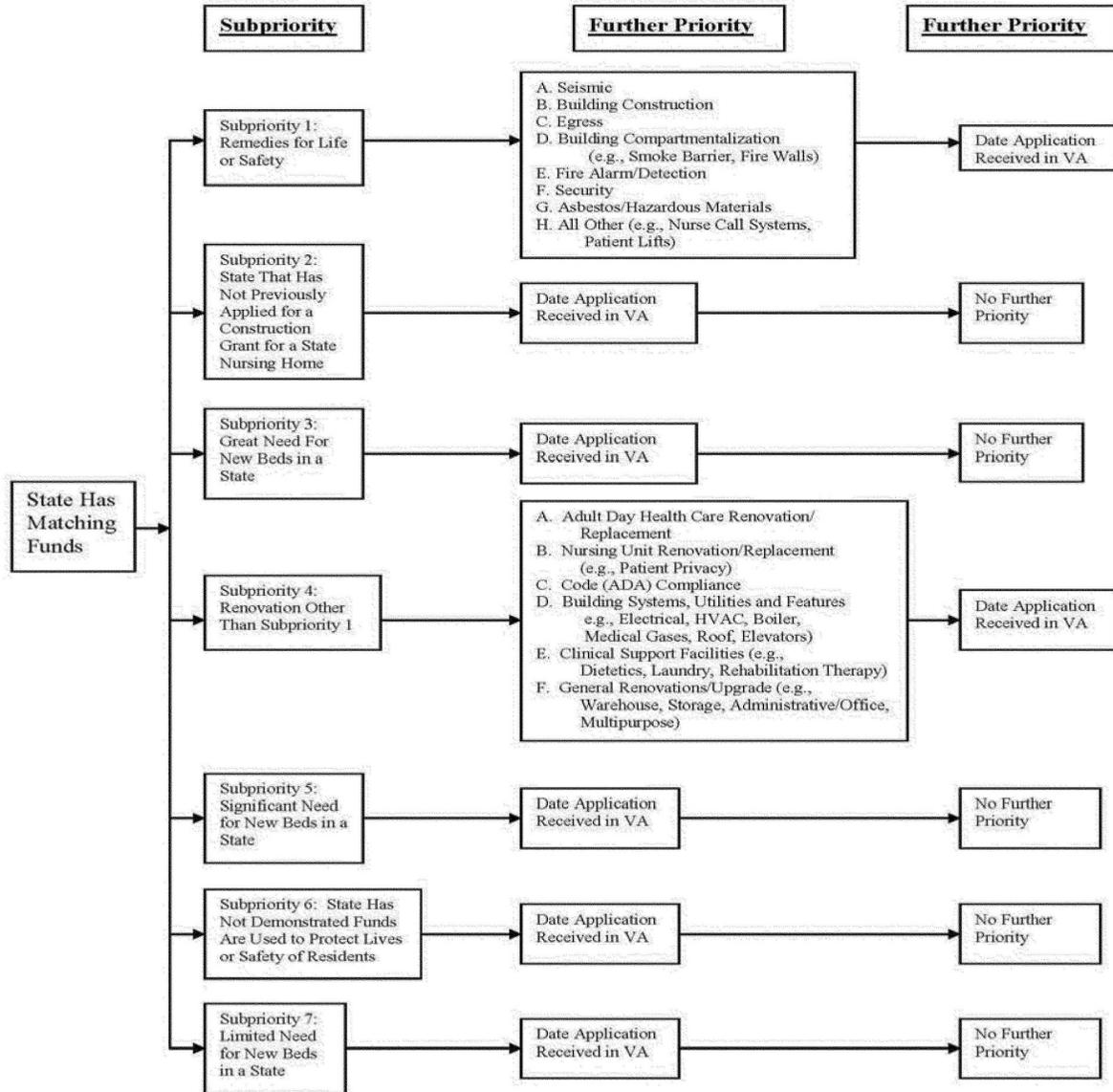
(v) *Priority group 1—subpriority 5.* An application for construction or acquisition of a nursing home or domiciliary from a State that has a significant need for the beds that the State in that application proposes to establish.

(vi) *Priority group 1—subpriority 6.* An application for construction or acquisition of a nursing home or domiciliary from a State that has not demonstrated that State funds are being used to protect the lives or safety of the residents and program participants of the facility as required in §59.50(e).

(vii) *Priority group 1—subpriority 7.* An application for construction or acquisition of a nursing home or domiciliary from a State that has a limited need for the beds that the State, in that application, proposes to establish.

**Note to paragraph (a)(1):** The following chart is intended to provide a graphic aid for understanding priority group 1 and its subpriorities.

**Example – Prioritization for Priority Group 1**



(2) *Priority group 2.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(i) of this section. Projects within this priority group will be further prioritized the same as in paragraphs (a)(1)(i)(A) through (a)(1)(i)(H) of this section.

(3) *Priority group 3.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(ii) of this section.

(4) *Priority group 4.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(iii) of this section.

(5) *Priority group 5.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(iv) of this section. Projects within this priority group will be further prioritized the same as in paragraphs (a)(1)(iv)(A) through (a)(1)(iv)(F) of this section.

(6) *Priority group 6.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(v) of this section.

(7) *Priority group 7.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(vi) of this section.

(8) *Priority group 8.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(vii) of this section.

(b) (1) If a State accepts a partial grant for a project under §59.80(a)(2), VA will give that project the highest priority for the next fiscal year within the priority group to which it is assigned (without further prioritization of that priority group) to receive up to 30 percent of the funds available for that year. Funds available do not include funds conditionally obligated in the previous fiscal year under §59.70(a)(2).

(2) If, in a given fiscal year, more than one State previously accepted a partial grant under §59.80(a)(2), these partial-grant recipients will be further prioritized on the priority list for that fiscal year based on the date that VA first awarded a partial grant for the project (the earlier the grant was awarded, the higher the priority given). The partial-grant recipients, in aggregate, may receive up to 30 percent of the funds available for that year that would be set aside for partial-grant recipients.

(c) An application will be given priority on the priority list (after applications described in paragraph (b) of this section) for the next fiscal year ahead of all applications that had not been approved under §59.20 on the date that the application was approved under §59.20, if:

(1) During the current fiscal year VA would have awarded a grant based on the application except for the fact that VA determined that the State did not, by July 1, provide evidence that it had its matching funds for the project, and

(2) The State was notified prior to July 1 that VA had funding available for this grant application.

(d) Applications in each priority or subpriority group will be further prioritized based on the date the application was received in VA (the earlier the application was received, the higher the priority given). Projects will be prioritized under this paragraph after all prioritization is completed under the projects' priority or subpriority group, as specified in paragraph (a) of this section, and only if necessary to give separate priorities to applications that have the same priority ranking after the prioritization specified in paragraph (a) of this section is accomplished.

(e) If any State home in a State has been cited by a VA safety office, VA engineering office, or other VA office with responsibility for life and safety inspections; a State or local government agency (including a Fire Marshal); or an accrediting institution (including the Joint Commission on Accreditation of Healthcare Organizations) for conditions that threaten the lives or safety of one or more of the residents or program participants in the facility, the State must include in any application submitted under §59.20 or its updates to such application its plan to address all such citations. If VA determines that the State's plan fails to set forth how it will address such citations in a reasonable period of time, then VA will prioritize all applications of such State as follows:

(1) Applications that meet the criteria of paragraph (a)(1) of this section, but do not meet the criteria of paragraphs (a)(1)(i) or (vii) of this section, will be prioritized in subpriority group 6 of priority group 1 (paragraph (a)(1)(vi) of this section).

(2) Applications not meeting the criteria for placement in priority group 1 (paragraph (a)(1) of this section) and not meeting the criteria of subpriority group 1 of priority group 1 (paragraph (a)(1)(i) of this section) will be prioritized in priority group 7 (paragraph (a)(7) of this section).

(f) The priority list will not contain any project for the construction or acquisition of a hospital or hospital beds.

(g) For purposes of establishing priorities under this section:

(1) A State has a great need for nursing home and domiciliary beds if the State:

(i) Has no State homes with nursing home or domiciliary beds, or

(ii) Has an unmet need of 2,000 or more nursing home and domiciliary beds;

(2) A State has a significant need for nursing home and domiciliary beds if the State has an unmet need of 1,000 to 1,999 nursing home and domiciliary beds; and

(3) A State has a limited need for nursing home and domiciliary beds if the State has an unmet need of 999 or fewer nursing home and domiciliary beds.

(h) Except for applications that must be included in subpriority group 1 of priority group 1, applications for projects with components that could be prioritized in more than one priority group will be placed in the priority group toward which the largest share of the cost of the project is allocated. Once the correct priority group is determined, applications for projects with components that could be prioritized in more than one subpriority group in that priority group will be placed in the subpriority group toward which the largest share of the cost of the project is allocated. For example, if a project for which 25 percent of the funds needed would address seismic issues and 75 percent of the funds needed would be for building construction in a State with a great need for new beds, the project would be placed in subpriority group 3. If the highest-cost component of an application for multiple projects does not meet the criteria for placement in priority group 1, subpriority group 1, because it is estimated to cost \$400,000.00 or more, it will be prioritized based on the component with the next largest share of the cost.

(i) Once the Secretary prioritizes the applications in the priority list, VA will not change the priorities unless a change is necessary as a result of an appeal. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

[66 FR 33847, June 26, 2001, as amended at 71 FR 46104, Aug. 11, 2006; 72 FR 6959, Feb. 14, 2007; 73 FR 58880, Oct. 8, 2008; 77 FR 10665, Feb. 23, 2012; 78 FR 21265, Apr. 10, 2013]

**Supplement *Highlights* references:** 33(1), 35(1), 43(2), 67(2), 76(2).

*Next Section is §59.60*