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Title 38, Parts 17, 46, 47, 51–53,
58–62, 70, 71, and 200

Medical

Veterans Benefits Administration

Supplement No. 67

Covering period of *Federal Register* issues
through March 1, 2012

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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, 58–62, 70, 71, and 200

Medical

Veterans Benefits Administration

Supplement No. 67

5 March 2012

Covering the period of Federal Register issues
through March 1, 2012

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FILING INSTRUCTIONS

**Book I, Supplement No. 67
March 5, 2011**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
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17.70-1 to <u>17.72-1</u>	17.70-1 to <u>17.74-6</u>	§§17.73 & 17.74
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59.70-1 to 59.80-1	59.70-1 to 59.80-1	§59.70

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HIGHLIGHTS

Book I, Supplement No. 67 March 5, 2012

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 February 2012, the VA published a final rule, effective 5 March 2012, to amend its Medical regulations to add rules relating to medical foster homes. Changes:

- In §17.1, revised paragraph (b); and
- Added §§17.73 and 17.74.

2. On 23 February 2012, the VA published a final rule, effective 26 March 2012, to amend its regulations concerning the calendar date by which VA must receive an initial application for a State Home Construction Grant in order for the application to be included on the priority list for the award of grants during the next fiscal year. Changes:

- In §59.20, revised paragraph (c), and replaced “August” with “April” in paragraph (d);
- In §59.50, replaced “August” with “April” in paragraph (a); and
- In §59.70, replaced “August 15” with “August 1” in paragraph (b).



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Part 17 — Medical

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

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

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Part 17 — Medical

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

Updating Fire Safety Standards

§ 17.1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce an edition of a publication other than that specified in this section, VA will provide notice of the change in a notice of proposed rulemaking in the *Federal Register* and the material will be made available to the public. All approved materials are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420, or at the National Archives and Records Administration (NARA). For information on the availability of approved materials at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)

(b) The following materials are incorporated by reference into this part.

(1) NFPA 10, Standard for Portable Fire Extinguishers (2010 edition), Incorporation by Reference (IBR) approved for §§17.63, 17.74, and 17.81.

(2) NFPA 101, Life Safety Code (2009 edition), IBR approved for §§17.63, 17.74 (chapters 1 through 11, 24, and section 33.7), 17.81, and 17.82.

(3) NFPA 101A, Guide on Alternative Approaches to Life Safety (2010 edition), IBR approved for §17.63.

(4) NFPA 13, Standard for the Installation of Sprinkler Systems (2010 edition), IBR approved for §17.74.

(5) NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes (2010 edition), IBR approved for §17.74.

(6) NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height (2010 edition), IBR approved for §17.74.

(7) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (2008 edition), IBR approved for §17.74.

(8) NFPA 30, Flammable and Combustible Liquids Code (2008 edition), IBR approved for §17.74.

(9) NFPA 72, National Fire Alarm and Signaling Code (2010 edition), IBR approved for §17.74.

(10) NFPA 720, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment (2009 edition), IBR approved for §17.74.

[76 FR 10248, Feb. 24, 2011, as amended at 77FR 5188, Feb. 2, 2012]

Supplement *Highlights* references: 61(1), 67(1).

Next Section is §17.30

§17.70 Written decision following a hearing.

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

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

(c) The written decision shall include:

(1) A statement of the facts;

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

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

(d) The hearing official's determination of any time period under paragraph (c)(3) of this section shall consider the safety and health of the residents of the community residential care facility and the length of time since the community residential care facility received notice of the noncompliance. (Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996]

§17.71 Revocation of VA approval.

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

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

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

and,

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

(c) If the hearing official determines that a community residential care facility fails to comply with the standards set forth in §17.63 of this part and determines that the community residential care facility shall have an additional time period to remedy the noncompliance, the hearing official shall review at the end of the time period the evidence of the community residential care facility's compliance with the standards which were to have been met by the end of that time period and determine if the community residential care facility complies with the standards. If the community residential care facility fails to comply with these or any other standards, the procedures set forth in §§17.66-17.71 of this part shall be followed. (Authority: 38 U.S.C. 1730)

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

§17.72 Availability of information.

VA standards will be made available to other Federal, State and local agencies charged with the responsibility of licensing, or otherwise regulating or inspecting community residential care facilities. (Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated at 61 FR 21965, May 13, 1996]

§17.73 Medical foster homes—general.

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

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

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

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

- (i) The medical foster home caregiver lives in the medical foster home;
- (ii) The medical foster home caregiver owns or rents the medical foster home; and
- (iii) There are not more than three residents receiving care (including veteran and non-veteran residents).

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

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

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

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

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

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

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

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

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

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

(e) *Duties of Medical foster home caregivers.* The medical foster home caregiver, with assistance from relief caregivers, provides a safe environment, room and board, supervision, and personal assistance, as appropriate for each veteran. (Authority: 38 U.S.C. 501, 1730)

[77 FR 5189, Feb. 2, 2012]

Supplement *Highlights* reference: 67(1).

§17.74 Standards applicable to medical foster homes.

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

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

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

(3) Except as otherwise provided in this section, meet the applicable provisions of chapters 1 through 11 and 24, and section 33.7 of NFPA 101 (incorporated by reference, see §17.1), and the other codes and chapters identified in this section, as applicable.

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

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

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

(1) With a door that closes and latches;

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

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

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

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

(1) The responsible VA clinician; and

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

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

(1) Smoke detectors or smoke alarms must be provided in accordance with sections 24.3.4.1 or 24.3.4.2 of NFPA 101 (incorporated by reference, see §17.1); section 24.3.4.3 of NFPA 101 will not be used. In addition, smoke alarms must be interconnected so that the operation of any smoke alarm causes an alarm in all smoke alarms within the medical foster home. Smoke detectors or smoke alarms must not be installed in the kitchen or any other location subject to causing false alarms.

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

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

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

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

(h) *Sprinkler systems.*

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

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

(i) *Fire extinguishers.* At least one 2-A:10-B:C rated fire extinguisher must be visible and readily accessible on each floor, including basements, and must be maintained in accordance with the manufacturer's instructions. Portable fire extinguishers must be inspected, tested, and maintained in accordance with NFPA 10 (incorporated by reference, see §17.1).

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

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

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

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

(2) The heaters are labeled; and

(3) The heaters have tip-over protection.

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

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

(o) *Special/other hazards.*

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

(2) Flammable or combustible liquids and other hazardous material must be safely and properly stored in either the original, labeled container or a safety can as defined by section 3.3.44 of NFPA 30 (incorporated by reference, see §17.1).

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

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

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

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

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

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

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

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

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

(r) *Local permits and emergency response.* Where applicable, a permit or license must be obtained for occupancy or business by the medical foster home caregiver from the local building or business authority. When there is a home occupant who is incapable of self-preservation, the local fire department or response agency must be notified by the medical foster home within 7 days of the beginning of the occupant's residency.

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

(t) *Cost of medical foster homes.*

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

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

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

[77 FR 5189, Feb. 2, 2012]

Supplement *Highlights* reference: 67(1).

Next Section is §17.80

Reserved

Part 59

Grants to States for Construction or Acquisition of State Homes

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137.

Source: 66 Fed. Reg. 33847, June 26, 2001, and 73 FR 58880, Oct. 8, 2008, unless otherwise indicated.

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Part 59

Grants to States for Construction or Acquisition of State Homes

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137.

Source: 66 Fed. Reg. 33847, June 26, 2001, and 73 FR 58880, Oct. 8, 2008, unless otherwise indicated.

Supplement Highlights Reference for Part 59: I-4(1), unless otherwise indicated.

§59.1 Purpose.

This part sets forth the mechanism for a State to obtain a grant:

- (a) To construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, and
- (b) To expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, adult day health, or hospital care to veterans in State homes. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

§59.2 Definitions.

For the purpose of this part:

Acquisition means the purchase of a facility in which to establish a State home for the provision of domiciliary and/or nursing home care to veterans.

Adult day health care is a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of elderly veterans.

Construction means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, or adult day health care, or hospital care in State homes, and the provision of initial equipment for any such buildings.

Domiciliary care means providing shelter, food, and necessary medical care on an ambulatory self-care basis (this is more than room and board). It assists eligible veterans who are suffering from a disability, disease, or defect of such a degree that incapacitates veterans from earning a living, but who are not in need of hospitalization or nursing care services. It assists in attaining physical, mental, and social well-being through special rehabilitative programs to restore residents to their highest level of functioning.

Nursing home care means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services.

Secretary means the Secretary of the United States Department of Veterans Affairs.

State means each of the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

State representative means the official designated in accordance with State authority with responsibility for matters relating to the request for a grant under this part.

VA means the United States Department of Veterans Affairs. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008; 75 FR 17860, Apr. 8, 2010]

Supplement *Highlights* reference: 54(1)

§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 Chief Consultant, Geriatrics and Extended Care, 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 Chief Consultant, Geriatrics and Extended Care (114), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

§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 provided in paragraphs (b) and (c) of 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 project to remedy a condition, or conditions, at an existing facility that have been cited as threatening to the lives or safety of the residents in the facility by a VA Life Safety Engineer, a State or local government agency (including a Fire Marshal), or an accrediting institution (including the Joint Commission on Accreditation of Healthcare Organizations). This priority group does not include applications for the addition or replacement of building utility systems, such as heating and air conditioning systems or building features, such as roof replacements. Projects in this subpriority will be further prioritized in the following order: seismic; building construction; egress; building compartmentalization (e.g., smoke barrier, fire walls); fire alarm/detection; asbestos/hazardous materials; and all other projects. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(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. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(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. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(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 1 of Priority group 1. Projects will be further prioritized in the following order: adult day health care construction; nursing home construction (e.g., patient privacy); code compliance under the Americans with Disabilities Act; building systems and utilities (e.g., electrical; heating,

ventilation, and air conditioning (HVAC); boiler; medical gasses; roof; elevators); clinical-support facilities (e.g., for dietetics, laundry, rehabilitation therapy); and general renovation/upgrade (e.g., warehouse, storage, administration/office, multipurpose). Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(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. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(vi) *Priority group 1—subpriority 6.* 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. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

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

[Chart will be found at the end of this section]

(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 paragraph (a)(1)(i) 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. Projects within this priority group will be further prioritized the same as in 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. Projects within this priority group will be further prioritized the same as in 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 paragraph (a)(1)(iv) 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. Projects within this priority group will be further prioritized the same as in 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. Projects within this priority group will be further prioritized the same as in paragraph (a)(1)(vi) 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) The priority list will not contain any project for the construction or acquisition of a hospital or hospital beds.

(e) 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.

(f) Projects that could be placed in more than one subpriority will be placed in the subpriority toward which the preponderance of the cost of the project is allocated. For example, under priority group 1—subpriority 1, if a project for which 25 percent of the funds needed would concern seismic and 75 percent of the funds needed would concern building construction, the project would be placed in the subpriority for building construction.

(g) 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]

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

Next Section is §59.60

§59.70 Award of grants.

(a) The Secretary, during the fiscal year for which a priority list is made under this part, will:

(1) Award a grant for each application that has been approved under §59.20, that is sufficiently high on the priority list so that funding is available for the application, that meets the additional application requirements in §59.60, and that meets all other requirements under this part for obtaining a grant, or

(2) Conditionally approve a grant for a project for which a State has submitted an application that substantially meets the requirements of this part if the State representative requests conditional approval and provides written assurance that the State will meet all requirements for a grant not later than 180 calendar days after the date of conditional approval. If a State that has obtained conditional approval for a project does not meet all of the requirements within 180 calendar days after the date of conditional approval, the Secretary will rescind the conditional approval and the project will be ineligible for a grant in the fiscal year in which the State failed to fully complete the application. The funds that were conditionally obligated for the project will be deobligated.

(b) As a condition of receiving a grant, a State must make 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 such purpose. 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. To be eligible for inclusion in priority group 1 under this part, a State must make such funds available by August 1 of the year prior to the fiscal year for which the grant is requested. To otherwise be eligible for a grant and grant funds based on inclusion on the priority list in other than priority group 1, a State must make such funds available by July 1 of the fiscal year for which the grant is requested.

(c) As a condition of receiving a grant, the State representative and the Secretary will sign three originals of the Memorandum of Agreement documents (one for the State and two for VA). A sample is in §59.170. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

[66 FR 33851, June 26, 2001, as amended at 77 FR 10665, Feb. 23, 2012]

Supplement *Highlights* Reference: 67(2).

Next Section is §59.80

§59.80 Amount of grant.

(a) The total cost of a project (VA and State) for which a grant is awarded under this part may not be less than \$400,000 and, except as provided in paragraph (i) of this section, the total cost of a project will not exceed the total cost of new construction. The amount of a grant awarded under this part will be the amount requested by the State and approved in accordance with this part, not to exceed 65 percent of the total cost of the project except that:

(1) The total cost of a project will not include the cost of space that exceeds the maximum allowable space specified in this part, and

(2) The amount of the grant may be less than 65 percent of the total cost of the project if the State accepts less because VA did not have sufficient funds to award the full amount of the grant requested.

(b) The total cost of a project under this part for acquisition of a facility may also include construction costs.

(c) The total cost of a project under this part will not include any costs incurred before the date VA sent the State written notification that the application in §59.20 was approved.

(d) The total cost of a project under this part may include administration and production costs, e.g., architectural and engineering fees, inspection fees, and printing and advertising costs.

(e) The total cost of a project under this part may include the cost of projects on the grounds of the facility, e.g., parking lots, landscaping, sidewalks, streets, and storm sewers, only if they are inextricably involved with the construction of the project.

(f) The total cost of a project under this part may include the cost of equipment necessary for the operation of the State home facility. This may include the cost of:

(1) Fixed equipment included in the construction or acquisition contract. Fixed equipment must be permanently affixed to the building or connected to the heating, ventilating, air conditioning, or other service distributed through the building via ducts, pipes, wires, or other connecting device. Fixed equipment must be installed during construction. Examples of fixed equipment include kitchen and intercommunication equipment, built-in cabinets, and cubicle curtain rods; and

(2) Other equipment not included in the construction contract constituting no more than 10 percent of the total construction contract cost of the project. Other equipment includes: furniture, furnishings, wheeled equipment, kitchen utensils, linens, draperies, blinds, electric clocks, pictures and trash cans.

(g) The contingency allowance may not exceed five percent of the total cost of the project for new construction or eight percent for renovation projects.