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Federal Regulations**

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

Medical

Veterans Benefits Administration

Supplement No. 78

Covering period of *Federal Register* issues
through August 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. 78

5 August 2013

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

When **Book I** was originally prepared, it was current through final regulations published in the *Federal Register* of 15 January 2000. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page I-8 of Book I, *Medical*.

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page I-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page I-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page I-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book I, Supplement No. 78
August 5, 2013**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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**Do not file this supplement until you confirm that
all prior supplements have been filed**

17.96-1 to 17.96-2	17.96-1 to 17.96-2	§17.96
17.1005-2 to 17.1006-1	17.1005-2 to 17.1006-1	§17.1005

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

HIGHLIGHTS

Book I, Supplement No. 78 August 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 17 June 2013 the VA published a correcting amendment effective that same day, to correct a VA final rule that governs “Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities” regulations to conform with a statutory change that expanded veterans’ eligibility for reimbursement. This document corrects a typographical error without making any substantive change to the content of the final rule. Change:

- In §17.1005, revised paragraph (e).

2. On 16 July 2013 the VA published a final rule effective that same day, to amending its regulation concerning filling prescriptions written by non-VA providers for veterans of a period of war who are receiving increased pension because they are permanently housebound or in need of aid and attendance. Change:

- In §17.96, revised paragraph (a)(1).

§17.96 Medication prescribed by non-VA physicians.

Any prescription, which is not part of authorized Department of Veterans Affairs hospital or outpatient care, for drugs and medicines ordered by a private or non-Department of Veterans Affairs doctor of medicine or doctor of osteopathy duly licensed to practice in the jurisdiction where the prescription is written, shall be filled by a Department of Veterans Affairs pharmacy or a non-VA pharmacy in a state home under contract with VA for filling prescriptions for patients in state homes, provided:

(a) The prescription is for:

(1) A veteran who by reason of being permanently housebound or in need of regular aid and attendance is in receipt of increased compensation under 38 U.S.C. chapter 11, or increased pension under §3.1(u) (Section 306 Pension) or §3.1(w) (Improved Pension), of this chapter, as a veteran of a period of war as defined by 38 U.S.C. 101(11) (or, although eligible for such pension, is in receipt of compensation as the greater benefit), or

(2) A veteran in need of regular aid and attendance who was formerly in receipt of increased pension as described in paragraph (a)(1) of this section whose pension has been discontinued solely by reason of excess income, but only so long as such veteran's annual income does not exceed the maximum annual income limitation by more than \$ 1,000, and

(b) The drugs and medicines are prescribed as specific therapy in the treatment of any of the veteran's illnesses or injuries. (Authority 38 U.S.C. 101(11), 1706, 1710, 1712(d))

[32 FR 13816, Oct. 4, 1967, as amended at 36 FR 4782, Mar. 12, 1971; 45 FR 6937, Jan. 31, 1980; 47 FR 58249, Dec. 30, 1982. Redesignated at 61 FR 21965, May 13, 1996; 63 FR 37780, July 14, 1998; 68 FR 11977, Mar. 13, 2003; 68 FR 43929, July 25, 2003; 74 FR 44291, Aug. 28, 2009; 78 FR 42456; July 16, 2013]

Supplement *Highlights* references: Book I—19(1), 50(1), 78(2).

Reserved

(e) If an eligible veteran under § 17.1002 has contractual or legal recourse against a third party that would only partially extinguish the veteran's liability to the provider of emergency treatment, then:

(1) VA will be the secondary payer;

(2) Subject to the limitations of this section, VA will pay the difference between the amount VA would have paid under this section for the cost of the emergency treatment and the amount paid (or payable) by the third party; and

(3) The provider will consider the combined payment under paragraph (e)(2) of this section as payment in full and extinguish the veteran's liability to the provider.

(f) VA will not reimburse a claimant under this section for any deductible, copayment or similar payment that the veteran owes the third party.

[66 FR 36470, July 12, 2001, as amended at 68 FR 3404, Jan. 24, 2003; 76 FR 79071, Dec. 21, 2011; 77 FR 23618, Apr. 20, 2012; 78 FR 36093, June 17, 2013]

Supplement *Highlights* references: 14(1), 66(3), 69(1), 78(1).

§17.1006 Decisionmakers.

The Chief of the Health Administration Service or an equivalent official at the VA medical facility of jurisdiction will make all determinations regarding payment or reimbursement under 38 U.S.C. 1725, except that the designated VA clinician at the VA medical facility of jurisdiction will make determinations regarding §17.1002(b), (c), and (d). Any decision denying a benefit must be in writing and inform the claimant of VA reconsideration and appeal rights. (Authority: 38 U.S.C. 1725)

[66 FR 36470, July 12, 2001, as amended at 76 FR 79072, Dec. 21, 2011]

Supplement *Highlights* reference: 66(3).