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Medical

Book I

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

Supplement No. 93

Covering period of *Federal Register* issues
through August 1, 2015

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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

Supplement No. 93

5 August 2015

Covering the period of Federal Register issues
through August 1, 2015

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*.

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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.
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FILING INSTRUCTIONS

**Book I, Supplement No. 93
August 5, 2015**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
Do not file this supplement until you confirm that all prior supplements have been filed		
17.1-1 to 17.1-2	17.1-1 to 17.1-2	§17.1
17.74-1 to 17.74-6	17.74-1 to 17.74-6	§17.74
17.197-1 to 17.200-1	17.197-1 to 17.200-1	§17.200
17.715-2 to 17.720-1	17.715-2 to 17.720-1	§17.715
51.42-1 to 51.50-1	51.42-1 to 51.50-1	§51.43
51.200-1 to 51.210-1	51.200-1 to 51.210-1	§51.200
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52.200-1 to 52.210-1	52.200-1 to 52.210-1	§52.200
53.30-1 to 53.31-1	53.30-1 to 53.31-1	§53.31
59.123-1 to 59.140-1	59.123-1 to 59.140-1	§§59.124, 59.130
61.16-1 to 61.17-1	61.16-1 to 61.17-1	§61.16
61.50-1 to 61.50-2	61.50-1 to 61.50-2	§61.50
61.55-1 to 61.67-2	61.55-1 to 61.67-2	§§61.61, 61.66 & 61.67
62.63-1 to 62.70-1	62.63-1 to 62.70-1	§62.70
64.12-1 to 64.14-1	64.12-1 to 64.14-1	§64.14

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HIGHLIGHTS

Book I, Supplement No. 93

August 5, 2015

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 22 July 2015, the VA published a final rule effective that same day, to amend its regulations with updated citations and references to Office of Management and Budget (OMB) authorities for Federal grant programs. OMB has issued final guidance, located in Title 2 of the Code of Federal Regulations (CFR), which streamlines and supersedes requirements previously found in various OMB Circulars. Changes:

- Revised §17.200,
- In §17.715, revised paragraph (b),
- In §51.43, revised paragraph (e),
- In §52.40, revised paragraph (b),
- In §53.31, revised paragraph (b),
- In §59.124, revised paragraph (a),
- In §61.16, revised paragraph (a),
- In §61.50, revised paragraph (b)(3)(i),
- In §61.61, revised paragraph (a),
- Revised §61.66,
- In §61.67, revised paragraphs (c) and (f),
- In §62.70, revised paragraphs (a), (b) and (c), and
- In §64.14, revised paragraph (b)(2).

2. On 28 July 2015, the VA published a final rule effective 27 August 2015, to amend its regulations incorporating by reference the National Fire Protection Association (NFPA) codes and standards. These codes and standards are referenced in VA regulations concerning community residential care facilities, contract facilities for certain outpatient and residential services, Medical Foster Homes, and State home facilities. To ensure the continued safety of veterans in these facilities, VA is continuing to rely upon NFPA codes and standards for VA approval of such facilities. Changes:

- Revised §17.1,
- In §17.74, revised paragraph (a)(3), (g)(1) and (o)(2),
- In §51.200, revised paragraphs (a) and (b), added paragraph (i),
- In §52.200, revised paragraph (a), and
- In §59.130, revised paragraph (d)(1), added paragraph (i).

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I-93-8

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 rule 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, call 202-461-4902, 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.

(b) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555).

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

(3) 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.

(4) 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.

(5) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (2011 edition), IBR approved for §17.74.

(6) NFPA 30, Flammable and Combustible Liquids Code (2012 edition), IBR approved for §17.74.

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

(8) NFPA 101, Life Safety Code (2012 edition), IBR approved for §§17.63, 17.74 (chapters 1 through 11, 24, and section 33.7), 17.81, and 17.82.

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

(10) NFPA 720, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment (2012 edition), IBR approved for §17.74. (Authority: 5 U.S.C. 552(a), 38 U.S.C. 501, 1721.)

[76 FR 10248, Feb. 24, 2011, as amended at 77FR 5188, Feb. 2, 2012; 80 FR 44861, July 28, 2015]

Supplement *Highlights* references: 61(1), 67(1), 93(2).

Next Section is §17.30

§17.74 Standards applicable to medical foster homes.

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

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

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

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

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

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

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

(1) With a door that closes and latches;

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

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

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

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

(1) The responsible VA clinician; and

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

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

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

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

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

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

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

(h) *Sprinkler systems.*

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

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

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

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

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

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

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

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

(2) The heaters are labeled; and

(3) The heaters have tip-over protection.

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

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

(o) *Special/other hazards.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) *Cost of medical foster homes.*

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

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

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

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

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

Next Section is §17.80

Reserved

§17.197 Amount of aid payable.

The amount of aid payable to a recognized State home shall be at the per diem rates established by 38 U.S.C. 1741(a)(1)(A) for domiciliary care; and sec. 1741(a)(1)(B) for hospital care. In no case shall the payments made with respect to any veteran exceed one-half of the cost of the veteran's care in the State home. VA will publish the actual per diem rates, whenever they change, in a *Federal Register* notice. (Authority: 38 U.S.C. 1741)

[50 FR 32568, Aug. 13, 1985. Redesignated at 61 FR 21966, May 13, 1996. Amended at 65 FR 968, Jan. 6, 2000; 79 FR 54616, Sep. 12, 2014]

Supplement *Highlights* reference: 86(1).

§17.198 Department of Veterans Affairs approval of eligibility required.

Federal aid will be paid only for the care of veterans whose separate eligibility for hospital or domiciliary care has been approved by the Department of Veterans Affairs. To obtain such approval, State homes will complete a Department of Veterans Affairs application form for each veteran for the type of care to be provided and submit it to the Department of Veterans Affairs office of jurisdiction for determination of eligibility. Payments shall be made only from the date the Department of Veterans Affairs office of jurisdiction receives such application; however, if such request is received by the Department of Veterans Affairs office of jurisdiction within 10 days after the beginning of the care of such veteran for which he or she is determined to be eligible, payment shall be made on account of such veteran from the date care began. (Authority: 38 U.S.C. 1743)

[85 FR 3167, Feb. 19, 1970, as amended at 45 FR 6940, Jan. 31, 1980. Redesignated at 61 FR 21966, May 13, 1996. Amended at 65 FR 968, Jan. 6, 2000]

§17.199 Inspection of recognized State homes.

Representatives of the Department of Veterans Affairs may inspect any State home at such times as are deemed necessary. Such inspections shall be concerned with the physical plant; records relating to admissions, discharges and occupancy; fiscal records; and all other areas of interest necessary to a determination of compliance with applicable laws and regulations relating to the payment of Federal aid. The authority to inspect carries with it no authority over the management or control of any State home. (Authority: 38 U.S.C. 1742)

[30 FR 221, Jan. 8, 1965, as amended at 35 FR 3167, Feb. 19, 1970. Redesignated at 61 FR 21966, May 13, 1996]

§17.200 Audit of State homes.

The State must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. (Authority: 31 U.S.C. 7501-7507)

Supplement *Highlights* reference: 93(1)

[52 FR 23825, June 25, 1987. Redesignated at 61 FR 21966, May 13, 1996; as amended at 80 FR 43322, July 22, 2015]

Next Section is §17.230

(b) Additional requirements. Grantees and identified subrecipients are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200, and subject to 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), 93(1)

[78 FR 19595, Apr. 2, 2013; as amended at 80 FR 43322, July 22, 2015]

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

§51.42 Drugs and medicines for certain veterans.

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

(1) The veteran:

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

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

(2) The veteran:

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

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

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

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

[74 FR 19432, Apr. 29, 2009]

Supplement *Highlights* reference: 47(1)

§51.43 Per diem and drugs and medicines—principles.

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

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

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

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

(e) The daily cost of care for an eligible veteran's nursing home care for purposes of §§51.40(a)(1) and 51.41(b)(2) consists of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of residents at the nursing home. Relevant cost principles are set forth in 2 CFR part 200.

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

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

[74 FR 19432, Apr. 29, 2009; as amended at 77 FR 59230, Sep. 27, 2012; 78 FR 18240, Mar. 26, 2013; 78 FR 51675, Aug. 21, 2013; 80 FR 43322, July 22, 2015]

Supplement *Highlights* references: 47(1), 73(1), 79(2), 93(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

§51.200 Physical environment.

The facility management must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of NFPA 101, Life Safety Code and NFPA 99, Health Care Facilities Code.

(b) *Emergency power.*

(1) An emergency electrical power system must be provided to supply power adequate for illumination of all exit signs and lighting for the means of egress, fire alarm and medical gas alarms, emergency communication systems, and generator task illumination.

(2) The system must be the appropriate type essential electrical system in accordance with the applicable provisions of NFPA 101, Life Safety Code and NFPA 99, Health Care Facilities Code.

(3) When electrical life support devices are used, an emergency electrical power system must also be provided for devices in accordance with NFPA 99, Health Care Facilities Code.

(4) The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources in accordance with NFPA 101, Life Safety Code and NFPA 99, Health Care Facilities Code.

(c) *Space and equipment.* Facility management must:

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Resident rooms.* Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents:

(1) Bedrooms must:

(i) Accommodate no more than four residents;

(ii) Measure at least 115 net square feet per resident in multiple resident bedrooms;

(iii) Measure at least 150 net square feet in single resident bedrooms;

(iv) Measure at least 245 net square feet in small double resident bedrooms; and

- (v) Measure at least 305 net square feet in large double resident bedrooms used for spinal cord injury residents. It is recommended that the facility have one large double resident bedroom for every 30 resident bedrooms.
- (vi) Have direct access to an exit corridor;
- (vii) Be designed or equipped to assure full visual privacy for each resident;
- (viii) Except in private rooms, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;
- (ix) Have at least one window to the outside; and
- (x) Have a floor at or above grade level.

(2) The facility management must provide each resident with:

- (i) A separate bed of proper size and height for the safety of the resident;
- (ii) A clean, comfortable mattress;
- (iii) Bedding appropriate to the weather and climate; and
- (iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(e) *Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities. It is recommended that public toilet facilities be also located near the resident's dining and recreational areas.

(f) *Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from:

- (1) Resident rooms; and
- (2) Toilet and bathing facilities.

(g) *Dining and resident activities.* The facility management must provide one or more rooms designated for resident dining and activities. These rooms must:

- (1) Be well lighted;
- (2) Be well ventilated;
- (3) Be adequately furnished; and
- (4) Have sufficient space to accommodate all activities.

(h) *Other environmental conditions.* The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must:

- (1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

- (2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
- (3) Equip corridors with firmly secured handrails on each side; and
- (4) Maintain an effective pest control program so that the facility is free of pests and rodents. (Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

(i) (1) Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference 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, call 202-461-4902, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html

(2) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555).

(i) NFPA 99, Health Care Facilities Code, Including all Gas & Vacuum System Requirements, (2012 Edition).

(ii) NFPA 101, Life Safety Code (2012 edition).

[65 FR 968, Jan. 6, 2000, as amended at 74 FR 19434, Apr. 29, 2009; 76 FR 11340, Mar. 2, 2011; 80 FR 44862, July 28, 2015]

Supplement *Highlights* references: 47(1), 61(3), 93(2).

Next Section is §51.210

§51.210 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident.

(a) *Governing body.*

(1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body or State official with oversight for the facility appoints the administrator who is:

- (i) Licensed by the State where licensing is required; and
- (ii) Responsible for operation and management of the facility.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Office of Geriatrics and Extended Care (114), VA Headquarters, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

- (1) The State agency and individual responsible for oversight of a State home facility;
- (2) The State home administrator; and
- (3) The State employee responsible for oversight of the State home facility if a contractor operates the State home.

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

- (1) The copy of legal and administrative action establishing the State-operated facility (e.g., State laws);
- (2) Site plan of facility and surroundings;
- (3) Legal title, lease, or other document establishing right to occupy facility;
- (4) Organizational charts and the operational plan of the facility;
- (5) The number of the staff by category indicating full-time, part-time and minority designation (annual at time of survey);
- (6) The number of nursing home patients who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities (annual at time of survey);
- (7) Annual State Fire Marshall's report;

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

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

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

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

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

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

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

Supplement *Highlights* Reference: 79(2).

Next Section is §52.40

Subpart C—Per Diem Payments

§52.40 Monthly payment.

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

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

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

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

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

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

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

(b) For determining "the one-half of the total cost" under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in 2 CFR part 200. (Authority: 38 U.S.C. 101, 501, 1741-1743)

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

[67 FR 660, Jan. 7, 2002; as amended at 78 FR 51675, Aug. 21, 2013; 80 FR 43322, July 22, 2015]

Supplement *Highlights* Reference: 79(2), 93(1).

Next Section is §52.50

§52.200 Physical environment.

The physical environment must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (2012 edition). Incorporation by reference this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The document incorporated by reference is available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800/344-3555.)

(b) *Space and equipment.*

(1) Program management must:

(i) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide participants with needed services as required by these standards and as identified in each participant's plan of care; and

(ii) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(2) Each adult day health care program, when it is co-located in a nursing home, domiciliary, or other care facility, must have its own separate designated space during operational hours.

(3) The indoor space for an adult day health care program must be at least 100 square feet per participant including office space for staff and must be 60 square feet per participant excluding office space for staff.

(4) Each program will need to design and partition its space to meet its own needs, but a minimal number of functional areas must be available. These include:

(i) A dividable multipurpose room or area for group activities, including dining, with adequate table-setting space.

(ii) Rehabilitation rooms or an area for individual and group treatments for occupational therapy, physical therapy, and other treatment modalities.

(iii) A kitchen area for refrigerated food storage, the preparation of meals and/or training participants in activities of daily living.

(iv) An examination and/or medication room.

(v) A quiet room (with at least one bed), which functions to isolate participants who become ill or disruptive, or who require rest, privacy, or observation, must include a bed. It should be separate from activity areas, near a restroom, and supervised.

(vi) Bathing facilities adequate to facilitate bathing of participants with functional impairments.

(vii) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all program areas, i.e., preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier-free.

(viii) Adequate storage space. There should be space to store arts and crafts materials, personal clothing and belongings, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.

(ix) An individual room for counseling and interviewing participants and family members.

(x) A reception area.

(xi) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and garden area. It should be easily supervised by staff.

(c) *Furnishings must be available for all participants.* This must include functional furniture appropriate to the participants' needs. Furnishings must be attractive, comfortable, and homelike, while being sturdy and safe.

(d) *Participant call system.* The coordinator's station must be equipped to receive participant calls through a communication system from:

- (1) Clinic rooms; and
- (2) Toilet and bathing facilities.

(e) *Other environmental conditions.* The program management must provide a safe, functional, sanitary, and comfortable environment for the participants, staff and the public. The program management must:

- (1) Establish procedures to ensure that water is available to essential areas if there is a loss of normal water supply;
- (2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

- (3) Equip corridors, when available, with firmly-secured handrails on each side;
and
- (4) Maintain an effective pest control program so that the facility is free of pests and rodents. (Authority: 38 U.S.C. 101, 501, 1741-1743)

[67 FR 660, Jan. 7, 2002; as amended at 80 FR 44862, July 28, 2015]

Supplement *Highlights* reference: 93(2).

Next Section is §52.210

§52.210 Administration.

An adult day health care program must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each participant.

(a) *Governing body.*

(1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the program; and

(2) The governing body or State official with oversight for the program appoints the adult day health care program administrator who is:

(i) A qualified health care professional experienced in clinical program management and, if required by the State, certified as a Certified Administrator in Adult Day Health Care; and

(ii) Responsible for the operation and management of the program including:

(A) Documentation of current credentials for each licensed independent practitioner employed by the program;

(B) Review of the practitioner's record of experience;

(C) Assessment of whether practitioners with clinical privileges act within the scope of privileges granted; and

(iii) Awareness of local trends in community adult day health care and other services, and participation in area adult day health care organizations.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;

(2) The State adult day health care program administrator; or

(3) The State employee responsible for oversight of the State home adult day health care program if a contractor operates the State program.

§53.30 Payments.

(a) The amount of payments awarded under this part during a Federal fiscal year will be the amount requested by the State and approved by VA in accordance with this part. Payments may not exceed 50 percent of the cost of the employee incentive program for that fiscal year and may not exceed 2 percent of the amount of the total per diem payments estimated by VA to be made under 38 U.S.C. 1741 to the State for that SVH during that fiscal year for adult day health care, domiciliary care, hospital care, and nursing home care.

(b) Payments will be made by lump sum or installment as deemed appropriate by the Director, Geriatrics and Extended Care Operations.

(c) Payments will be made to the State or, if designated by the State representative, the SVH conducting the employee incentive program.

(d) Payments made under this part for a specific employee incentive program shall be used solely for that purpose. (Authority: 38 U.S.C. 101, 501, 1744)

[73 FR 73562, Dec. 3, 2008, as amended at 77 FR 73313, Dec. 10, 2012]

Supplement *Highlights* reference: 74(3).

§53.31 Annual report.

(a) A State receiving payment under this part shall provide to VA a report setting forth in detail the use of the funds, including a descriptive analysis of how effective the employee incentive program has been in improving nurse staffing in the SVH. The report shall be provided to VA within 60 days of the close of the Federal fiscal year (September 30) in which payment was made and shall be subject to audit by VA.

(b) A State receiving payment under this part shall also prepare audit reports as required by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200' and submit them to VA. (Authority: 38 U.S.C. 101, 501, 1744)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0709.)

Supplement *Highlights* Reference: 93(1).

[73 FR 73562, Dec. 3, 2008; as amended at 80 FR 43322, July 22, 2015]

§59.123 Conference.

At any time, VA may recommend that a conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss requirements for a grant with VA officials. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

§59.124 Inspections, audits, and reports.

(a) A State will allow VA inspectors and auditors to conduct inspections and audits as necessary to ensure compliance with the provisions of this part. The State will provide evidence that it has met its responsibility under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200' and submit that evidence to VA.

(b) A State will make such reports in such form and containing such information as the Chief Consultant, Geriatrics and Extended Care, may from time to time reasonably require and give the Chief Consultant, Geriatrics and Extended Care, upon demand, access to the records upon which such information is based. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

Supplement *Highlights Reference*: 93(1).

[73 FR 73562, Dec. 3, 2008; as amended at 80 FR 43322, July 22, 2015]

Next Section is §59.130

§59.130 General requirements for all State home facilities.

As a condition for receiving a grant and grant funds under this part, States must comply with the requirements of this section.

(a) The physical environment of a State home must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(b) A State home must meet the general conditions of the American Institute of Architects, or other general conditions required by the State, for awarding contracts for State home grant projects. Facilities must meet all Federal, State, and local requirements, including the Uniform Federal Accessibility Standards (UFAS) (24 CFR part 40, appendix A), during the design and construction of projects subject to this part. If the State or local requirements are different from the Federal requirements, compliance with the most stringent provisions is required. A State must design and construct the project to provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by this part and as identified in each resident's plan of care.

(c) State homes should be planned to approximate the home atmosphere as closely as possible. The interior and exterior should provide an attractive and home-like environment for elderly residents. The site will be located in a safe, secure, residential-type area that is accessible to acute medical care facilities, community activities and amenities, and transportation facilities typical of the area.

(d) (1) State homes must meet the applicable provisions of NFPA 101, Life Safety Code, except that the NFPA requirement in paragraph 19.3.5.1 for all buildings containing nursing homes to have an automatic sprinkler system is not applicable until February 24, 2016 for “existing buildings” with nursing home facilities as of June 25, 2001 (paragraph 3.3.36.5 in the NFPA 101 defines an “[e]xisting [b]uilding” as “[a] building erected or officially authorized prior to the effective date of the adoption of this edition of the Code by the agency or jurisdiction”), and NFPA 99, Health Care Facilities Code

(2) Facilities must also meet the State and local fire codes.

(e) State homes must have an emergency electrical power system to supply power adequate to operate all exit signs and lighting for means of egress, fire and medical gas alarms, and emergency communication systems. The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources.

(f) The nurse's station must be equipped to receive resident calls through a communication system from resident rooms, toilet and bathing facilities, dining areas, and activity areas.

(g) The State home must have one or more rooms designated for resident dining and activities. These rooms must be:

(1) Well lighted;

- (2) Well ventilated; and
- (3) Adequately furnished.

(h) The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must:

- (1) Ensure that water is available to essential areas when there is a loss of normal water supply;
- (2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
- (3) Equip corridors with firmly secured handrails on each side; and
- (4) Maintain an effective pest control program so that the facility is free of pests and rodents. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

(i) (1) Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials, incorporated by reference, 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, call 202-461-4902, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html

(2) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)

(i) NFPA 99, Health Care Facilities Code, Including all Gas & Vacuum System Requirements, (2012 Edition).

(ii) NFPA 101, Life Safety Code (2012 edition).

[66 FR 33847, June 26, 2011, as amended at 76 FR 10249, Feb. 24, 2011; 76 FR 70885, Nov. 16, 2011; 80 FR 44862, July 28, 2015]

Supplement *Highlights* references: 61(1), 93(2).

Next Section is §59.140

§59.140 Nursing home care requirements.

As a condition for receiving a grant and grant funds for a nursing home facility under this part, States must comply with the requirements of this section.

(a) Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents. Resident rooms must:

- (1) Accommodate no more than four residents;
- (2) Have direct access to an exit corridor;
- (3) Have at least one window to the outside;
- (4) Be equipped with, or located near, toilet and bathing facilities (VA recommends that public toilet facilities also be located near the residents dining and recreational areas);
- (5) Be at or above grade level;
- (6) Be designed or equipped to ensure full visual privacy for each resident;
- (7) Except in private rooms, each bed must have ceiling suspended curtains that extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;
- (8) Have a separate bed for each resident of proper size and height for the safety of the resident;
- (9) Have a clean, comfortable mattress;
- (10) Have bedding appropriate to the weather and climate;
- (11) Have functional furniture appropriate to the resident's needs, and
- (12) Have individual closet space with clothes racks and shelves accessible to the resident.

(b) Unless determined by VA as necessary to accommodate an increased quality of care for patients, a nursing home project may propose a deviation of no more than 10 percent (more or less) from the following net square footage for the State to be eligible for a grant of 65 percent of the total estimated cost of the project. If the project proposes building more than the following net square footage and VA makes a determination that it is not needed, the cost of the additional net square footage will not be included in the estimated total cost of construction.

Table to Paragraph (b)—Nursing Home

I. Support facilities [allowable square feet (or metric equivalent) per facility for VA participation]:	
Administrator.....	200
Assistant administrator.....	150
Medical officer, director of nursing or equivalent	150

§61.16 Matching funds for capital grants.

(a) VA cannot award a capital grant for more than 65 percent of the total allowable costs of the project. The grantee must provide funding (“matching funding”) for the remaining 35 percent of the total cost, using non-federal funds. VA requires that applicants provide documentation of all costs related to the project including those that are not allowable under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. Allowable costs means those related to the portion (percentage) of the property that would be used to provide supportive housing and services under this part.

(b) Capital grants may include application costs, including site surveys, architectural, and engineering fees, but may not include relocation costs or developer's fees.

(c) *Documentation of matching funds.* The matching funds described in paragraph (a) of this section must be documented as follows; no other format will be accepted as evidence of a firm commitment of matching funds:

(1) Donations must be on the donor's letterhead, signed and dated.

(2) The applicant's own cash must be committed on the applicant's letterhead, signed, and dated.

(3) No conditions may be placed on the matching funds other than the organization's receipt of the capital grant.

(4) Funds must be committed to the same activity as the capital grant application (i.e., acquisition, renovation, new construction, or a van), and must not relate to operating costs or services.

(5) The value of matching funds must be for a cost that is included in the calculation of the total project cost, thereby decreasing the total expenditures of the grantee.

(d) *Van applications.* The requirements of this section also apply to applications for a capital grant for a van under § 61.18.

(Authority: 38 U.S.C. 501, 2011)

[78 FR 12608, Feb. 25, 2013; as amended at 80 FR 43323, July 22, 2015]

Supplement *Highlights* references: 75(1), 93(1).

§61.17 Site control for capital grants.

(a) In order to receive a capital grant for supportive housing or a fixed site service center, an applicant must demonstrate site control. Site control must be demonstrated through a deed or an executed contract of sale, or a capital lease, which assigns control or ownership to the entity whose Federal employer or taxpayer identification number is on the Application for Federal Assistance (SF424), unless one of the following apply:

(1) VA gives written permission for an alternate assignment. VA will permit alternate assignments except when:

(i) The alternate assignment is to a for-profit entity which is neither controlled by the applicant or by the applicant's parent organization or the entity is controlled by the applicant's parent organization which is a for-profit entity; or

(ii) VA has a reasonable concern that the assignment may provide an economic or monetary benefit to the assignee other than the benefit that would have inured to the applicant had the applicant not made the alternate assignment.

(2) The site is in a building or on land owned by VA, and the applicant has an agreement with VA for site control.

(b) A capital grant recipient may change the site to a new site meeting the requirements of this part subject to VA approval under § 61.62. However, the recipient is responsible for and must demonstrate ability to provide for any additional costs resulting from the change in site.

(c) If site control is not demonstrated within 1 year after execution of an agreement under § 61.61, the grantee may request a reasonable extension from the VA national GPD office, or the grant may be terminated. VA will authorize an extension request if the grantee was not at fault for being unable to exercise site control and the lack of site control does not affect the grantee's ability to complete the project.

(Authority: 38 U.S.C. 501, 2011) (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

[78 FR 12609, Feb. 25, 2013]

Supplement *Highlights* reference: 75(1)

Subpart E—Technical Assistance Grants

§61.50 Technical assistance grants—general.

(a) *General.* VA provides technical assistance grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients must use the grants to provide technical assistance to nonprofit organizations with experience in providing assistance to homeless veterans in order to help such groups apply for grants under this part, or from any other source, for addressing the needs of homeless veterans. Current recipients of any grant under this part (other than a technical assistance grant), or their sub-recipients, are ineligible for technical assistance grants.

(b) *Allowable activities.* Technical assistance grant recipients may use grant funds for the following activities:

(1) Group or individual “how-to” grant writing seminars, providing instructions on applying for a grant. Topics must include:

- (i) Determining eligibility;
- (ii) Matching the awarding agency's grant mission to the applicant agency's strengths;
- (iii) Meeting the specific grant outcome requirements;
- (iv) Creating measurable goals and objectives for grants;
- (v) Relating clear and concise grant project planning;
- (vi) Ensuring appropriate grant project staffing; and
- (vii) Demonstrating the applicant's abilities.

(2) Creation and dissemination of “how-to” grant writing materials, i.e., compact disks, booklets, web pages or other media specifically designed to facilitate and instruct applicants in the completion of grant applications.

(3) Group or individual seminars, providing instructions on the legal obligations associated with grant applications. Topics must include:

(i) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200;

(ii) Federal funding match and fund separation requirements; and

(iii) Property and equipment disposition.

(4) Telephone, video conferencing or email with potential grant applicants that specifically address grant application questions.

(c) *Unallowable activities.* Technical assistance grant recipients may not use grant funds for the following activities:

(1) Meetings, consortia, or any similar activity that does not assist community agencies in seeking grants to aid homeless veterans.

(2) Referral of individual veterans to agencies for benefits, housing, medical assistance, or social services.

(3) Lobbying.

(Authority: 38 U.S.C. 501 and 2064)

[78 FR 12611, Feb. 25, 2013; as amended at 80 FR 43323, July 22, 2015]

Supplement *Highlights* references: 75(1), 93(1).

§61.55 Technical assistance reports.

Each technical assistance grantee must submit to VA a quarterly report describing the activities for which the technical assistance grant funds were used, including the type and amount of technical assistance provided and the number of nonprofit community-based groups served.

(Authority: 38 U.S.C. 501, 2064) (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

[78 FR 12613Feb. 25, 2013]

Supplement *Highlights* reference: 75(1)

Next Section is §61.61

Subpart F—Awards, Monitoring, and Enforcement of Agreements**§61.61 Agreement and funding actions.**

(a) *Agreement.* When VA selects an applicant for grant or per diem award under this part, VA will incorporate the requirements of this part into an agreement to be executed by VA and the applicant. VA will enforce the agreement through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency. Appropriate actions include actions in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) *Obligating funds.* Upon execution of the agreement, VA will obligate funds to cover the amount of the approved grant/per diem, subject to the availability of funding. Payments will be for services rendered, contingent on submission of documentation in the form of invoices or purchase agreements and inspections, as VA deems necessary. VA will make payments on its own schedule to reimburse for amounts expended. Except for increases in the rate of per diem, VA will not increase the amount obligated for assistance under this part after the initial obligation of funds.

(c) *Deobligating funds.* VA may deobligate all or parts of funds obligated under this part:

(1) If the actual total cost for assistance is less than the total cost stated in the application; or

(2) If the recipient fails to comply with the requirements of this part.

(d) *Deobligation procedure.* Before deobligating funds under this section, VA will issue a notice of intent to terminate payments. The recipient will have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision concerning termination of payment.

(e) *Other government funds.* No funds provided under this part may be used to replace Federal, state or local funds previously used, or designated for use, to assist homeless veterans.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

[78 FR 12613, Feb. 25, 2013; as amended at 80 FR 43323, July 22, 2105]

Supplement *Highlights* references: 75(1), 93(1).

§61.62 Program changes.

(a) Except as provided in paragraphs (b) through (d) of this section, a recipient may not make any significant changes to a project for which a grant has been awarded without prior written approval from the VA National Grant and Per Diem Program Office. Significant changes include, but are not limited to, a change in the recipient, a change in the project site (including relocating, adding an annex, a branch, or other expansion), additions or deletions of activities, shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.

(b) Recipients of grants involving both construction and non-construction projects must receive prior written approval from the VA National Grant and Per Diem Program Office for cumulative transfers among direct cost categories which exceed or are expected to exceed 10 percent of the current total approved budget.

(c) Recipients of grants for projects involving both construction and non-construction who are state or local governments must receive prior written approval from the VA National Grant and Per Diem Program Office for any budget revision which would transfer funds between non-construction and construction categories.

(d) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

(e) Any changes to an approved program must be fully documented in the recipient's records.

(f) Recipients must inform the VA National Grant and Per Diem Program Office in writing of any key position and address changes in/of their organization within 30 days of the change, i.e., new executive director or chief financial officer, permanent change of address for corporate communications.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064) (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554).

[78 FR 12613, Feb. 25, 2013]

Supplement *Highlights* reference: 75(1)

§61.63 Procedural error.

If an application would have been selected but for a procedural error committed by VA, VA may reconsider that application in the next funding round. A new application will not be required for this purpose so long as there is no material change in the information.

(Authority: 38 U.S.C. 501)

[78 FR 12613, Feb. 25, 2013]

Supplement *Highlights* reference: 75(1)

§61.64 Religious organizations.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. In the selection of service providers, neither the Federal Government nor a state or local government receiving funds under this part shall discriminate for or against an organization on the basis of the organization's religious character or affiliation.

(b) (1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Inherently religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, “indirect financial assistance” means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. “Direct financial assistance” means Federal aid in the form of a grant, contract, or cooperative agreement where the independent choices of individual beneficiaries do not determine which organizations receive program funds.

(c) Organizations that engage in inherently religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's inherently religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A religious organization that participates in VA programs under this part will retain its independence from Federal, state, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a state or local government voluntarily contributes its own funds to supplement Federally funded activities, the state or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where VA funds are provided to religious organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of this part. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

(Authority: 38 U.S.C. 501)

[78 FR 12613, Feb. 25, 2013]

Supplement *Highlights* reference: 75(1)

§61.65 Inspections.

VA may inspect the facility and records of any applicant or recipient when necessary to determine compliance with this part or an agreement under §61.61. The authority to inspect does not authorize VA to manage or control the applicant or recipient.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

[78 FR 12614, Feb. 25, 2013]

Supplement *Highlights* reference: 75(1)

§61.66 Financial management.

(a) All recipients must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principles and meets the requirements set forth under 2 CFR part 200. All recipients must implement the requirements of 2 CFR part 200 when determining costs reimbursable under all awards issued under this part.

(Authority: 38 U.S.C. 501)

[78 FR 12614, Feb. 25, 2013; as amended at 80 FR 43323, July 22, 2105]

Supplement *Highlights* references: 75(1), 93(1).

§61.67 Recovery provisions.

(a) *Full recovery of capital grants.* VA may recover from the grant recipient all of the grant amounts provided for the project if, after 3 years after the date of an award of a capital grant, the grant recipient has withdrawn from the VA Homeless Providers Grant and Per Diem Program (Program), does not establish the project for which the grant was made, or has established the project for which the grant was made but has not passed final inspection. Where a recipient has no control over causes for delays in implementing a project, VA may extend the 3-year period, as appropriate. VA may obligate any recovered funds without fiscal year limitation.

(b) *Prorated (partial) recovery of capital grants.* If a capital grant recipient is not subject to recovery under paragraph (a) of this section, VA will seek recovery of the grant amount on a prorated basis where the grant recipient ceases to provide services for which the grant was made or withdraws from the Program prior to the expiration of the applicable period of operation, which period shall begin on the date shown on the activation document produced by the VA National GPD Program. In cases where capital grant recipients have chosen not to receive per diem payments, the applicable period of operation shall begin on the date the VA Medical Center Director approved placement at the project site as shown on the inspection documents. The amount to be recaptured equals the total amount of the grant, multiplied by the fraction resulting from using the number of years the recipient was not operational as the numerator, and using the number of years of operation required under the following chart as the denominator.

Grant Amount (dollars in thousands)	Years of Operation
0 – 250	7
251 – 500	8
501 – 750	9
751 – 1,000	10
1,001 – 1,250	11
1,251 – 1,500	12
1,501 – 1,750	13
1,751 – 2,000	14
2,000 – 2,250	15
2,251 – 2,500	16
2,501 – 2,750	17
2,751 – 3,000	18
Over 3,000	20

(c) *Disposition of real property for capital grantees.* In addition to being subject to recovery under paragraphs (a) and (b) of this section, capital grantees are subject to real property disposition as required by 2 CFR part 200 when the grantee no longer is providing services through a grant awarded under this part.

(d) *Recovery of per diem and non-capital grants.* VA will seek to recover from the recipient of per diem, a special need non-capital grant, or a technical assistance grant any funds that are not used in accordance with the requirements of this part.

(e) *Notice.* Before VA takes action to recover funds, VA will issue to the recipient a notice of intent to recover funds. The recipient will then have 30 days to submit documentation demonstrating why funds should not be recovered. After review of any such documentation, VA will issue a decision regarding whether action will be taken to recover funds.

(f) *Vans.* All recovery provisions will apply to vans with the exception of the period of time for recovery. The period of time for recovery will be 7 years. Disposition provisions of 2 CFR part 200 apply to vans. Grantees are required to notify the VA National Grant and Per Diem Program Office for disposition of any van funded under this part.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

[78 FR 12614, Feb. 25, 2013; as amended at 80 FR 43323, July 22, 2015]

Supplement *Highlights* references: 75(1), 93(1)

Next Section is §61.80

§62.63 Visits to monitor operations and compliance.

(a) VA has the right, at all reasonable times, to make visits to all grantee locations where a grantee is using supportive services grant funds in order to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. In the event that a grantee delivers services in a participant's home, or at a location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a subcontractor under the supportive services grant, the grantee must provide, and must require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

(b) The authority to inspect carries with it no authority over the management or control of any applicant or grantee under this part. (Authority: 38 U.S.C. 501, 2044)

Supplement *Highlights* reference: 58(1)

Next Section is §62.70

§62.70 Financial management and administrative costs.

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) Grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

(c) Payment up to the amount specified in the supportive services grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the supportive services grant. The determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

(d) Grantees are subject to the Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, codified at 38 CFR Part 49.

(e) Costs for administration by a grantee must not exceed 10 percent of the total amount of the supportive services grant. Administrative costs will consist of all direct and indirect costs associated with the management of the program. These costs will include the administrative costs, both direct and indirect, of subcontractors. (Authority: 38 U.S.C. 501, 2044)

[78 FR 12614, Feb. 25, 2013; as amended at 80 FR 43323, July 22, 2015]

Supplement *Highlights* reference: 58(1), 93(1).

§64.12 Scoring and selection.

(a) *Scoring.* VA will score only complete applications received from eligible entities by the established deadline. Applications will be scored using the following criteria:

(1) *Background, organizational history, qualifications, and past performance (maximum 10 points).* Applicant documents a relevant history of successfully providing the type of services proposed in the RVCP grant application, particularly in the location it plans to serve and/or to veterans and their families.

(2) *Need for pilot project (maximum 10 points).* Applicant demonstrates the need for the pilot project among veterans and their families in the proposed project location, and provides evidence of the applicant's understanding of the unique needs of veterans and their families in the location to be served.

(3) *Pilot project concept, innovation, and ability to meet VA's objectives (maximum 40 points).* Application shows appropriate concept, size, and scope of the project; provides realistic estimates of time, staffing, and material needs to implement the project; and details the project's ability to enhance the overall services provided, while presenting realistic plans to reduce duplication of benefits and services already in place. Application must describe a comprehensive and well-developed plan to meet one or more of the permissible uses set out in § 64.6.

(4) *Pilot project evaluation and monitoring (maximum 10 points).* Self-evaluation and monitoring strategy provided in application is reasonable and expected to meet requirements of § 64.10(b)(5).

(5) *Organizational finances (maximum 10 points).* Applicant provides documentation that it is financially stable, has not defaulted on financial obligations, has adequate financial and operational controls in place to assure the proper use of RVCP grants, and presents a plan for using RVCP grants that is cost effective and efficient.

(6) *Pilot project location (maximum 20 points).* Applicant documents how the proposed project location meets the definition of rural or underserved communities in this part.

(b) *Selection of grantees.* All complete applications will be scored using the criteria in paragraph (a) and ranked in order from highest to lowest total score. VA will rank all applications that receive at least the minimum number of points indicated in the NOFA. VA will award one RVCP grant to the highest scoring application. VA will award RVCP grants to each successive application, ranked by total score, provided the applicant has not been awarded an RVCP grant for a higher scoring application and the proposed project is not in the same project location as any previously awarded RVCP grant. (Authority: 38 U.S.C. 501, 523 note)

[78 FR 12619, Feb. 25, 2013]

Supplement *Highlights* reference: 75(2)

Next Section is §64.14

§64.14 RVCP grant agreement.

- (a) VA will draft an RVCP grant agreement to be executed by VA and the grantee.
- (b) The RVCP grant agreement will provide that the grantee agrees to:
 - (1) Operate the project in accordance with this part and the terms of the agreement;
 - (2) Abide by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200, and 2 CFR parts 25 and 170, if applicable.
 - (3) Comply with such other terms and conditions, including recordkeeping and reports for project monitoring and evaluation purposes, as VA may establish for purposes of carrying out the RVCP in an effective and efficient manner and as described in the NOFA; and
 - (4) Provide any necessary additional information that is requested by VA in the manner and timeframe specified by VA. (Authority: 38 U.S.C. 501, 523 note)

[78 FR 12619, Feb. 25, 2013; as amended at 80 FR 43323, July 22, 2015]

Supplement *Highlights* references: 75(2), 93(1).

Next Section is §64.16