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Title 38, Parts 17, 46, 47, 51–53, 58–61, and 70

Medical

Veterans Benefits Administration

Supplement No. 45

Covering period of *Federal Register* issues
through January 4, 2009

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Custom Federal Regulations Service™

Supplemental Materials for *Book I*

Code of Federal Regulations

Title 38, Parts 17, 46, 47, 51–53, 58–61, and 70

Medical

Veterans Benefits Administration

Supplement No. 45

5 January 2009

Covering the period of Federal Register issues
through January 4, 2009

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FILING INSTRUCTIONS

**Book I, Supplement No. 45
January 5, 2009**

*Remove these
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I-21 to I-24

I-21 to I-24

Index to Book I

None

53–Title Page to 53.41-2

Part 53 (§§53.1–53.41);
add after Part 52, page
52.220-2

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HIGHLIGHTS

Book I, Supplement No. 45 January 5, 2009

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 3 December 2008, the VA published a final rule, effective 2 January 2009, to implement provisions of the Veterans Health Programs Improvement Act of 2004 by establishing a mechanism for States to obtain payments from the VA in order to assist a State veterans home in the hiring and retention of nurses for the purpose of reducing nursing shortages at the home.
Change:

- In Title 38, C.F.R., added a new Part 53 (§§53.1–53.41).



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Part 53

Payments to States for Programs to Promote the Hiring and Retention of Nurses at State Veterans Homes

Reserved

Part 53

**Payments to States for Programs to Promote the Hiring and Retention
of Nurses at State Veterans Homes**

Authority: 38 U.S.C. 101, 501, 1744.

Source: 73 Fed. Reg. 73560, December 3, 2008, and as stated in specific sections.

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Reserved

Part 53

Payments to States for Programs to Promote the Hiring and Retention of Nurses at State Veterans Homes

Authority: 38 U.S.C. 101, 501, 1744.

Source: 73 Fed. Reg. 73560, December 3, 2008, and as stated in specific sections.

Supplement Highlights Reference for Part 53: Book I – 45(1), unless otherwise indicated.

§53.1 Purpose and scope.

In accordance with the provisions of 38 U.S.C. 1744, this part sets forth the mechanism for a State to obtain payments to assist a State Veterans Home (SVH) in the hiring and retention of nurses for the purpose of reducing nursing shortages at that SVH. (Authority: 38 U.S.C. 101, 501, 1744)

§53.2 Definitions.

For the purpose of this part:

Nurse means an individual who is a registered nurse, a licensed practical nurse, a licensed vocational nurse, or a nursing assistant certified in the State in which payment is made and who is a bedside caregiver at least a majority of the time (e.g., this would generally not include an individual acting in the capacity of an advance practice nurse, an administrative nurse, or a director of nursing) (the terms nurses and nursing shall be construed consistent with this definition).

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

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

State Veterans Home (SVH) means a home approved by the Department of Veterans Affairs (VA) which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A SVH may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the SVH also provides domiciliary and/or nursing home care. (Authority: 38 U.S.C. 101, 501, 1744)

Next Section is §53.10

§53.10 Decision makers, notifications, and additional information.

The Chief Consultant, Geriatrics and Extended Care, will make all determinations regarding payments under this part, and will provide written notice to affected State representatives of approvals, denials, or requests for additional information under this part. (Authority: 38 U.S.C. 101, 501, 1744)

§53.11 General requirements for payments.

(a) VA will make payment under this part to a State for an employee incentive program to reduce the shortage of nurses at the SVH, when the following conditions are met:

(1) The State representative applies for payment in accordance with the provisions of §53.20;

(2) The SVH receives per diem payments from VA under the provisions of 38 U.S.C. 1741 for one or more of the following: Adult day health care, domiciliary care, hospital care, or nursing home care;

(3) The SVH has a nursing shortage that is documented by credible evidence, including but not limited to SVH records showing nursing vacancies, SVH records showing nurse overtime use, and reports documenting that nurses are difficult to hire in the local area and difficult to retain as employees at the SVH;

(4) The SVH does not use payments under this part to pay for all or part of a nurse's standard employee benefits, such as salary, health insurance, or retirement plan;

(5) The SVH provides to the Chief Consultant, Geriatrics and Extended Care, documentation establishing that it has an employee incentive program that:

(i) Is likely to be effective in promoting the hiring and retention of nurses for the purpose of reducing nursing shortages at that home, and

(ii) Is in operation or ready for immediate implementation if VA payments are made under this part;

(6) The payment amount applied for by the State is no more than 50 percent of the funding for the employee incentive program during the Federal fiscal year;

(7) The SVH employee incentive program includes a mechanism to ensure that an individual receiving benefits under the program works at the SVH as a nurse for a period commensurate with the benefits provided, and, insofar as possible, the program is designed to eliminate any nursing shortage at the SVH within a 3-year period from the initiation of VA payments;

(8) The SVH, if it received payments under this part during a previous Federal fiscal year, has met the reporting requirements of §53.31(a) regarding such payments;

(9) The SVH credits to its employee incentive program any funds refunded to the SVH by an employee because the employee was in breach of an agreement for employee assistance funded with payments made under this part and the SVH credits the amount returned as a non-Federal funding source; and

(10) The project does not involve the construction, acquisition, expansion, remodeling or alteration of the SVH.

(b) VA intends to allow flexibility and innovation in determining the types of employee incentive programs at SVHs eligible for payments. Programs could include such things as the provision of short-term scholarships for continuing nursing education, sign-on bonuses for nurses, student loan forgiveness programs, and improvements to working conditions. In determining whether an employee incentive program is likely to be effective, VA will consider any information available, including past performance of the SVH's program funded by payments made under this part. (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.)

Next Section is §53.20

§53.20 Application requirements.

(a) To apply for payments during a Federal fiscal year, a State representative must submit to VA, in accordance with §53.40, a completed VA Form 10-0430 and documentation specified by the form (VA Form 10-0430 is available at VA medical centers and on the Internet at <http://www1.va.gov/geriatricsshg/> or may be obtained by contacting the Geriatrics and Extended Care Office (114) at 202-461-6750, VHA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420). The submission for payments for a fiscal year must be received by VA during the last quarter (July 1–September 30) of the preceding fiscal year. The State must submit a new application for each fiscal year that the State seeks payments for an incentive program.

(b) As part of the application, the State representative must submit to VA evidence that the State has sufficient funding, when combined with the VA payments, to fully operate its employee incentive program through the end of the fiscal year. To meet this requirement, the State representative must provide to VA a letter from an authorized State official certifying that, if VA were to approve payments under this part, the non-VA share of the funds for the program would be by a date or dates specified in the certification, available for the employee incentive program without further State action to make such funds available. If the certification is based on a State law authorizing funds for the employee incentive program, a copy of the State law must be submitted with the certification.

(c) If an application does not contain sufficient information for a determination under this part, the State representative will be notified in writing (electronically and by mail) of any additional submission required and that the State has 30 calendar days from the date of the notice to submit such additional information or no further action will be taken. If the State representative does not submit all of the required information or demonstrate that he or she has good cause for failing to provide the information within 30 calendar days of the notice (which may extend beyond the last quarter of the preceding Federal fiscal year), then the State applicant will be notified in writing that the application for VA assistance will be deemed withdrawn and no further action will be taken. (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.)

Next Section is §53.30

§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 Chief Consultant, Geriatrics and Extended Care.

(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)

§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 Single Audit Act of 1984 (see 38 CFR part 41) 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.)

§53.32 Recapture provisions.

If a State fails to use the funds provided under this part for the purpose for which payment was made or receives more than is allowed under this part, the United States shall be entitled to recover from the State the amount not used for such purpose or the excess amount received. (Authority: 38 U.S.C. 101, 501, 1744)

Next Section is §53.40

§53.40 Submissions of information and documents.

All submissions of information and documents required to be presented to VA must be made to the Chief Consultant, Geriatrics and Extended Care (114), VHA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420. (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.)

§53.41 Notification of funding decision.

If the Chief Consultant, Geriatrics and Extended Care, determines that a submission from a State fails to meet the requirements of this part for funding, the Chief Consultant shall provide written notice of the decision and the reasons for the decision. (Authority: 38 U.S.C. 101, 501, 1744)

End of Part 53

Reserved