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Medical

Book I

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

Supplement No. 107

Covering period of *Federal Register* issues
through June 1, 2017

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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. 107

5 June 2017

Covering the period of Federal Register issues
through June 1, 2017

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

**To ensure accuracy and timeliness of your materials,
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1. Always file your supplemental materials immediately upon receipt.
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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. 107
June 5, 2017**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
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all prior supplements have been filed**

17.INDEX-1 to 17.INDEX-2	17.INDEX-1 to 17.INDEX-2	Part 17 Index
17.400-2 to 17.412-1	17.400-2 to 17.412-1	§17.410

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when you have finished filing this material.**

HIGHLIGHTS

Book I, Supplement No. 107 June 5, 2017

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 5 May 2017, the VA published a final rule effective that same day, to adopt as final an interim final rule addressing payment or reimbursement of certain medical expenses for family members of Camp Lejeune veterans. Under this rule, VA reimburses family members, or pays providers, for medical expenses incurred as a result of certain illnesses and conditions that may be associated with contaminants present in the base water supply at U.S. Marine Corps Base Camp Lejeune (Camp Lejeune), North Carolina, from August 1, 1953, to December 31, 1987. Changes:
 - In Part 17 Index, revised the authority citations,
 - Revised in full §17.410.

Part 17 — Medical

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

Section 17.38 also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Section 17.169 also issued under 38 U.S.C. 1712C.

Sections 17.380 and 17.412 are also issued under sec. 260, Public Law 114-223, 130 Stat. 857.

Section 17.410 is also issued under 38 U.S.C. 1787.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Sections 17.640 and 17.647 are also issued under sec. 4, Public Law 114-2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Public Law 114-2, 129 Stat. 30.

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

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(c) *Limitations.* For a Camp Lejeune veteran, VA will assume that a covered illness or condition is attributable to the veteran's active duty service at Camp Lejeune unless it is clinically determined, under VA clinical practice guidelines, that such an illness or condition resulted from a cause other than such service.

(d) *Copayments*

(1) *Exemption.*

(i) Camp Lejeune veterans who served at Camp Lejeune between January 1, 1957, and December 31, 1987, are not subject to copayment requirements for hospital care and medical services provided for a covered illness or condition on or after August 6, 2012.

(ii) Camp Lejeune veterans who served at Camp Lejeune between August 1, 1953, and December 31, 1956, are not subject to copayment requirements for hospital care and medical services provided for a covered illness or condition on or after December 16, 2014.

(2) *Retroactive exemption.* VA will reimburse Camp Lejeune veterans for any copayments paid to VA for hospital care and medical services provided for a covered illness or condition if either of the following is true:

(i) For Camp Lejeune veterans who served at Camp Lejeune between January 1, 1957, and December 31, 1987, VA provided the hospital care or medical services to the Camp Lejeune veteran on or after August 6, 2012, and the veteran requested Camp Lejeune veteran status no later than September 24, 2016; or

(ii) For Camp Lejeune veterans who served at Camp Lejeune between August 1, 1953, and December 31, 1956, VA provided the hospital care or medical services to the Camp Lejeune veteran on or after December 16, 2014, and the veteran requested Camp Lejeune veteran status no later than July 18, 2018.

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900-0091.) (Authority: 38 U.S.C. 1710)

[79 FR 57414, Sep. 24, 2014; as amended at 81 FR 46605, July 18, 2016]

Supplement *Highlights* references: 86(2), 101(2).

§ 17.410 Hospital care and medical services for Camp Lejeune family members.

(a) *General.* In accordance with this section and subject to the availability of funds appropriated for such purpose, VA will provide payment or reimbursement for certain hospital care and medical services furnished to Camp Lejeune family members by non-VA health care providers.

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

Camp Lejeune has the meaning set forth in §17.400(b).

Camp Lejeune family member means an individual who:

(i) Resided at Camp Lejeune (or was in utero while his or her mother either resided at Camp Lejeune or served at Camp Lejeune under §17.400(b)) for at least 30 (consecutive or nonconsecutive) days during the period beginning on August 1, 1953, and ending on December 31, 1987; and

(ii) Meets one of the following criteria:

(A) Is related to a Camp Lejeune veteran by birth;

(B) Was married to a Camp Lejeune veteran; or

(C) Was a legal dependent of a Camp Lejeune veteran.

Camp Lejeune veteran has the meaning set forth in §17.400(b).

Health-plan contract has the meaning set forth in §17.1001(a).

Third party has the meaning set forth in §17.1001(b).

(c) *Application.* An individual may apply for benefits under this section by completing and submitting an application form.

(d) *Payment or reimbursement of certain medical care and hospital services.* VA will provide payment or reimbursement for hospital care and medical services provided to a Camp Lejeune family member by a non-VA provider if all of the following are true:

(1) The Camp Lejeune family member or provider of care or services has submitted a timely claim for payment or reimbursement, which means:

(i) In the case of a Camp Lejeune family member who resided at Camp Lejeune between January 1, 1957, and December 31, 1987, for hospital care and medical services received prior to the date an application for benefits is filed per paragraph (c) of this section, the hospital care and medical services must have been provided on or after March 26, 2013, but no more than 2 years prior to the date that VA receives the application. The claim for payment or reimbursement must be received by VA no more than 60 days after VA approves the application;

(ii) In the case of a Camp Lejeune family member who resided at Camp Lejeune between August 1, 1953, and December 31, 1956, for hospital care and medical services received prior to the date an application for benefits is filed per paragraph (c) of this section, the hospital care and medical services must have been provided on or after December 16, 2014, but no more than 2 years prior to the date that VA receives the application. The claim for payment or reimbursement must be received by VA no more than 60 days after VA approves the application;

(iii) For hospital care and medical services provided on or after the date an application for benefits is filed per paragraph (c) of this section, the claim for payment or reimbursement must be received by VA no more than 2 years after the later of either the date of discharge from a hospital or the date that medical services were rendered;

(2) The Camp Lejeune family member's treating physician certifies that the claimed hospital care or medical services were provided for a covered illness or condition as defined in §17.400(b), and provides information about any co-morbidities, risk factors, or other exposures that may have contributed to the illness or condition;

(3) VA makes the clinical finding, under VA clinical practice guidelines, that the illness or condition did not result from a cause other than the residence of the family member at Camp Lejeune;

(4) VA would be authorized to provide the claimed hospital care or medical services to a veteran under VA's medical benefits package in §17.38;

(5) The Camp Lejeune family member or hospital care or medical service provider has exhausted without success all claims and remedies reasonably available to the family member or provider against a third party, including health-plan contracts; and

(6) Funds were appropriated to implement 38 U.S.C. 1787 in a sufficient amount to permit payment or reimbursement.

(e) *Payment or reimbursement amounts.* Payments or reimbursements under this section will be in amounts determined in accordance with this paragraph (e).

(1) If a third party is partially liable for the claimed hospital care or medical services, then VA will pay or reimburse the lesser of the amount for which the Camp Lejeune family member remains personally liable or the amount for which VA would pay for such care under §§ 17.55 and 17.56.

(2) If VA is the sole payer for hospital care and medical services, then VA will pay or reimburse in accordance with §§ 17.55 and 17.56, as applicable.

(The information collection requirements have been submitted to OMB and are pending OMB approval.)

[79 FR 57414, Sep. 24, 2014; as amended at 82 FR 21122, May 5, 2017]

Supplement *Highlights* reference: 86(3).

§ 17.412 Fertility counseling and treatment for certain spouses.

(a) (1) VA may provide fertility counseling and treatment to a spouse of a veteran described in §17.380 to the extent such services are available to a veteran under §17.38, and consistent with the benefits relating to reproductive assistance provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in the April 3, 2012, memorandum issued by the Assistant Secretary of Defense for Health Affairs on the subject of “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued by the Department of Defense to implement such policy, including any limitations on the amount of such benefits available to such a member.

(2) VA may provide in vitro fertilization to a spouse of a veteran described in §17.380 when clinically appropriate and consistent with the benefits relating to reproductive assistance provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to 10 U.S.C. 1074(c)(4)(A), as described in the April 3, 2012, memorandum issued by the Assistant Secretary of Defense for Health Affairs on the subject of “Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members,” and the guidance issued by the Department of Defense to implement such policy, including any limitations on the amount of such benefits available to such a member.

(b) Authority to provide fertility counseling and treatment, including in vitro fertilization under this section, expires September 30, 2018.

[82 FR 6275, Jan. 19, 2017, as amended at 82 FR 11153, Feb. 21, 2017]

Supplement *Highlights* references: 104(3), 105(1).