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## **Medical**

Book I

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

Supplement No. 112

Covering period of *Federal Register* issues  
through December 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. 112**

5 December 2017

Covering the period of Federal Register issues  
through December 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*.

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<b>FILING INSTRUCTIONS</b>
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**Book I, Supplement No. 112  
December 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**

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**Be sure to complete the  
*Supplement Filing Record* (page I-9)  
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## HIGHLIGHTS

### Book I, Supplement No. 112 December 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 3 November 2017, the VA published a final rule effective 4 December 2017, to amend its regulations that govern homeless veterans to conform to recent statutory requirements. VA is amending the definition of homeless veterans by including veterans who would otherwise be ineligible to receive certain benefits because of their length of service or type of discharge from the Armed Forces. This rule will also increase the payment of per diem in cases where homeless veterans are placed in transitional housing that will become permanent housing. This final rule is an essential part of VA's attempts to eliminate homelessness among the veteran population. Changes:

- In §61.1, revised the definition of *Veteran*,
- In §61.33, revised paragraph (b),
- In §62.2, revised the definition of *Veteran*.

2. On 8 November 2017, the VA published a final rule effective 8 December 2017, to amend its medical regulations by establishing in regulation the eligibility requirements that ecclesiastical endorsing organizations must meet in order to provide ecclesiastical endorsements of individuals seeking employment as VA chaplains, or of individuals who are seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under the United States Code. VA considers veterans' spiritual care an integral part of their overall health care. As such, VA is committed to providing qualified VA chaplains to address the veterans' spiritual needs by engaging chaplains that are ecclesiastically endorsed. Ecclesiastical endorsement certifies that the individual is qualified to perform all the religious sacraments, rites, rituals, ceremonies and ordinances needed by members of a particular faith. Changes:

- Added §17.655.

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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.

Section 17.655 also issued under 38 U.S.C. 501(a), 7304, 7405.

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

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## Chaplain Services

### §17.655 Ecclesiastical endorsing organizations

(a) *Purpose.* This section establishes the eligibility requirements that an ecclesiastical endorsing organization must meet in order to provide ecclesiastical endorsements of individuals who are seeking employment as VA chaplains or seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. Acceptance of an ecclesiastical endorsement by VA does not imply any approval by VA of the theology or practices of an ecclesiastical endorsing organization, nor does it obligate VA to employ the endorsed individual or any other member of the organization.

(b) *Definitions.* The following definitions apply to this section:

(1) *Ecclesiastical endorsement* means a written statement addressed to VA and signed by the designated endorsing official of an ecclesiastical endorsing organization certifying that an individual is in good standing with the faith group or denomination and, in the opinion of the endorsing official, is qualified to perform the full range of ministry, including all sacraments, rites, ordinances, rituals, and liturgies required by members of the faith group. Ecclesiastical endorsement is a condition of employment as a VA chaplain. An individual must obtain and maintain a full and active ecclesiastical endorsement to be employed as a VA chaplain.

(2) *Ecclesiastical endorsing official* means an individual who is authorized to provide or withdraw ecclesiastical endorsements on behalf of an ecclesiastical endorsing organization.

(3) *Ecclesiastical endorsing organization* means an organization that meets the eligibility requirements of paragraph (c) of this section and has been properly designated as an endorsing organization in accordance with paragraph (e) of this section.

(c) *Eligibility to serve as an ecclesiastical endorsing organization.* An ecclesiastical endorsing organization must meet the following requirements before such organization can endorse an applicant for VA chaplaincy:

(1) Be organized and function exclusively or substantially to provide religious ministries to a lay constituency and possess authority to both grant and withdraw initial and subsequent ecclesiastical endorsements;

(2) Have tax-exempt status as a religious organization or church under the Internal Revenue Code, section 501(c)(3);

(3) Agree to abide by all Federal and VA laws, regulations, policies, and issuances on the qualification and endorsement of persons for service as VA chaplains;

(4) Agree to notify VA in writing of any withdrawal of an existing ecclesiastical endorsement within ten days after the date of such withdrawal;

(5) Provide VA the documents stated in paragraph (d) of this section;

(6) Notify VA in writing within 30 days of any change of the name, address or contact information of the individual that it designates as its ecclesiastical endorsing official; and

(7) An ecclesiastical endorsing organization that is part of an endorsing organization by which its members can be endorsed cannot become a separate endorsing organization without the written permission of the larger endorsing organization.

(d) *Request to designate ecclesiastical endorser.* In order for an ecclesiastical endorsing organization to be recognized by VA such organization must submit the following:

(1) A complete VA form that requests the designation of an ecclesiastical endorsing official;

(2) A copy of an Internal Revenue Service document verifying that the organization currently holds a section 501(c)(3) exempt status as a church for Federal tax purposes from the Internal Revenue Service (IRS) (note “church” is used by the IRS not to denote a belief system, but to distinguish “churches” from other types of religious organizations; see IRS Instructions for Form 1023 Schedule A). Such rules stipulate that the particular religious beliefs of the organization are truly and sincerely held and that the practices and rituals associated with the organization's religious belief or creed are not illegal or contrary to clearly defined public policy. In order to determine whether a particular religious organization has properly acquired, and currently maintains, an IRS tax exempt status and does not engage in practices that are illegal or contrary to defined public policy, VA shall take appropriate steps to verify compliance with these requirements;

(3) A document verifying that the organization shall provide chaplains who shall function in a pluralistic environment, and who shall support directly and indirectly the free exercise of religion by all veterans, their family members, and other persons authorized to be served by VA;

(4) That it agrees to abide by all VA Directives, Instructions, and other guidance, regulations and policies on the qualification and endorsement of ministers for service as VA chaplains;

(5) Documentation that states the structure of the organization, including copies of the articles of incorporation, by-laws and constitution, membership requirements of the organization, if any, the religious beliefs and practices of the organization, and the organization's requirements to become clergy; and

(6) The name and address of the individual who is applying to become a VA chaplain.

(e) *Approval of request to designate an ecclesiastical endorsing official.* If an ecclesiastical endorsing organization meets the requirements of paragraph (c) of this section and has submitted the documents stated in paragraph (d) of this section, VA will notify the organization in writing that such organization has been designated as an ecclesiastical endorsing organization. The designation will be for a period of 3 years from the date of notification. Once an organization is designated as an ecclesiastical endorsing organization, VA will accept ecclesiastical endorsements from that organization without requiring any further documentation from the organization during the 3 year period, unless VA receives evidence that an organization no longer meets the requirements of this section. VA will only take action on an initial request to designate an ecclesiastical endorsing official when VA receives an application from an individual who is seeking employment as a VA chaplain or is seeking to be engaged under VA contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405.

(f) *Reporting requirement.*

(1) To certify that VA chaplains continue to be endorsed by an ecclesiastical endorsing organization, such organization must provide VA an alphabetical listing of individuals who are endorsed by that endorsing organization and are employed as VA chaplains or are engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405 by January 1 of every calendar year.

(2) In order for VA to continue to recognize an ecclesiastical endorsing organization, such organization must provide written documentation that it continues to meet the requirements of this section every 3 years.

(g) *Rescission of ecclesiastical endorsing organization.* VA may rescind an organization's status as an ecclesiastical endorsing organization and refuse to accept ecclesiastical endorsements from such organization if it no longer meets the requirements of paragraph (c) of this section. VA will take the following steps before it rescinds the organization's status:

(1) VA will give the ecclesiastical endorsing organization written notice stating the reasons for the rescission and give the organization 60 days to provide a written reply addressing VA's concerns.

(2) VA will notify the ecclesiastical endorsing organization and all VA chaplains endorsed by the organization in writing of its decision after VA reviews the evidence provided by the organization or after the 60 day time period has expired, whichever comes first.

(3) Ecclesiastical endorsing organizations that are notified that they may no longer endorse individuals for VA chaplaincy because they do not meet the requirements of paragraph (c) of this section must resubmit all of the evidence stated in paragraph (d) of this section in order to be reconsidered as an endorsing organization.

(4) If an ecclesiastical endorsing organization is no longer able to endorse individuals for VA chaplaincy in accordance with this section, all ecclesiastical endorsements issued by that organization are considered to be withdrawn.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0852.)

[82 FR 51772, Nov. 8, 2017]

**Supplement *Highlight* Reference(s):** 112(2).

*Total project cost* means the sum of all costs incurred by a recipient for the acquisition, rehabilitation, and new construction of a facility, or van(s), identified in a grant application.

VA means the Department of Veterans Affairs.

*VA National GPD Program* refers to the VA Homeless Providers Grant and Per Diem Program.

*Veteran* means a person who served in the active military, naval, or air service, regardless of length of service, and who was discharged or released therefrom. Veteran excludes a person who received a dishonorable discharge from the Armed Forces or was discharged or dismissed from the Armed Forces by reason of the sentence of a general court-martial. The length of service restrictions under 38 U.S.C. 5303A do not apply.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064)

[78 FR 12604, Feb. 25, 2013; as amended at 82 FR 51160, Nov. 3, 2017]

**Supplement *Highlights* references:** 75(1), 112(1).

**§61.2 Supportive services—general.**

(a) Recipients must design supportive services. Such services must provide appropriate assistance, or aid participants in obtaining appropriate assistance, to address the needs of homeless veterans. The following are examples of supportive services:

- (1) Outreach activities;
- (2) Providing food, nutritional advice, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;
- (3) Establishing and operating child care services for dependents of homeless veterans;
- (4) Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using supportive housing or services;
- (5) Assistance in obtaining permanent housing;
- (6) Education, employment counseling and assistance, and job training;
- (7) Assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling and assistance, veterans' benefits, medical assistance, and income support assistance; and
- (8) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

(b) Supportive services do not include inpatient acute hospital care.

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

[78 FR 12605, Feb. 25, 2013]

**Supplement *Highlights* reference:** 75(1)

**§61.33 Payment of per diem.**

(a) *General.* VA will pay per diem to the recipient for those homeless veterans:

(1) Who VA referred to the recipient; or

(2) For whom VA authorized the provision of supportive housing or supportive service.

(b) *Rate of payments for individual veterans.* Except as provided in paragraph (b)(3) of this section, the rate of per diem for each veteran in supportive housing shall be the lesser of:

(1) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of local and State governments, from private entities or organizations, and from program participants); or

(2) The current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1).

(3) For a veteran who is placed in housing that will become permanent housing for that veteran upon termination of supportive housing services, the rate of payment shall be the lesser of 150 percent of the current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1) or the daily cost of care estimated pursuant to paragraph (b)(1) of this section.

(c) *Rate of payments for service centers.* The per diem amount for service centers shall be 1/8 of the lesser of the amount in paragraph (b)(1) or (b)(2) of this section, per hour, not to exceed 8 hours in any day.

(d) *Continuing payments.* Recipients may continue to receive per diem only so long as funding is available, they continue to provide the supportive services described in their application, and they continue to meet the applicable ongoing requirements of this part. For non-capital grant recipients of per diem only, funds will be paid to the highest-ranked applicants, within the highest-funding priority category if applicable, in descending order until funds are expended. Generally, payments will continue for the time frame specified in the Notice of Fund Availability. When necessary due to funding limitations, VA will reduce the rate of per diem.

(e) *Retroactive payments.* Per diem may be paid retroactively for services provided not more than 3 days before VA approval is given or where, through no fault of the recipient, per diem payments should have been made but were not made.

(f) *Payments for absent veterans.* VA will pay per diem for up to, and not more than, 72 consecutive hours (scheduled or unscheduled) of absence.

(g) *Supportive housing limitation.* VA will not pay per diem for supportive housing for any homeless veteran who has had three or more episodes (admission and discharge for each episode) of supportive housing services paid for under this part. VA may waive this limitation if the services offered are different from those previously provided and may lead to a successful outcome.

(h) *Veterans receiving supportive housing and services.* VA will not pay per diem for both supportive housing and supportive services provided to the same veteran by the same per diem recipient.

(i) At the time of receipt, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. The report provides a basis for adjustments to the per diem payment under paragraph (b)(1) of this section.

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

[78 FR 12610, Feb. 25, 2013; as amended at 82 FR 51160, Nov. 3, 2017]

**Supplement *Highlights* references:** 75(1), 112(1).

*Next Section is §61.40*

*Notice of Fund Availability* means a Notice of Fund Availability published in the *Federal Register* in accordance with §62.40.

*Occupying permanent housing* means meeting any of the conditions set forth in §62.11.

*Participant* means a very low-income veteran family occupying permanent housing who is receiving supportive services from a grantee.

*Permanent housing* means community-based housing without a designated length of stay where an individual or family has a lease in accord with state and Federal law that is renewable and terminable only for cause. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership.

*Private non-profit organization* means any of the following:

- (1) An incorporated private institution or foundation that:
  - (i) Has no part of the net earnings that inure to the benefit of any member, founder, contributor, or individual;
  - (ii) Has a governing board that is responsible for the operation of the supportive services provided under this part; and
  - (iii) Is approved by VA as to financial responsibility.
- (2) A for-profit limited partnership, the sole general partner of which is an organization meeting the requirements of paragraphs (1)(i), (ii) and (iii) of this definition.
- (3) A corporation wholly owned and controlled by an organization meeting the requirements of paragraphs (1)(i), (ii), and (iii) of this definition.
- (4) A tribally designated housing entity (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)).

*Rapid re-housing* means an intervention designed to help individuals and families quickly exit homelessness and return to permanent housing. Rapid re-housing assistance is offered without preconditions (such as employment, income, absence of criminal record, or sobriety) and the resources and services provided are typically tailored to the unique needs of the household. The three core components of rapid re-housing include housing identification, rent and move-in financial assistance, and rapid re-housing case management and services. While a rapid re-housing program must have all three core components available, it is not required that a single entity provide all three services nor that a household utilize them all.

*State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

*Subcontractor* means any third party contractor, of any tier, working directly for an eligible entity.

*Supportive services* means any of the following provided to address the needs of a participant:

- (1) Outreach services as specified under §62.30.
- (2) Case management services as specified under §62.31.

(3) Assisting participants in obtaining VA benefits as specified under §62.32.

(4) Assisting participants in obtaining and coordinating other public benefits as specified under §62.33.

(5) Other services as specified under §62.34.

*Supportive services grant* means a grant awarded under this part.

*Supportive services grant agreement* means the agreement executed between VA and a grantee as specified under §62.50.

*Suspension* means an action by VA that temporarily withdraws VA funding under a supportive services grant, pending corrective action by the grantee or pending a decision to terminate the supportive services grant by VA. Suspension of a supportive services grant is a separate action from suspension under VA regulations implementing Executive Orders 12549 and 12689, “Debarment and Suspension.”

VA means the Department of Veterans Affairs.

*Very low-income veteran family* means a veteran family whose annual income, as determined in accordance with 24 CFR 5.609, does not exceed 50 percent of the median income for an area or community, as will be adjusted by VA based on family size and as may be adjusted and announced by VA in the Notice of Fund Availability based on residency within an area with unusually high or low construction costs, fair market rents (as determined under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)), or family incomes. Unless VA announces otherwise in the Notice of Fund Availability, the median income for an area or community will be determined using the income limits most recently published by the Department of Housing and Urban Development for programs under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

*Veteran* means a person who served in the active military, naval, or air service, regardless of length of service, and who was discharged or released therefrom. Veteran excludes a person who received a dishonorable discharge from the Armed Forces or was discharged or dismissed from the Armed Forces by reason of the sentence of a general court-martial. The length of service restrictions under 38 U.S.C. 5303A do not apply.

*Veteran family* means a veteran who is a single person or a family in which the head of household, or the spouse of the head of household, is a veteran.

*Withholding* means that payment of a supportive services grant will not be paid until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the supportive services grant. Costs for supportive services provided by grantees under the supportive services grant from the date of the withholding letter would be reimbursed only if the grantee is able to submit the documentation or actions that the deficiency has been corrected to the satisfaction of VA. (Authority: 38 U.S.C. 501, 2044)

[75 FR 68979, Nov. 10, 2010; as amended at 80 FR 9610, Feb. 24, 2015; 82 FR 51160, Nov. 3, 2017]

**Supplement *Highlights* references:** 58(1), 91(1), 112(1).

*Next Section is §62.10*