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Medical

Book I

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

Supplement No. 114

Covering period of *Federal Register* issues
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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. 114

5 April 2018

Covering the period of Federal Register issues
through April 1, 2018

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FILING INSTRUCTIONS

**Book I, Supplement No. 114
April 5, 2018**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
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17.INDEX-1 to 17.INDEX-6	17.INDEX-1 to 17.INDEX-6	Part 17 Index
17.380-2 to 17.400-1	17.380-2 to 17.400-1	Adds §17.390

**Be sure to complete the
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HIGHLIGHTS

Book I, Supplement No. 114 April 5, 2018

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 March 2018, the VA published an interim final rule effective that same day, to provide for reimbursement of qualifying adoption expenses incurred by a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. Under the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, VA may use funds appropriated or otherwise made available to VA for the “Medical Services” account to provide adoption reimbursement to these veterans. Under the law, reimbursement may be for the adoption-related expenses for an adoption that is finalized after the date of the enactment of this Act under the same terms as apply under the adoption reimbursement program of the Department of Defense (DoD), as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in such instruction. This rulemaking implements the new adoption reimbursement benefit for covered veterans. Change:

- Added §17.390.

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

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

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

Sections 17.380, 17.390 and 17.412 are also issued under sec. 260, Pub. L. 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, Pub. L. 114-2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Pub. L. 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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[Reserved]

§ 17.390 Reimbursement for qualifying adoption expenses incurred by certain veterans.

(a) *General.* A covered veteran may request reimbursement for qualifying adoption expenses incurred by the veteran in the adoption of a child under 18 years of age.

(1) An adoption for which expenses may be reimbursed under this section includes an adoption by a married or single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(2) Reimbursement for qualifying adoption expenses may be requested only for an adoption that became final after September 29, 2016, and must be requested:

(i) No later than 2 years after the adoption is final; or,

(ii) In the case of adoption of a foreign child, no later than 2 years from the date the certificate of United States citizenship is issued.

(3) In the case of adoption of a foreign child, reimbursement for qualifying adoption expenses may be requested only after United States citizenship has been granted to the adopted child.

(4) Reimbursement for qualifying adoption expenses may not be made under this section for any expense paid to or for a covered veteran under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(b) *Limitations.*

(1) Reimbursement per adopted child. No more than \$2,000 may be reimbursed under this section to a covered veteran, or to two covered veterans who are spouses of each other, for expenses incurred in the adoption of a child. In the case of two married covered veterans, only one spouse may claim reimbursement for any one adoption.

(2) Maximum reimbursement in any calendar year. No more than \$5,000 may be paid under this section to a covered veteran in any calendar year. In the case of two married covered veterans, the couple is limited to a maximum of \$5,000 per calendar year.

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

(1) “Covered veteran” means a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment.

(2) “Qualifying adoption expenses” means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a qualified adoption agency. Such term does not include any expense incurred:

(i) For items such as clothing, bedding, toys and books;

(ii) For travel; or

(iii) In connection with an adoption arranged in violation of Federal, State, or local law.

(3) “Reasonable and necessary expenses” include:

(i) Public and private agency fees, including adoption fees charged by an agency in a foreign country;

(ii) Placement fees, including fees charged to adoptive parents for counseling;

(iii) Legal fees (including court costs) or notary expenses;

(iv) Medical expenses, including hospital expenses of the biological mother and medical care of the child to be adopted; and

(v) Temporary foster care charges when payment of such charges is required before the adoptive child's placement.

(4) “Qualified adoption agency” means any of the following:

(i) A State or local government agency which has responsibility under State or local law for child placement through adoption.

(ii) A nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.

(iii) Any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law.

(iv) A foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which:

(A) The adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or

(B) A certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).

(d) *Applying for reimbursement of qualifying adoption expenses.* An application for reimbursement must be submitted on a form prescribed for such purpose by VA. Information and documentation must include:

(1) A copy of the final adoption decree, certificate or court order granting the adoption. For U.S. adoptions, the court order must be signed by a judge unless either State law or local court rules authorize that the adoption order may be signed by a commissioner, magistrate or court referee. The covered veteran must submit a full English translation of any foreign language document, to include the translator's certification that he or she is competent to translate the foreign language to English and that his or her translation is complete and correct.

(2) For foreign adoptions, proof of U.S. citizenship of the child, including any of the following:

- (i) A copy of Certificate of Citizenship.
- (ii) A copy of a U.S. court order that recognizes the foreign adoption, or documents the re-adopting of the child in the United States.
- (iii) A letter from the United States Citizenship and Immigration Services, which states the status of the child's adoption.
- (iv) A copy of the child's U.S. passport (page with personal information only).

(3) For U.S. adoptions, documentation to show that the adoption was handled by a qualified adoption agency or other source authorized by a State or local law to provide adoption placement. Acceptable forms of proof that the adoption was handled by a qualified adoption agency include:

- (i) A copy of placement agreement from the adoption agency showing the agreement entered into between the member and the agency.
- (ii) A letter from the adoption agency stating that the agency arranged the adoption and that the agency is a licensed child placing agency in the United States.
- (iii) Receipts for payment to the adoption agency, as well as proof, (e.g., a copy of the agency's web page), of the agency's status as a for-profit or non-profit licensed child placing agency.

(4) For foreign adoptions, documentation to show that the adoption was handled by a qualified adoption agency. In addition to the forms of acceptable proof that the adoption was handled by a qualified adoption agency listed in paragraph (d)(3) of this section, the documentation must also include:

- (i) A document that describes the mission of the foreign agency and its authority from the foreign government to place children for adoption; and
- (ii) A placement agreement from the adoption agency or letter from the adoption agency stating the specific services it provided for the adoption.

(5) Documentation to substantiate reasonable and necessary expenses paid by the covered veteran. Acceptable forms of documentation include receipts, cancelled checks, or a letter from the adoption agency showing the amount paid by the member. Receipts from a foreign entity should include the U.S. currency equivalency. Reconstruction of expense records is permissible when the original records are unavailable and the covered veteran submits a notarized affidavit stating the costs.

(6) Checking or savings account information to facilitate VA providing reimbursement to the covered veteran under this section.

(e) *Failure to establish eligibility.* If documents submitted by a covered veteran in support of an application for reimbursement do not establish eligibility for reimbursement or justify claimed expenses, VA will retain the application and advise the covered veteran of additional documentation needed. All requested documentation must be submitted to VA within 90 calendar days of VA request.

(f) *Authority.* Authority to provide reimbursement for qualifying adoption expenses incurred by a covered veteran in the adoption of a child under 18 years of age expires September 30, 2018.

(Approval for information collection under this section has been requested from the Office of Management and Budget)

[83 FR 9212, March 5, 2018]

Supplement *Highlights* reference: 114(1).

§ 17.400 Hospital care and medical services for Camp Lejeune veterans.

(a) *General.* In accordance with this section, VA will provide hospital care and medical services to Camp Lejeune veterans. Camp Lejeune veterans will be enrolled pursuant to §17.36(b)(6).

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

Camp Lejeune means any area within the borders of the U.S. Marine Corps Base Camp Lejeune or Marine Corps Air Station New River, North Carolina.

Camp Lejeune veteran means any veteran who served at Camp Lejeune on active duty, as defined in 38 U.S.C. 101(21), in the Armed Forces for at least 30 (consecutive or nonconsecutive) days during the period beginning on August 1, 1953, and ending on December 31, 1987. A veteran served at Camp Lejeune if he or she was stationed at Camp Lejeune, or traveled to Camp Lejeune as part of his or her professional duties.

Covered illness or condition means any of the following illnesses and conditions:

- (i) Esophageal cancer;
- (ii) Lung cancer;
- (iii) Breast cancer;
- (iv) Bladder cancer;
- (v) Kidney cancer;
- (vi) Leukemia;
- (vii) Multiple myeloma;
- (viii) Myelodysplastic syndromes;
- (ix) Renal toxicity;
- (x) Hepatic steatosis;
- (xi) Female infertility;
- (xii) Miscarriage;
- (xiii) Scleroderma;
- (xiv) Neurobehavioral effects; and
- (xv) Non-Hodgkin's lymphoma.