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Medical

Book I

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

Supplement No. 118

Covering period of *Federal Register* issues
through November 1, 2018

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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. 118

5 November 2018

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

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,
it is important that you follow these simple procedures:**

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.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
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To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book I, Supplement No. 118
November 5, 2018**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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**Do not file this supplement until you confirm that
all prior supplements have been filed**

17.30-1 to 17.31-1	17.30-1 to 17.31-1	§17.30
17.47-1 to 17.47-6	17-47-1 to 17.47-6	§17.47

**Be sure to complete the
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HIGHLIGHTS

Book I, Supplement No. 118 November 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 25 September 2018, the VA published a final rule effective 25 October 2018, to adopt as final, with no changes, a proposed rule amending the definition of domiciliary care to encompass VA's Mental Health Residential Rehabilitation Treatment Program (MH RRTP). This rule aligns regulations with VA's administrative decision in 2005 to designate MH RRTP as a type of domiciliary care. We also proposed clarifying that domiciliary care provides temporary, not permanent, residence to affected veterans. Changes:

- In §17.30, revised paragraph (b),
- In §17.47, revised paragraph (c).

❧

Part 17 — Medical

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

Definitions and Active Duty

§17.30 Definitions.

When used in Department of Veterans Affairs medical regulations, each of the following terms shall have the meaning ascribed to it in this section:

(a) *Medical services.* The term *medical services* includes, in addition to medical examination, treatment, and rehabilitative services:

(1) Surgical services, dental services and appliances as authorized in §§17.160 through 17.166, optometric and podiatric services, (in the case of a person otherwise receiving care or services under this chapter) the preventive health care services set forth in 38 U.S.C. 1701(9), noninstitutional extended care, wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary. (Authority: 38 U.S.C. 1701(6)(A)(i))

(2) Consultation, professional counseling, marriage and family counseling, training, and mental health services for the members of the immediate family or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, as necessary in connection with the veteran's treatment.

(3) Transportation and incidental expenses for any person entitled to such benefits under the provisions of §70.10 of this chapter. (Authority: 38 U.S.C. 1701(6))

(b) *Domiciliary care.* The term domiciliary care--

(1) Means the furnishing of:

(i) A temporary home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services; or

(ii) A day hospital program consisting of intensive supervised rehabilitation and treatment provided in a therapeutic residential setting for residents with mental health or substance use disorders, and co-occurring medical or psychosocial needs such as homelessness and unemployment.

(2) Includes travel and incidental expenses pursuant to §70.10. (Authority: 38 U.S.C. 1701(4))

[23 FR 6498, Aug. 22, 1958, as amended at 24 FR 8326, Oct. 14, 1959; 30 FR 1787, Feb. 9, 1965; 32 FR 6841, Mar. 4, 1967; 32 FR 13813, Oct. 4, 1967; 33 FR 5298, Apr. 3, 1968; 33 FR 19009, Dec. 20, 1968; 34 FR 9339, June 13, 1969; 36 FR 4782, Mar. 12, 1971; 45 FR 6934, Jan. 31, 1980; 47 FR 58246, Dec. 30, 1982; 49 FR 50029, Dec. 26, 1984; 51 FR 25264, July 10, 1986; 54 FR 14648, Apr. 12, 1989; 61 FR 21965, 21966, May 13, 1996; 62 FR 17072, Apr. 9, 1997; 75 FR 54030, Sept. 3, 2010; 79 FR 54615, Sep. 12, 2014; 83 FR 48382, Sept. 25, 2018]

Supplement *Highlights* references: 57(1), 86(1), 118(1).

§17.31 Duty periods defined.

Definitions of duty periods applicable to eligibility for medical benefits are as follows:

(a) *Active military, naval, or air service* includes:

(1) Active duty.

(2) Any period of active duty for training during which the individual was disabled from a disease or injury incurred or aggravated in line of duty.

(3) Any period of inactive duty training during which the individual was disabled from an injury incurred or aggravated in line of duty.

(4) Any period of inactive duty training during which the individual was disabled from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during such period of inactive duty training.

(b) *Active duty* means:

(1) Full-time duty in the Armed Forces, other than active duty for training.

(2) Full-time duty, other than for training purposes, as a commissioned officer of the Regular or Reserve Corps of the Public Health Service during the following dates:

(i) On or after July 29, 1945;

(ii) Before July 29, 1945, under circumstances affording entitlement to full military benefits; or

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organizations, the Coast and Geodetic Survey or the Environmental Science Services Administration, during the following dates:

(i) On or after July 29, 1945;

(ii) Before July 29, 1945, under the following circumstances:

(A) While on transfer to one of the Armed Forces;

(B) While, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard; or

(C) In the Philippine Islands on December 7, 1941, and continuously in such islands thereafter; or

(4) Service as a cadet at the U.S. Military, Air Force, or Coast Guard Academy, or as a midshipman at the U.S. Naval Academy.

§17.47 Considerations applicable in determining eligibility for hospital care, medical services, nursing home care or domiciliary care.

(a) (1) For applicants discharged or released for disability incurred or aggravated in line of duty and who are not in receipt of compensation for service-connected or service-aggravated disability, the official records of the Armed Forces relative to findings of line of duty for its purposes will be accepted in determining eligibility for hospital care or medical services. Where the official records of the Armed Forces show a finding of disability not incurred or aggravated in line of duty and evidence is submitted to the Department of Veterans Affairs which permits of a different finding, the decision of the Armed Forces will not be binding upon the Department of Veterans Affairs, which will be free to make its own determination of line of duty incurrence or aggravation upon evidence so submitted. It will be incumbent upon the applicant to present controverting evidence and, until such evidence is presented and a determination favorable to the applicant is made by the Department of Veterans Affairs, the finding of the Armed Forces will control and hospital care or medical services will not be authorized. Such controverting evidence, when received from an applicant, will be referred to the adjudicating agency which would have jurisdiction if the applicant was filing claim for pension or disability compensation, and the determination of such agency as to line of duty, which is promptly to be communicated to the head of the field facility receiving the application for hospital care or medical services, will govern the facility Director's disapproval or approval of hospital care or medical services, other eligibility requirements having been met. Where the official records of the Armed Forces show that the disability for which a veteran was discharged or released from the Armed Forces under other than dishonorable conditions was incurred or aggravated in the line of duty, such showing will be accepted for the purpose of determining his or her eligibility for hospital care or medical services, notwithstanding the fact that the Department of Veterans Affairs has made a determination in connection with a claim for monetary benefits that the disability was incurred or aggravated not in line of duty.

(2) In those exceptional cases where the official records of the Armed Forces show discharge or release under other than dishonorable conditions because of expiration of period of enlistment or any other reason except disability, but also show a disability incurred or aggravated in line of duty during the said enlistment; and the disability so recorded is considered in medical judgment to be or to have been of such character, duration, and degree as to have justified a discharge or release for disability had the period of enlistment not expired or other reason for discharge or release been given, the Under Secretary for Health, upon consideration of a clear, full statement of circumstances, is authorized to approve hospital care or medical services, provided other eligibility requirements are met. A typical case of this kind will be one where the applicant was under treatment for the said disability recorded during his or her service at the time discharge or release was given for the reason other than disability.

(b) (1) Under 38 U.S.C. 1710(a)(1), veterans who are receiving disability compensation awarded under §3.362 of this chapter, where a disease, injury or the aggravation of an existing disease or injury occurs as a result of VA examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. ch. 31, under any law administered by VA and not the result of his/her own willful misconduct. Treatment may be provided for the disability for which the compensation is being paid or for any other disability. Treatment under the authority of 38 U.S.C. 1710(a)(1) may not be authorized during any period when disability compensation under §3.362 of this title is not being paid because of the provision of §3.362(a)(2) except to the extent continuing eligibility for

such treatment is provided for in the judgment for settlement described in §3.362(a)(2) of this title. (Authority: 38 U.S.C. 1710(a); sec. 701, Pub. L. 98-160, Pub. L. 99-272)

(2) For purposes of eligibility for domiciliary care, the phrase *no adequate means of support* refers to an applicant for domiciliary care whose annual income exceeds the annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503, but who is able to demonstrate to competent VA medical authority, on the basis of objective evidence, that deficits in health and or functional status render the applicant incapable of pursuing substantially gainful employment, as determined by the Chief of Staff, and who is otherwise without the means to provide adequately for self, or be provided for in the community. (Authority: 38 U.S.C. 1710(a); sec. 701, Pub. L. 98-160, Pub. L. 99-272)

(c) A *disability, disease, or defect* will comprehend any acute, subacute, or chronic disease (or a general medical, tuberculous, or neuropsychiatric type) of any acute, subacute, or chronic surgical condition susceptible of cure or decided improvement by hospital care or medical services or any condition which does not require hospital care or medical services for an acute or chronic condition but requires domiciliary care. Domiciliary care, as the term implies, is the provision of a temporary home, with such ambulant medical care as is needed. To be provided with domiciliary care, the applicant must consistently have a disability, disease, or defect which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period. (Authority: 38 U.S.C. 1701, 1710)

(d) (1) For purposes of determining eligibility for hospital care, medical services, or nursing home care under §17.47(a), a veteran will be determined unable to defray the expenses of necessary care if the veteran agrees to provide verifiable evidence, as determined by the Secretary, that:

(i) The veteran is eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act; (Authority: 42 U.S.C. 1396, *et seq.*)

(ii) The veteran is in receipt of pension under 38 U.S.C. 1521; or

(iii) The veteran's attributable income does not exceed \$15,000 if the veteran has no dependents, \$18,000 if the veteran has one dependent, plus \$1,000 for each additional dependent. (Authority: 38 U.S.C. 1722; sec. 19011, Pub. L. 99-272)

(2) For purposes of determining eligibility for hospital care, medical services, or nursing home care under §17.47(c), a veteran will be determined eligible for necessary care if the veteran agrees to provide verifiable evidence, as determined by the Secretary, that: The veteran's attributable income does not exceed \$20,000 if the veteran has no dependents, \$25,000 if the veteran has one dependent, plus \$1,000 for each additional dependent. (Authority: 38 U.S.C. 1722; sec. 19011, Pub. L. 99-272)

(3) Effective on January 1 of each year after calendar year 1986, the amounts set forth in paragraph (d)(1) and (2) of this section shall be increased by the percentage by which the maximum rates of pension were increased under 38 U.S.C. 5312(a), during the preceding year. (Authority: 38 U.S.C. 1722; sec. 19011, Pub. L. 99-272)

(4) Determinations with respect to attributable income made under paragraph (d)(1) and (2) of this section, shall be made in the same manner, including the same sources of income and exclusions from income, as determinations with respect to income are made for determining eligibility for pension under §§3.271 and 3.272 of this title. The term attributable income means income of a veteran for the calendar year preceding application for care, determined in the same manner as the manner in which a determination is made of the total amount of income by which the rate of pension for such veteran under 38 U.S.C. 1521 would be reduced if such veteran were eligible for pension under that section. (Authority: 38 U.S.C. 1722; sec. 19011, Pub. L. 99-272)

(5) Notwithstanding the attributable income of a veteran, VA may determine that such veteran is not eligible under paragraph (d)(1) and (2) of this section if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some part of the corpus of the estate of the veteran be consumed for the veteran's maintenance. The corpus of the estate of a veteran shall be determined in the same manner as determinations are made with respect to the determinations of eligibility for pension under §3.275 of this chapter. The term *corpus of the estate of the veteran* includes the corpus of the estates of the veteran's spouse and dependent children, if any. (Authority: 38 U.S.C. 1722; sec. 19011, Pub. L. 99-272)

(6) In order to avoid hardship VA may determine that a veteran is eligible for care notwithstanding that the veteran does not meet the income requirements established in paragraph (d)(1)(iii) or (d)(2) of this section, if projections of the veteran's income for the year following application for care are substantially below the income requirements established in paragraph (d)(1)(iii) or (d)(2) of this section. (Authority: 38 U.S.C. 1722; sec. 19011, Pub. L. 99-272)

(e) (1) If VA determines that an individual was incorrectly charged a copayment, VA will refund the amount of any copayment actually paid by that individual. (Authority: 38 U.S.C. 501; sec. 19011, Pub. L. 99-272)

(2) In the event a veteran provided inaccurate information on an application and is incorrectly deemed eligible for care under 38 U.S.C. 1710(a)(1) or (a)(2) rather than 38 U.S.C. 1710(a)(3), VA shall retroactively bill the veteran for the applicable copayment. (Authority: 38 U.S.C. 501 and 1710; sec. 19011, Pub. L. 99-272)

(f) If a veteran who receives hospital care, medical services, nursing home care, or outpatient care under 38 U.S.C. 1710(a)(3) by virtue of the veteran's eligibility for hospital care and medical services under 38 U.S.C. 1710(a), fails to pay to the United States the amounts agreed to under those sections shall be grounds for determining, in accordance with guidelines promulgated by the Under Secretary for Health, that the veteran is not eligible to receive further care under those sections until such amounts have been paid in full. (Authority: 38 U.S.C. 1710, 1721; sec. 19011, Pub. L. 99-272)

(g) (1) Persons hospitalized and/or receiving medical services who have no service-connected disabilities pursuant to §17.47, and/or persons receiving outpatient medical services pursuant to §17.93 who have no service-connected disabilities who it is believed may be eligible for hospital care and/or medical services, or reimbursement for the expenses of care or services for all or part of the cost thereof by reason of the following:

(i) Membership in a union, fraternal or other organization, or

(ii) Coverage under an insurance policy, or contract, medical, or hospital service agreement, membership, or subscription contract or similar arrangement under which health services for individuals are provided or the expenses of such services are paid, will not be furnished hospital care or medical services without charge therefore to the extent of the amount for which such parties referred to in paragraphs (g)(1)(i) or (g)(1)(ii) of this section, are, will become, or may be liable. Persons believed entitled to care under any of the plans discussed above will be required to provide such information as the Secretary may require. Provisions of this paragraph are effective April 7, 1986, except in the case of a health care policy or contract that was entered into before that date, the effective date shall be the day after the plan was modified or renewed or on which there was any change in premium or coverage and will apply only to care and services provided by VA after the date the plan was modified, renewed, or on which there was any change in premium or coverage. (Authority: 38 U.S.C. 1729; sec. 19013, Pub. L. 99-272)

(2) Persons hospitalized and/or receiving medical services for the treatment of nonservice-connected disabilities pursuant to §17.47, or persons receiving outpatient medical services pursuant to §17.93, and who it is believed may be entitled to hospital care and/or medical services or to reimbursement for all or part of the cost thereof from any one or more of the following parties:

(i) *Workers' Compensation* or employer's liability statutes, State or Federal;

(ii) By reason of statutory or other relationships with third parties, including those liable for damages because of negligence or other legal wrong;

(iii) By reason of a statute in a State, or political subdivision of a State;

(A) Which requires automobile accident reparations or;

(B) Which provides compensation or payment for medical care to victims suffering personal injuries as the result of a crime of personal violence;

(iv) Right to maintenance and cure in admiralty;

will not be furnished hospital care or medical services without charge therefore to the extent of the amount for which such parties are, will become, or may be liable. Persons believed entitled to care under circumstances described in paragraph (g)(2)(ii) of this section will be required to complete such forms as the Secretary may require, such as a power of attorney and assignment. Notice of this assignment will be mailed promptly to the party or parties believed to be liable. When the amount of charges is ascertained, a bill therefore will be mailed to such party or parties. Persons believed entitled to care under circumstances described in paragraph (g)(2)(i) or

(g)(2)(iii) of this section will be required to complete such forms as the Secretary may require .
(Authority: 38 U.S.C. 1729, sec. 19013, Pub. L. 99-272)

(h) Within the limits of Department of Veterans Affairs facilities, any veteran who is receiving nursing home care in a hospital under the direct jurisdiction of the Department of Veterans Affairs, may be furnished medical services to correct or treat any nonservice-connected disability of such veteran, in addition to treatment incident to the disability for which the veteran is hospitalized, if the veteran is willing, and such services are reasonably necessary to protect the health of such veteran.

(i) *Participating in a rehabilitation program under 38 U.S.C. chapter 31* refers to any veteran

(1) Who is eligible for and entitled to participate in a rehabilitation program under chapter 31.

- (i) Who is in an extended evaluation period for the purpose of determining feasibility, or
- (ii) For whom a rehabilitation objective has been selected, or
- (iii) Who is pursuing a rehabilitation program, or
- (iv) Who is pursuing a program of independent living, or
- (v) Who is being provided employment assistance under 38 U.S.C. chapter 31, and

(2) Who is medically determined to be in need of hospital care or medical services (including dental) for any of the following reasons:

- (i) Make possible his or her entrance into a rehabilitation program; or
- (ii) Achieve the goals of the veteran's vocational rehabilitation program;
or
- (iii) Prevent interruption of a rehabilitation program; or
- (iv) Hasten the return to a rehabilitation program of a veteran in interrupted or leave status; or
- (v) Hasten the return to a rehabilitation program of a veteran placed in discontinued status because of illness, injury or a dental condition;
or
- (vi) Secure and adjust to employment during the period of employment assistance; or
- (vii) To enable the veteran to achieve maximum independence in daily living. (Authority: 38 U.S.C. 3104(a)(9); Pub. L. 96-466, sec. 101(a))

(j) Veterans eligible for treatment under chapter 17 of 38 U.S.C. who are alcohol or drug abusers or who are infected with the human immunodeficiency virus (HIV) shall not be discriminated against in admission or treatment by any Department of Veterans Affairs health care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection. This does not preclude the rule of clinical judgment in determining appropriate treatment which takes into account the patient's immune status and/or the infectivity of the HIV or other pathogens (such as tuberculosis, cytomegalovirus, cryptosporidiosis, etc.). Hospital Directors are responsible for assuring that admission criteria of all programs in the medical center do not discriminate solely on the basis of alcohol, drug abuse or infection with human immunodeficiency virus. Quality Assurance Programs should include indicators and monitors for nondiscrimination. (Authority: 38 U.S.C. 7333)

(k) In seeking medical care from VA under 38 U.S.C. 1710 or 1712, a veteran shall furnish such information and evidence as the Secretary may require to establish eligibility. (Authority: 38 U.S.C. 1722; sec. 19011, Pub. L. 99-272)

[32 FR 13813, Oct. 4, 1967, as amended at 64 FR 54218, Oct. 6, 1999; 73 FR 20532, Apr. 16, 2008; 73 FR 65260, Nov. 3, 2008; 79 FR 54615, Sep. 12, 2014; 79 FR 68131, Nov. 14, 2014; 83 FR 48382, Sept. 25, 2018]

Editorial Note: For earlier *Federal Register* citations affecting §17.47, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Supplement *Highlights* references: 37(1), 40(1), 86(1), 88(1), 118(1).