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Title 38, Parts 17, 46, 47, 51–53,  
58–62, 70, and 200

*Medical*

**Veterans Benefits Administration**

Supplement No. 61

Covering period of *Federal Register* issues  
through April 5, 2011

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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, 58–62, 70, and 200

*Medical*

## Veterans Benefits Administration

Supplement No. 61

5 April 2011

Covering the period of Federal Register issues  
through April 5, 2011

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# FILING INSTRUCTIONS

## Book I, Supplement No. 61 April 5, 2011

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I-9 to I-26	I-9 to I-26	Book I Contents
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17.INDEX-1 to 17.INDEX-10	17.INDEX-1 to 17.INDEX-10	Part 17 Index
(none)	17.1-1 to 17.1-2	§17.1
<b>Add page immediately following 17.INDEX-10</b>		
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17.62-1 to 17.64-1	17.62-1 to 17.64-1	§17.63
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59.123-1 to 59.140-1	59.123-1 to 59.140-1	§59.130

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# HIGHLIGHTS

## Book I, Supplement No. 61 April 5, 2011

**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 24 February 2011, the VA published a final rule, effective 28 March 2011, to amend the VA regulations concerning community residential care facilities, contract facilities for certain outpatient and residential services, and State home facilities. Changes:

- Add §17.1;
- In §17.63, revised paragraphs (a)(2) and added paragraph (a)(4);
- In §17.81, revised paragraph (a)(1)(i), removed paragraphs (a)(1)(v) to (a)(1)(viii), redesignated paragraph (a)(1)(ix) as (a)(1)(vi), and added paragraph (a)(1)(v);
- In §17.82 revised paragraphs (a)(1)(i) and (iv), removed paragraphs (a)(1)(v) and (a)(1)(vi), and redesignated paragraph (a)(1)(vii) as (a)(1)(v); and
- Revised §59.130.

2. On 2 March 2011, the VA published a final rule, effective 1 April 2011, to amend the VA medical regulations to authorize VA to provide hospital and outpatient care to a veteran in a program that provides temporary housing upon release from incarceration in a prison or jail. Change:

- In §17.38, revised paragraph (c)(5).

3. On 2 March 2011, the VA published a final rule, effective 1 April 2011, to amend the VA regulations governing the physical environment of State Home facilities. Change:

- Revised §51.200.



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

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## Part 17 — Medical

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

### Updating Fire Safety Standards

#### § 17.1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce an edition of a publication other than that specified in this section, VA will provide notice of the change in a notice of proposed rulemaking in the *Federal Register* and the material will be made available to the public. All approved materials are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420, or at the National Archives and Records Administration (NARA). For information on the availability of approved materials at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)

(b) The following materials are incorporated by reference into this part.

(1) NFPA 10, Standard for Portable Fire Extinguishers (2010 edition), Incorporation by Reference (IBR) approved for §§ 17.63 and 17.81.

(2) NFPA 101, Life Safety Code (2009 edition), IBR approved for §§ 17.63, 17.81, 17.82.

(3) NFPA 101A, Guide on Alternative Approaches to Life Safety (2010 edition), IBR approved for § 17.63. (Authority: 5 U.S.C. 552(a), 38 U.S.C. 501, 1721.)

[76 FR 10248, Feb. 24, 2011]

**Supplement *Highlights* references:** 61(1).

*Next Section is §17.30*

**Reserved**

**§17.38 Medical benefits package.**

(a) Subject to paragraphs (b) and (c) of this section, the following hospital, outpatient, and extended care services constitute the “medical benefits package” (basic care and preventive care):

(1) *Basic care.*

- (i) Outpatient medical, surgical, and mental healthcare, including care for substance abuse.
- (ii) Inpatient hospital, medical, surgical, and mental healthcare, including care for substance abuse.
- (iii) Prescription drugs, including over-the-counter drugs and medical and surgical supplies available under the VA national formulary system.
- (iv) Emergency care in VA facilities; and emergency care in non-VA facilities in accordance with sharing contracts or if authorized by §§17.52(a)(3), 17.53, 17.54, 17.120–132.
- (v) Bereavement counseling as authorized in §17.98.
- (vi) Comprehensive rehabilitative services other than vocational services provided under 38 U.S.C. chapter 31.
- (vii) 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 and appropriate, in connection with the veteran’s treatment.
- (viii) Durable medical equipment and prosthetic and orthotic devices, including eyeglasses and hearing aids as authorized under §17.149.
- (ix) Home health services authorized under 38 U.S.C. 1717 and 1720C.
- (x) Reconstructive (plastic) surgery required as a result of disease or trauma, but not including cosmetic surgery that is not medically necessary.
- (xi) (A) Hospice care, palliative care, and institutional respite care;  
and  
(B) Noninstitutional extended care services, including but not limited to noninstitutional geriatric evaluation,

noninstitutional adult day health care, and noninstitutional respite care.

- (xii) Payment of beneficiary travel as authorized under 38 CFR part 70.
- (xiii) Pregnancy and delivery services, to the extent authorized by law.
- (xiv) Completion of forms (e.g., Family Medical Leave forms, life insurance applications, Department of Education forms for loan repayment exemptions based on disability, non-VA disability program forms) by healthcare professionals based on an examination or knowledge of the veteran's condition, but not including the completion of forms for examinations if a third party customarily will pay health care practitioners for the examination but will not pay VA.

(2) *Preventive care, as defined in 38 U.S.C. 1701(9), which includes:*

- (i) Periodic medical exams.
- (ii) Health education, including nutrition education.
- (iii) Maintenance of drug-use profiles, drug monitoring, and drug use education.
- (iv) Mental health and substance abuse preventive services.
- (v) Immunizations against infectious disease.
- (vi) Prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature.
- (vii) Genetic counseling concerning inheritance of genetically determined diseases.
- (viii) Routine vision testing and eye-care services.
- (ix) Periodic reexamination of members of high-risk groups for selected diseases and for functional decline of sensory organs, and the services to treat these diseases and functional declines.

(b) *Provision of the “medical benefits package”.* Care referred to in the “medical benefits package” will be provided to individuals only if it is determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.

(1) *Promote health.* Care is deemed to promote health if the care will enhance the quality of life or daily functional level of the veteran, identify a predisposition for development of a condition or early onset of disease which can be partly or totally ameliorated by monitoring or early diagnosis and treatment, and prevent future disease.

(2) *Preserve health.* Care is deemed to preserve health if the care will maintain the current quality of life or daily functional level of the veteran, prevent the progression of disease, cure disease, or extend life span.

(3) *Restoring health.* Care is deemed to restore health if the care will restore the quality of life or daily functional level that has been lost due to illness or injury.

(c) In addition to the care specifically excluded from the “medical benefits package” under paragraphs (a) and (b) of this section, the “medical benefits package” does not include the following:

(1) Abortions and abortion counseling.

(2) In vitro fertilization.

(3) Drugs, biologicals, and medical devices not approved by the Food and Drug Administration unless the treating medical facility is conducting formal clinical trials under an Investigational Device Exemption (IDE) or an Investigational New Drug (IND) application, or the drugs, biologicals, or medical devices are prescribed under a compassionate use exemption.

(4) Gender alterations.

(5) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services. This exclusion does not apply to veterans who are released from incarceration in a prison or jail into a temporary housing program (such as a community residential re-entry center or halfway house).

(6) Membership in spas and health clubs. (Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782)

[64 FR 54217, Oct. 6, 1999, as amended at 67 FR 35039, May 17, 2002; 73 FR 36798, June 30, 2008; 75 FR 54030, Sept. 3, 2010; 76 FR 11339, Mar. 2, 2011]

**Supplement *Highlights* references:** 37(1). Book I, 9(1), 41(1), 57(1), 61(2).

**§17.39 Certain Filipino veterans.**

(a) Any Filipino Commonwealth Army veteran, including one who was recognized by authority of the U.S. Army as belonging to organized Filipino guerilla forces, or any new Philippine Scout is eligible for hospital care, nursing home care, and outpatient medical services within the United States in the same manner and subject to the same terms and conditions as apply to U.S. veterans, if such veteran or scout resides in the United States and is a citizen or lawfully admitted to the United States for permanent residence. For purposes of these VA health care benefits, the standards described in 38 CFR 3.42(c) will be accepted as proof of U.S. citizenship or lawful permanent residence.

(b) Commonwealth Army Veterans, including those who were recognized by authority of the U.S. Army as belonging to organized Filipino guerilla forces, and new Philippine Scouts are not eligible for VA health care benefits if they do not meet the residency and citizenship requirements described in §3.42(c). (Authority: 38 U.S.C. 501, 1734 )

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0091.)

[67 FR 41179, June 17, 2002, as amended at 71 FR 6680, Feb. 9, 2006]

**Supplement *Highlights* references:** Book I, 10(1), 32(1).

**§17.62 Definitions.**

For the purpose of §§17.61 through 17.72:

(a) The term *community residential care* means the monitoring, supervision, and assistance, in accordance with a statement of needed care, of the daily living activities of referred veterans in an approved home in the community by the facility's provider.

(b) The term *daily living activities* includes:

- (1) Walking;
- (2) Bathing, shaving, brushing teeth, combing hair;
- (3) Dressing;
- (4) Eating;
- (5) Getting in or getting out of bed;
- (6) Laundry;
- (7) Cleaning room;
- (8) Managing money;
- (9) Shopping;
- (10) Using public transportation;
- (11) Writing letters;
- (12) Making telephone calls;
- (13) Obtaining appointments;
- (14) Self-administration of medications;
- (15) Recreational and leisure activities; and
- (16) Other similar activities.

(c) The term *paper hearing* means review of the written evidence record by the hearing official.

(d) The term *oral hearing* means the in person testimony of representatives of a community residential care facility and of VA before the hearing official and the review of the written evidence of record by that official.

(e) The term *approving official* means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(f) The term *hearing official* means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility. (Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15 1989. Redesignated and amended at 61 FR 21965, 21966, May 13, 1996; 74 FR 63308, Dec. 3, 2009]

**Supplement *Highlights* reference: 52(1)**

**§17.63 Approval of community residential care facilities.**

The approving official may approve a community residential care facility, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, if that facility meets the following standards:

(a) *Health and safety standards.* The facility must:

(1) Meet all State and local regulations including construction, maintenance, and sanitation regulations;

(2) Meet the requirements in the applicable provisions of NFPA 101 and NFPA 101A (incorporated by reference, *see* §17.1) and the other publications referenced in those provisions. The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director;

(3) Have safe and functioning systems for heating and/or cooling, as needed (a heating or cooling system is deemed to be needed if VA determines that, in the county, parish, or similar jurisdiction where the facility is located, a majority of community residential care facilities or other extended care facilities have one), hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.

(4) Meet the following additional requirements, if the provisions for One and Two-Family Dwellings, as defined in NFPA 101, are applicable to the facility:

(i) Portable fire extinguishers must be installed, inspected, and maintained in accordance with NFPA 10 (incorporated by reference, *see* § 17.1); and

(ii) The facility must meet the requirements in section 33.7 of NFPA 101.

(b) [Reserved]

(c) *Interior plan.* The facility must:

(1) Have comfortable dining areas, adequate in size for the number of residents;

(2) Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents; and

(3) Maintain at least one functional toilet and lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.

(d) *Laundry service.* The facility must provide or arrange for laundry service.

(e) *Residents' bedrooms.* Residents' bedrooms must:

(1) Contain no more than four beds;

(2) Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multiresident room; and

- (3) Contain a suitable bed for each resident and appropriate furniture and furnishings.

(f) *Nutrition*. The facility must:

- (1) Provide a safe and sanitary food service that meets individual nutritional requirements and residents' preferences;

- (2) Plan menus to meet currently recommended dietary allowances;

(g) *Activities*. The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs.

(h) *Residents' rights*. The facility must have written policies and procedures that ensure the following rights for each resident:

- (1) Each resident has the right to:

- (i) Be informed of the rights described in this section;

- (ii) The confidentiality and nondisclosure of information obtained by community residential care facility staff on the residents and the residents' records subject to the requirements of applicable law;

- (iii) Be able to inspect the residents' own records kept by the community residential care facility;

- (iv) Exercise rights as a citizen; and

- (v) Voice grievances and make recommendations concerning the policies and procedures of the facility.

- (2) *Financial affairs*. Residents must be allowed to manage their own personal financial affairs, except when the resident has been restricted in this right by law. If a resident requests assistance from the facility in managing personal financial affairs the request must be documented.

- (3) *Privacy*. Residents must:

- (i) Be treated with respect, consideration, and dignity;

- (ii) Have access, in reasonable privacy, to a telephone within the facility;

- (iii) Be able to send and receive mail unopened and uncensored; and

- (iv) Have privacy of self and possessions.

- (4) *Work*. No resident will perform household duties, other than personal housekeeping tasks, unless the resident receives compensation for these duties or is told in advance they are voluntary and the patient agrees to do them.

- (5) *Freedom of association*. Residents have the right to:

- (i) Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;

- (ii) Make contacts in the community and achieve the highest level of independence, autonomy, and interaction in the community of which the resident is capable;

- (iii) Leave and return freely to the facility, and
- (iv) Practice the religion of their own choosing or choose to abstain from religious practice.

(6) *Transfer.* Residents have the right to transfer to another facility or to an independent living situation.

(i) *Records.*

(1) The facility must maintain records on each resident in a secure place.

(2) Facility records must include:

(i) Emergency notification procedures; and

(ii) A copy of all signed agreements with the resident.

(3) Records may only be disclosed with the resident's permission, or when required by law. (Approved by the Office of Management and Budget under control number 2900 0491)

(j) *Staff requirements.*

(1) Sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.

(2) The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(k) *Cost of community residential care.*

(1) Payment for the charges of community residential care is not the responsibility of the United States Government or VA.

(2) The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.

(3) The charges for community residential care must be reasonable:

(i) For residents in a community residential care facility as of June 14, 1989 the rates charged for care are pegged to the facility's basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year;

(ii) For community residential care facilities approved after July 31, 1987, the rates for care shall not exceed 110 percent of the average rate for approved facilities in that State as of March 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year.

(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3)(i) through (ii) of this section upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency, if the approving official determines that the cost of care for the resident will be greater than the average cost of care for other residents, or if the resident chooses to pay more for the care provided at a facility which exceeds VA standards. (Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989, as amended at 54 FR 22754, May 26, 1989. Redesignated at 61 FR 21965, May 13, 1996, as amended at 61 FR 63720, Dec. 2, 1996; 74 FR 63308, Dec. 3, 2009; 76 FR 10248, Feb. 24, 2011]

**Supplement *Highlights* reference:** 52(1), 61(1)

§17.64 [Reserved]

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996; removed and reserved at 74 FR 63308, Dec. 3, 2009]

**Supplement *Highlights* reference:** 52(1)

### Use of Services of Other Federal Agencies

#### **§17.80 Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.**

(a) Alcohol and drug dependence or abuse treatment and rehabilitation may be authorized by contract in nonresidential facilities and in residential facilities provided by halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities, when considered to be medically advantageous and cost effective for the following:

(1) Veterans who have been or are being furnished care by professional staff over which the Secretary has jurisdiction and such transitional care is reasonably necessary to continue treatment;

(2) Persons in the Armed Forces who, upon discharge therefrom will become eligible veterans, when duly referred with authorization for Department of Veterans Affairs medical center hospital care in preparation for treatment and rehabilitation in this program under the following limitations:

(i) Such persons may be accepted by transfer only during the last 30 days of such person's enlistment or tour of duty,

(ii) The person requests transfer in writing for treatment for a specified period of time during the last 30 days of such person's enlistment period or tour of duty,

(iii) Treatment does not extend beyond the period of time specified in the request unless such person requests in writing an extension for a further specified period of time and such request is approved by the Department of Veterans Affairs Medical Center Director authorizing treatment and rehabilitation,

(iv) Such care and treatment will be provided as if the person were a veteran, subject to reimbursement by the respective military service for the costs of hospital care and control treatment provided while the person is an active duty member.

(b) The maximum period for one treatment episode is limited to 60 days. The Department of Veterans Affairs Medical Center Director may authorize one 30 day extension.

(c) Any person who has been discharged or released from active military, naval or air service, and who, upon application for treatment and rehabilitative services under the authority of this section is determined to be legally ineligible for such treatment or rehabilitation services shall be:

(1) Provided referral services to assist the person. to the maximum extent possible, in obtaining treatment and rehabilitation services from sources outside the Department of Veterans Affairs, not at Department of Veterans Affairs expense and,

(2) If pertinent, advised of the right to apply to the appropriate military, naval or air service and the Department of Veterans Affairs for review of such person's discharge or release from such service. (Authority: 38 U.S.C. 1720A)

[47 FR 57706, Dec. 28, 1982. Redesignated at 61 FR 21965, May 13, 1996, as amended at 61 FR 56897, Nov. 5, 1996]

**§17.81 Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.**

(a) Contracts for treatment services authorized under §17.80(a) may be awarded in accordance with applicable Department of Veterans Affairs and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the residents of the contractor's program, has been determined and then only to contractors, determined by the Under Secretary for Health or designee to meet the following requirements.

(1) Meet fire safety requirements as follows:

(i) The building must meet the requirements in the applicable provisions of NFPA 101 (incorporated by reference, *see* §17.1) and the other publications referenced in those provisions. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director.

(ii) Where applicable, the home must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Department of Veterans Affairs sponsored residents will be mentally and physically capable of leaving the building, unaided, in the event of an emergency. Halfway house, therapeutic community and other residential program management must agree that all the other residents in any building housing veterans will also have such capability.

(iv) There must be at least one staff member on duty 24 hours a day.

(v) The facility must meet the following additional requirements, if the provisions for One and Two-Family Dwellings, as defined in NFPA 101, are applicable to the facility:

(A) Portable fire extinguishers shall be installed, inspected, and maintained in accordance with NFPA 10 (incorporated by reference, *see* §17.1).

(B) The facility shall meet the requirements in section 33.7 of NFPA 101.

(vi) An annual fire and safety inspection shall be conducted at the halfway house or residential facility by qualified Department of Veterans Affairs personnel. If a review of past Department of Veterans Affairs inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Be in compliance with existing standards of State safety codes and local, and/or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the “Confidentiality of Alcohol and Drug Abuse Patient Records” (42 CFR part II) and the “Confidentiality of Certain Medical Records” (38 U.S.C. 7332), which shall be part of the contract.

(6) Demonstrate an existing capability to furnish the following:

- (i) A supervised alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.
- (ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.
- (iii) Board and room.
- (iv) Laundry facilities for residents to do their own laundry.
- (v) Structured activities.
- (vi) Appropriate group activities, including physical activities.
- (vii) Health and personal hygiene maintenance.
- (viii) Monitoring administration of medications.
- (ix) Supportive social service.
- (x) Individual counseling as appropriate.
- (xi) Opportunities for learning/development of skills and habits which will enable Department of Veterans Affairs sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.
- (xii) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).
- (xiii) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and for upgrading skills and improving personal relationships.

(7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible.

(b) Representatives of the Department of Veterans Affairs will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Department of Veterans Affairs.

(c) All requirements in this rule, and Department of Veterans Affairs reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the “Confidentiality of Alcohol and Drug Abuse Patient Records” (42 CFR part 2) and the “Confidentiality of Certain Medical Records” (38 U.S.C.

7332), and will be made available on a need to know basis to appropriate Department of Veterans Affairs staff members involved with the treatment program of the veterans concerned.

(e) Contractors under this section shall provide reports of budget and case load experience upon request from a Department of Veterans Affairs official. (Authority: 38 U.S.C. 1720A)

[47 FR 57707, Dec. 28, 1982. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996; 61 FR 63720, Dec. 2, 1996; 76 FR 10249, Feb. 24, 2011]

**Supplement *Highlights* references:** 61(1)

**§17.82 Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.**

(a) Contracts for treatment services authorized under §17.80 may be awarded in accordance with applicable Department of Veterans Affairs and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the participants of the contractor's program, has been determined and then only to contractors determined by the Under Secretary for Health or designee to be fully capable of meeting the following standards:

(1) The following minimum fire safety requirements must be met:

(i) The building must meet the requirements in the applicable provisions of the NFPA 101 (incorporated by reference, *see* §17.1) and the other publications referenced in those provisions. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director.

(ii) Where applicable, the facility must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Department of Veterans Affairs sponsored patients will be mentally and physically capable of leaving the building, unaided, in the event of an emergency.

(iv) As a minimum, fire exit drills must be held at least quarterly, and a written plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(v) An annual fire and safety inspection shall be conducted at the facility by qualified Department of Veterans Affairs personnel. If a review of past Department of Veterans Affairs inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Conform to existing standards of State safety codes and local and/or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 7332), which shall be part of the contract.

(6) Demonstrate an existing capability to furnish the following:

(i) A supervised, alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.

(ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.

(iii) Structured activities.

- (iv) Appropriate group activities.
- (v) Monitoring medications.
- (vi) Supportive social service.
- (vii) Individual counseling as appropriate.

(viii) Opportunities for learning/development of skills and habits which will enable Department of Veterans Affairs sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.

(ix) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).

(x) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and to upgrade skills and improve personal relationships.

(7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible .

(b) Representatives of the Department of Veterans Affairs will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Department of Veterans Affairs.

(c) All requirements in this rule and Department of Veterans Affairs reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall, to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the “Confidentiality of Alcohol and Drug Abuse Patient Records” (42 CFR part 2) and the “Confidentiality of Certain Medical Records” (38 U.S.C. 7332). and will be made available on a need to know basis to appropriate Department of Veterans Affairs staff members involved with the treatment program of the veterans concerned. (Authority: 38 U.S.C. 1720A)

[47 FR 57708, Dec. 28, 1982. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996; 61 FR 63720, Dec. 2, 1996; 62 FR 17072, Apr. 9, 1997; 76 FR 10249, Feb. 24, 2011; 76 FR 10249, Feb. 24, 2011]

**Supplement *Highlights* references: 61(1)**

**Reserved**

**§17.83 Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation.**

The authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts, and payments shall not exceed these amounts. (Authority: Pub. L. 96-22, 38 U.S.C. 1720A)

[47 FR 57708, Dec. 28, 1982. Redesignated at 61 FR 21965, May 13, 1996]

*Next Section is §17.85*

**§51.200 Physical environment.**

The facility management must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (2009 edition), except that the requirement in paragraph 19.3.5.1 for all buildings containing nursing homes to have an automatic sprinkler system is not applicable until August 13, 2013, unless an automatic sprinkler system was previously required by the Life Safety Code and the NFPA 99, Standard for Health Care Facilities (2005 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. (For ordering information, call toll-free 1/800-344-3555.)

(b) *Emergency power.*

(1) An emergency electrical power system must be provided to supply power adequate for illumination of all exit signs and lighting for the means of egress, fire alarm and medical gas alarms, emergency communication systems, and generator task illumination.

(2) The system must be the appropriate type essential electrical system in accordance with the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (2009 edition) and the NFPA 99, Standard for Health Care Facilities (2005 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these materials is described in paragraph (a) of this section.

(3) When electrical life support devices are used, an emergency electrical power system must also be provided for devices in accordance with NFPA 99, Standard for Health Care Facilities (2005 edition).

(4) The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources in accordance with the National Fire Protection Association's NFPA 101, Life Safety Code (2009 edition) and the NFPA 99, Standard for Health Care Facilities (2005 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these materials is described in paragraph (a) of this section.

(c) *Space and equipment.* Facility management must:

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Resident rooms.* Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents:

(1) Bedrooms must:

- (i) Accommodate no more than four residents;
- (ii) Measure at least 115 net square feet per resident in multiple resident bedrooms;
- (iii) Measure at least 150 net square feet in single resident bedrooms;
- (iv) Measure at least 245 net square feet in small double resident bedrooms; and
- (v) Measure at least 305 net square feet in large double resident bedrooms used for spinal cord injury residents. It is recommended that the facility have one large double resident bedroom for every 30 resident bedrooms.
- (vi) Have direct access to an exit corridor;
- (vii) Be designed or equipped to assure full visual privacy for each resident;
- (viii) Except in private rooms, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;
- (ix) Have at least one window to the outside; and
- (x) Have a floor at or above grade level.

(2) The facility management must provide each resident with:

- (i) A separate bed of proper size and height for the safety of the resident;
- (ii) A clean, comfortable mattress;
- (iii) Bedding appropriate to the weather and climate; and
- (iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(e) *Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities. It is recommended that public toilet facilities be also located near the resident's dining and recreational areas.

(f) *Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from:

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) *Dining and resident activities.* The facility management must provide one or more rooms designated for resident dining and activities. These rooms must:

- (1) Be well lighted;
- (2) Be well ventilated;
- (3) Be adequately furnished; and
- (4) Have sufficient space to accommodate all activities.

(h) *Other environmental conditions.* The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must:

- (1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;
- (2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
- (3) Equip corridors with firmly secured handrails on each side; and
- (4) Maintain an effective pest control program so that the facility is free of pests and rodents. (Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

[65 FR 968, Jan. 6, 2000, as amended at 74 FR 19434, Apr. 29, 2009; 76 FR 11340, Mar. 2, 2011]

**Supplement *Highlights* reference:** 47(1), 61(3).

*Next Section is §51.210*

**§51.210 Administration.**

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident.

(a) *Governing body.*

(1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body or State official with oversight for the facility appoints the administrator who is:

(i) Licensed by the State where licensing is required; and

(ii) Responsible for operation and management of the facility.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Office of Geriatrics and Extended Care (114), VA Headquarters, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;

(2) The State home administrator; and

(3) The State employee responsible for oversight of the State home facility if a contractor operates the State home.

(c) *Required Information.* The facility management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current or as specified:

(1) The copy of legal and administrative action establishing the State-operated facility (e.g., State laws);

(2) Site plan of facility and surroundings;

(3) Legal title, lease, or other document establishing right to occupy facility;

(4) Organizational charts and the operational plan of the facility;

(5) The number of the staff by category indicating full-time, part-time and minority designation (annual at time of survey);

(6) The number of nursing home patients who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities (annual at time of survey);

(7) Annual State Fire Marshall's report;

**§59.123 Conference.**

At any time, VA may recommend that a conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss requirements for a grant with VA officials. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

**§59.124 Inspections, audits, and reports.**

(a) A State will allow VA inspectors and auditors to conduct inspections and audits as necessary to ensure compliance with the provisions of this part. The State will provide evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter) and submit that evidence to VA.

(b) A State will make such reports in such form and containing such information as the Chief Consultant, Geriatrics and Extended Care, may from time to time reasonably require and give the Chief Consultant, Geriatrics and Extended Care, upon demand, access to the records upon which such information is based. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

*Next Section is §59.130*

**§59.130 General requirements for all State home facilities.**

As a condition for receiving a grant and grant funds under this part, States must comply with the requirements of this section.

(a) The physical environment of a State home must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(b) A State home must meet the general conditions of the American Institute of Architects, or other general conditions required by the State, for awarding contracts for State home grant projects. Facilities must meet all Federal, State, and local requirements, including the Uniform Federal Accessibility Standards (UFAS) (24 CFR part 40, appendix A), during the design and construction of projects subject to this part. If the State or local requirements are different from the Federal requirements, compliance with the most stringent provisions is required. A State must design and construct the project to provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by this part and as identified in each resident's plan of care.

(c) State homes should be planned to approximate the home atmosphere as closely as possible. The interior and exterior should provide an attractive and home-like environment for elderly residents. The site will be located in a safe, secure, residential-type area that is accessible to acute medical care facilities, community activities and amenities, and transportation facilities typical of the area.

(d) (1) State homes must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (2009 edition), except that the NFPA requirement in paragraph 19.3.5.1 for all buildings containing nursing homes to have an automatic sprinkler system is not applicable until February 24, 2016 for “existing buildings” with nursing home facilities as of June 25, 2001 (paragraph 3.3.32.5 in the NFPA 101 defines an “[e]xisting [b]uilding” as “[a] building erected or officially authorized prior to the effective date of the adoption of this edition of the *Code* by the agency or jurisdiction”) and the NFPA 99, Standard for Health Care Facilities (2005 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials, incorporated by reference, are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), Room 1068, 810 Vermont Avenue, NW, Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. (For ordering information, call toll free 1-800/344-3555.)

(2) Facilities must also meet the State and local fire codes.

(e) State homes must have an emergency electrical power system to supply power adequate to operate all exit signs and lighting for means of egress, fire and medical gas alarms, and emergency communication systems. The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources.

(f) The nurse's station must be equipped to receive resident calls through a communication system from resident rooms, toilet and bathing facilities, dining areas, and activity areas.

(g) The State home must have one or more rooms designated for resident dining and activities. These rooms must be:

- (1) Well lighted;
- (2) Well ventilated; and
- (3) Adequately furnished.

(h) The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must:

- (1) Ensure that water is available to essential areas when there is a loss of normal water supply;
- (2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
- (3) Equip corridors with firmly secured handrails on each side; and
- (4) Maintain an effective pest control program so that the facility is free of pests and rodents. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

[66 FR 33847, June 26, 2011, as amended at 76 FR 10249, Feb. 24, 2011]

**Supplement *Highlights* references:** 61(1).

*Next Section is §59.140*

**§59.140 Nursing home care requirements.**

As a condition for receiving a grant and grant funds for a nursing home facility under this part, States must comply with the requirements of this section.

(a) Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents. Resident rooms must:

- (1) Accommodate no more than four residents;
- (2) Have direct access to an exit corridor;
- (3) Have at least one window to the outside;
- (4) Be equipped with, or located near, toilet and bathing facilities (VA recommends that public toilet facilities also be located near the residents dining and recreational areas);
- (5) Be at or above grade level;
- (6) Be designed or equipped to ensure full visual privacy for each resident;
- (7) Except in private rooms, each bed must have ceiling suspended curtains that extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;
- (8) Have a separate bed for each resident of proper size and height for the safety of the resident;
- (9) Have a clean, comfortable mattress;
- (10) Have bedding appropriate to the weather and climate;
- (11) Have functional furniture appropriate to the resident's needs, and
- (12) Have individual closet space with clothes racks and shelves accessible to the resident.

(b) Unless determined by VA as necessary to accommodate an increased quality of care for patients, a nursing home project may propose a deviation of no more than 10 percent (more or less) from the following net square footage for the State to be eligible for a grant of 65 percent of the total estimated cost of the project. If the project proposes building more than the following net square footage and VA makes a determination that it is not needed, the cost of the additional net square footage will not be included in the estimated total cost of construction.

Table to Paragraph (b)—Nursing Home

I. Support facilities [allowable square feet (or metric equivalent) per facility for VA participation]:

Administrator.....	200
Assistant administrator.....	150
Medical officer, director of nursing or equivalent.....	150