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Title 38, Parts 17, 46, 47, 51–52, 58–61, and 70

*Medical*

**Veterans Benefits Administration**

Supplement No. 43

Covering period of *Federal Register* issues  
through November 3, 2008

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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, 51–52, 58–61, and 70**

*Medical*

## **Veterans Benefits Administration**

**Supplement No. 43**

5 November 2008

Covering the period of Federal Register issues  
through November 3, 2008

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

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## FILING INSTRUCTIONS

**Book I, Supplement No. 43  
November 5, 2008**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
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17.47-5 to 17.47-6	17.47-5 to 17.47-6	§17.47 (citation only)
17.108-3 to 17.108-4	17.108-3 to 17.108-4	§17.108 (citation only)
17.160-1 to 17.161-3	17.160-1 to 17.161-3	§17.160
<b>59.INDEX-1 to 59. INDEX -2</b>	<b>59.INDEX-1 to 59. INDEX -2</b>	<b>Source citation</b>
59.1-1 to 59.30-1	59.1-1 to <u>59.30-2</u>	Source citation; §59.20
59.50-3 to 59.60-1	59.50-3 to 59.60-1	§59.60
59.80-2 to 59.100-1	59.80-2 to <u>59.100-2</u>	§59.100
59.170-1 to 59.170-2	59.170-1 to 59.170-2	§59.170

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## HIGHLIGHTS

### Book I, Supplement No. 43 November 5, 2008

**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 8 October 2008, the VA published a final rule, effective that same date, to amend regulations regarding the authority to provide one-time outpatient dental treatment to eligible veterans following discharge or release from active duty. Changes:

- In §17.161, revised paragraphs (b)(1)(i)(B) and (b)(1)(ii)–(iii).

2. On 8 October 2008, the VA published a final rule, effect that same date, to affirm as final, with changes, an interim final rule (originally published at 66 FR 33845, June 26, 2001) that amended regulations regarding grants to States for the construction or acquisition of State homes for furnishing domiciliary and nursing home care to veterans, or for the expansion, remodeling, or alteration of existing State homes for furnishing domiciliary, nursing home, or adult day health care to veterans. Changes:

- In §59.20, revised paragraph (a);
- In §59.60, revised paragraphs (a) and (b); and
- Revised §§59.100 and 59.170.

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- (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]

**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).

- (7) A veteran whose entitlement to disability compensation is suspended because of the receipt of military retirement pay;
- (8) A veteran of the Mexican border period or of World War I;
- (9) A military retiree provided care under an interagency agreement as defined in section 113 of Public Law 106-117, 113 Stat. 1545; or
- (10) A veteran who VA determines to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(e) *Services not subject to copayment requirements for inpatient hospital care or outpatient medical care.* The following are not subject to the copayment requirements under this section:

- (1) Care provided to a veteran for a noncompensable zero percent service-connected disability;
- (2) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Gulf War veterans, or post-Gulf War combat-exposed veterans;
- (3) Special registry examinations (including any follow-up examinations or testing ordered as part of the special registry examination) offered by VA to evaluate possible health risks associated with military service;
- (4) Counseling and care for sexual trauma as authorized under 38 U.S.C 1720D;
- (5) Compensation and pension examinations requested by the Veterans Benefits Administration;
- (6) Care provided as part of a VA-approved research project authorized by 38 U.S.C. 7303;
- (7) Outpatient dental care provided under 38 U.S.C. 1712;
- (8) Readjustment counseling and related mental health services authorized under 38 U.S.C 1712A;
- (9) Emergency treatment paid for under 38 U.S.C. 1725 or 1728;
- (10) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck;
- (11) Publicly announced VA public health initiatives (e.g., health fairs) or an outpatient visit solely consisting of preventive screening and immunizations (e.g. influenza immunization, pneumococcal

immunization, hypertension screening, hepatitis C screening, tobacco screening, alcohol screening, hyperlipidemia screening, breast cancer screening, cervical cancer screening, screening for colorectal cancer by fecal occult blood testing, and education about the risks and benefits of prostate cancer screening);

(12) Weight management counseling (individual and group);

(13) Smoking cessation counseling (individual and group); and

(14) Laboratory services, flat film radiology services, and electrocardiograms.

(f) *Additional care not subject to outpatient copayment.* Outpatient care is not subject to the outpatient copayment requirements under this section when provided to a veteran during a day for which the veteran is required to make a copayment for extended care services that were provided either directly by VA or obtained for VA by contract. (Authority: 38 U.S.C. 1710)

[66 FR 63448, Dec. 6, 2001, as amended at 66 FR 64904, Dec. 14, 2001; 67 FR 21998, May 2, 2002; 68 FR 60854, Oct. 24, 2003; 70 FR 22596, May 2, 2005; 71 FR 2464, Jan. 17, 2006; 73 FR 20532, Apr. 16, 2008; 73 FR 65260, Nov. 3, 2008]

**Supplement *Highlights* references:** 21(1), 27(1), 31(1), 40(1).

*Next Section is §17.110*

## Dental Services

### §17.160 Authorization of dental examinations.

When a detailed report of dental examination is essential for a determination of eligibility for benefits, dental examinations may be authorized for the following classes of claimants or beneficiaries:

(a) Those having a dental disability adjudicated as incurred or aggravated in active military, naval, or air service or those requiring examination to determine whether the dental disability is service connected.

(b) Those having disability from disease or injury other than dental, adjudicated as incurred or aggravated in active military, naval, or air service but with an associated dental condition that is considered to be aggravating the basic service-connected disorder.

(c) Those for whom a dental examination is ordered as a part of a general physical examination.

(d) Those requiring dental examination during hospital, nursing home, or domiciliary care.

(e) Those held to have suffered dental injury or aggravation of an existing dental injury, as the result of examination, hospitalization, or medical or surgical (including dental) treatment that had been awarded.

(f) Veterans who are participating in a rehabilitation program under 38 U.S.C. chapter 31 are entitled to such dental services as are professionally determined necessary for any of the reasons enumerated in §17.47(g). (Authority: 38 U.S.C. 1712(b); ch. 31)

(g) Those for whom a special dental examination is authorized by the Under Secretary for Health or the Assistant Chief Medical Director for Dentistry.

(h) Persons defined in §17.60(d).

[13 FR 7162, Nov. 27, 1948, as amended at 21 FR 10388, Dec. 28, 1956; 23 FR 6503, Aug. 22, 1958; 27 FR 11424, Nov. 20, 1962; 29 FR 1463, Jan. 29, 1964; 30 FR 1789, Feb. 9, 1965; 32 FR 13817, Oct. 4, 1967; 33 FR 5300, Apr. 3, 1968; 35 FR 6586, Apr. 24 1970; 49 FR 5617, Feb. 14, 1984. Redesignated and amended at 61 FR 21966, 21968, May 13, 1996]

**§17.161 Authorization of outpatient dental treatment.**

Outpatient dental treatment may be authorized by the Chief, Dental Service, for beneficiaries defined in 38 U.S.C. 1712(b) and 38 CFR 17.93 to the extent prescribed and in accordance with the applicable classification and provisions set forth in this section.

(a) *Class I.* Those having a service-connected compensable dental disability or condition may be authorized any dental treatment indicated as reasonably necessary to maintain oral health and masticatory function. There is no time limitation for making application for treatment and no restriction as to the number of repeat episodes of treatment.

(b) *Class II.*

(1) (i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place after September 30, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They served on active duty during the Persian Gulf War and were discharged or released, under conditions other than dishonorable, from a period of active military, naval, or air service of not less than 90 days, or they were discharged or released under conditions other than dishonorable, from any other period of active military, naval, or air service of not less than 180 days;

(B) Application for treatment is made within 180 days after such discharge or release.

(C) The certificate of discharge or release does not bear a certification that the veteran was provided, within the 90-day period immediately before such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental treatment indicated by the examination to be needed, and

(D) Department of Veterans Affairs dental examination is completed within six months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service after August 12, 1981, who had reentered active military service within 90 days after the date of a discharge or release from a prior period of active military service, may apply for treatment of service-connected noncompensable dental conditions relating to any such periods of service within 180 days from the date of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within 180 days after the date of correction.

(2) (i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place before October 1, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They were discharged or released, under conditions other than dishonorable, from a period of active military, naval or air service of not less than 180 days.

(B) Application for treatment is made within one year after such discharge or release.

(C) Department of Veterans Affairs dental examination is completed within 14 months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service before August 13, 1981, who had reentered active military service within one year from the date of a prior discharge or release, may apply for treatment of service-connected noncompensable dental conditions relating to any such prior periods of service within one year of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within one year after the date of correction. (Authority: 38 U.S.C. 1712)

(c) *Class II(a)*. Those having a service-connected noncompensable dental condition or disability adjudicated as resulting from combat wounds or service trauma may be authorized any treatment indicated as reasonably necessary for the correction of such service-connected noncompensable condition or disability.

(d) *Class II(b)*. Those having a service-connected noncompensable dental condition or disability and who had been detained or interned as prisoners of war for a period of less than 90 days may be authorized any treatment as reasonably necessary for the correction of such service-connected dental condition or disability. (Authority: Pub. L. 100-322; 38 U.S.C. 1712(b)(1)(F))

(e) *Class II(c)*. Those who were prisoners of war for 90 days or more, as determined by the concerned military service department, may be authorized any needed dental treatment. (Authority: Pub. L. 100-322, 38 U.S.C. 1712(b)(1)(F))

(f) *Class IIR (Retroactive)*. Any veteran who had made prior application for and received dental treatment from the Department of Veterans Affairs for noncompensable dental conditions, but was denied replacement of missing teeth which were lost during any period of service prior to his/her last period of service may be authorized such previously denied benefits under the following conditions:

(1) Application for such retroactive benefits is made within one year of April 5, 1983.

(2) Existing Department of Veterans Affairs records reflect the prior denial of the claim.

All Class IIR (Retroactive) treatment authorized will be completed on a fee basis status. (Authority: 38 U.S.C. 1712)

(g) *Class III*. Those having a dental condition professionally determined to be aggravating disability from an associated service-connected condition or disability may be authorized dental treatment for only those dental conditions which, in sound professional judgment, are having a direct and material detrimental effect upon the associated basic condition or disability.

(g) *Class III.* Those having a dental condition professionally determined to be aggravating disability from an associated service-connected condition or disability may be authorized dental treatment for only those dental conditions which, in sound professional judgment, are having a direct and material detrimental effect upon the associated basic condition or disability.

(h) *Class IV.* Those whose service-connected disabilities are rated at 100% by schedular evaluation or who are entitled to the 100% rate by reason of individual unemployability may be authorized any needed dental treatment. (Authority: 38 U.S.C. 1712)

(i) *Class V.* A veteran who is participating in a rehabilitation program under 38 U.S.C. chapter 31 may be authorized such dental services as are professionally determined necessary for any of the reasons enumerated in §17.47(g). (Authority: 38 U.S.C. 1712(b); chapter 31)

(j) *Class VI.* Any veterans scheduled for admission or otherwise receiving care and services under chapter 17 of 38 U.S.C. may receive outpatient dental care which is medically necessary, i.e., is for dental condition clinically determined to be complicating a medical condition currently under treatment. (Authority: 38 U.S.C. 1712)

[20 FR 9505, Dec. 20, 1955, as amended at 26 FR 11214, Nov. 28, 1961; 27 FR 11424, Nov. 20, 1962; 29 FR 18219, Dec. 23, 1964; 32 FR 13817, Oct. 4, 1967; 33 FR 5300, Apr. 3, 1968; 45 FR 47680, July 16, 1980; 48 FR 16681, Apr. 19, 1983; 49 FR 5617, Feb. 14, 1984; 54 FR 25449, June 15, 1989; 57 FR 4367, Feb. 5, 1992; 57 FR 41701, Sept. 11, 1992. Redesignated and amended at 61 FR 21965, 21968, May 13, 1996; 73 FR 58876, Oct. 8, 2008]

**Supplement *Highlights* reference:** 43(1)

## Part 59

### Grants to States for Construction or Acquisition of State Homes

**Authority:** 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137.

**Source:** 66 Fed. Reg. 33847, June 26, 2001, and 73 FR 58880, Oct. 8, 2008,  
unless otherwise indicated.

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## Part 59

### Grants to States for Construction or Acquisition of State Homes

*Authority:* 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137.

*Source:* 66 Fed. Reg. 33847, June 26, 2001, and 73 FR 58880, Oct. 8, 2008,  
unless otherwise indicated.

*Supplement Highlights Reference for Part 59:* I-4(1), unless otherwise indicated.

#### §59.1 Purpose.

This part sets forth the mechanism for a State to obtain a grant:

(a) To construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, and

(b) To expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, adult day health, or hospital care to veterans in State homes. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

**§59.2 Definitions.**

For the purpose of this part:

*Acquisition* means the purchase of a facility in which to establish a State home for the provision of domiciliary and/or nursing home care to veterans.

*Adult day health care* is a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of elderly veterans.

*Construction* means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, or adult day health care, or hospital care in State homes, and the provision of initial equipment for any such buildings.

*Domiciliary care* means providing shelter, food, and necessary medical care on an ambulatory self-care basis (this is more than room and board). It assists eligible veterans who are suffering from a disability, disease, or defect of such a degree that incapacitates veterans from earning a living, but who are not in need of hospitalization or nursing care services. It assists in attaining physical, mental, and social well-being through special rehabilitative programs to restore residents to their highest level of functioning.

*Nursing home care* means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services.

*Secretary* means the Secretary of the United States Department of Veterans Affairs.

*State* means each of the several States, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico.

*State representative* means the official designated in accordance with State authority with responsibility for matters relating to the request for a grant under this part.

*VA* means the United States Department of Veterans Affairs. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

### **§59.3 Federal Application Identifier.**

Once VA has provided the State representative with a Federal Application Identifier Number for a project, the number must be included on all subsequent written communications to VA from the State, or its agent, regarding a request for a grant for that project under this part. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

### **§59.4 Decisionmakers, notifications, and additional information.**

The decisionmaker for decisions required under this part will be the Chief Consultant, Geriatrics and Extended Care, unless specified to be the Secretary or other VA official. The VA decisionmaker will provide written notice to affected States of approvals, denials, or requests for additional information under this part. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

### **§59.5 Submissions of information and documents to VA.**

All submissions of information and documents required to be presented to VA must be made, unless otherwise specified under this part, to the Chief Consultant, Geriatrics and Extended Care (114), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

### **§59.10 General requirements for a grant.**

For a State to obtain a grant under this part and grant funds, its initial application for the grant must be approved under §59.20, and the project must be ranked sufficiently high on the priority list for the current fiscal year so that funding is available for the project. It must meet the additional application requirements in §59.60, and it must meet all other requirements under this part for obtaining a grant and grant funds. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

*Next Section is §59.20*

**§59.20 Initial application requirements.**

(a) For a project to be considered for inclusion on the priority list in §59.50 of this part for the next fiscal year, a State must submit to VA an original and one copy of a completed VA Form 10-0388-1 and all information, documentation, and other forms specified by VA Form 10-0388-1 (these forms are available on the internet Web sites provided in §59.170 of this part).

(b) The Secretary, based on the information submitted for a project pursuant to paragraph (a) of this section, will approve the project for inclusion on the priority list in §59.50 of this part if the submission includes all of the information requested under paragraph (a) of this section and if the submission represents a project that, if further developed, could meet the requirements for a grant under this part.

(c) The information requested under paragraph (a) of this section should be submitted to VA by April 15, and must be received by VA by August 15, if the State wishes an application to be included on the priority list for the award of grants during the next fiscal year.

(d) If a State representative believes that VA may not award a grant to the State for a grant application during the current fiscal year and wants to ensure that VA includes the application on the priority list for the next fiscal year, the State representative must, prior to August 15 of the current fiscal year,

(1) Request VA to include the application in those recommended to the Secretary for inclusion on the priority list, and

(2) Send any updates to VA. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008]

**Supplement *Highlights* reference:** 43(2)

*Next Section is §59.30*

**§59.30 Documentation.**

For a State to obtain a grant and grant funds under this part, the State must submit to VA documentation that the site of the project is in reasonable proximity to a sufficient concentration and population of veterans that are 65 years of age and older and that there is a reasonable basis to conclude that the facility when complete will be fully occupied. This documentation must be included in the initial application submitted to VA under §59.20. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

*Next Section is §59.40*

Reserved

(b) (1) If a State accepts a partial grant for a project under §59.80(a)(2), VA will give that project the highest priority for the next fiscal year within the priority group to which it is assigned (without further prioritization of that priority group) to receive up to 30 percent of the funds available for that year. Funds available do not include funds conditionally obligated in the previous fiscal year under §59.70(a)(2).

(2) If, in a given fiscal year, more than one State previously accepted a partial grant under §59.80(a)(2), these partial-grant recipients will be further prioritized on the priority list for that fiscal year based on the date that VA first awarded a partial grant for the project (the earlier the grant was awarded, the higher the priority given). The partial-grant recipients, in aggregate, may receive up to 30 percent of the funds available for that year that would be set aside for partial-grant recipients.

(c) An application will be given priority on the priority list (after applications described in paragraph (b) of this section) for the next fiscal year ahead of all applications that had not been approved under §59.20 on the date that the application was approved under §59.20, if:

(1) During the current fiscal year VA would have awarded a grant based on the application except for the fact that VA determined that the State did not, by July 1, provide evidence that it had its matching funds for the project, and

(2) The State was notified prior to July 1 that VA had funding available for this grant application.

(d) The priority list will not contain any project for the construction or acquisition of a hospital or hospital beds.

(e) For purposes of establishing priorities under this section:

(1) A State has a great need for nursing home and domiciliary beds if the State:

(i) Has no State homes with nursing home or domiciliary beds, or

(ii) Has an unmet need of 2,000 or more nursing home and domiciliary beds;

(2) A State has a significant need for nursing home and domiciliary beds if the State has an unmet need of 1,000 to 1,999 nursing home and domiciliary beds; and

(3) A State has a limited need for nursing home and domiciliary beds if the State has an unmet need of 999 or fewer nursing home and domiciliary beds.

(f) Projects that could be placed in more than one subpriority will be placed in the subpriority toward which the preponderance of the cost of the project is allocated. For example, under priority group 1—subpriority 1, if a project for which 25 percent of the funds needed would concern seismic and 75 percent of the funds needed would concern building construction, the project would be placed in the subpriority for building construction.

(g) Once the Secretary prioritizes the applications in the priority list, VA will not change the priorities unless a change is necessary as a result of an appeal. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

[66 FR 33847, June 26, 2001, as amended at 71 FR 46104, Aug. 11, 2006; 72 FR 6959, Feb. 14, 2007; 73 FR 58880, Oct. 8, 2008]

**Supplement *Highlights* references:** 33(1), 35(1), 43(2).

*Next Section is §59.60*

Reserved

**§59.60 Additional application requirements.**

For a project to be eligible for a grant under this part for the fiscal year for which the priority list was made, during that fiscal year the State must submit to VA an original and a copy of the following:

(a) Complete, updated Standard Forms 424 (mark the box labeled application and submit the information requested for an application), 424C, and 424D (these forms are available on the internet Web site provided in §59.170 of this part), and

(b) A completed VA Form 10-0388-5 and all information and documentation specified by VA Form 10-0388-5 (this form is available on the internet Web site provided in §59.170).

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008]

**Supplement *Highlights* reference:** 43(2)

*Next Section is §59.70*

(h) The total cost of a project under this part may not include the cost of:

(1) Land acquisition;

(2) Maintenance or repair work; or

(3) Office supplies or consumable goods (such as food, drugs, medical dressings, paper, printed forms, and soap) which are routinely used in a State home.

(i) A grant for expansion, remodeling, or alteration of an existing State home, which is on or eligible for inclusion in the National Register of Historic Places, for furnishing domiciliary, nursing home, or adult day health care to veterans may not be awarded for the expansion, remodeling, or alteration of such building if such action does not comply with National Historic Preservation Act procedures or if the total cost of remodeling, renovating, or adapting such building or facility exceeds the cost of comparable new construction by more than five percent. If demolition of an existing building or facility on, or eligible for inclusion in, the National Register of Historic Places is deemed necessary and such demolition action is taken in compliance with National Historic Preservation Act procedures, any mitigation cost negotiated in the compliance process and/or the cost to professionally record the building or facility in the Historic American Buildings Survey (HABS), plus the total cost for demolition and site restoration, shall be included by the State in calculating the total cost of new construction.

(j) The cost of demolition of a building cannot be included in the total cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project.

(k) With respect to the final award of a conditionally-approved grant, the Secretary may not award a grant for an amount that is 10 percent more than the amount conditionally-approved. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

*Next Section is §59.90*

**§59.90 Line item adjustments to grants.**

After a grant has been awarded, upon request from the State representative, VA may approve a change in a line item (line items are identified in Form 424C which is set forth in §59.170(o) of this part) of up to 10 percent (increase or decrease) of the cost of the line item if the change would be within the scope or objective of the project and would not change the amount of the grant. (Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137).

*Next Section is §59.100*

**§59.100 Payment of grant award.**

The amount of the grant award will be paid to the State or, if designated by the State representative, the State home for which such project is being carried out or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of the project as the Chief Consultant, Geriatrics and Extended Care, may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved. As a condition for the final payment, the State must comply with the requirements of this part based on an architectural and engineering inspection approved by VA, must obtain VA approval of the final equipment list submitted by the State representative, and must submit to VA a completed VA Form 10-0388-13 (this form is available on the internet Web site provided in §59.170). The equipment list and the completed VA Form 10-0388-13 must be submitted to the Chief Consultant, Geriatrics and Extended Care (114), VHA Headquarters; 810 Vermont Avenue, NW.; Washington, DC 20420. **Authority:** 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008]

**Supplement *Highlights* reference:** 43(2)

*Next Section is §59.110*

Reserved

**§59.170 Forms.**

All forms required by this part are available on the internet at "<http://www.va.gov/forms/>" for VA Forms and at "<http://www.gsa.gov>" for Standard Forms, or at the Veterans Health Administration, Room 789, 810 Vermont Ave., NW., Washington, DC 20420. **Authority:** 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8137, Section 2, 3, 4, and 4a of the Architectural Barriers Act of 1968, as amended, Pub. L. 90-480, 42 U.S.C. 4151-4157

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008]

**Supplement *Highlights* reference:** 43(2)

**Note:** For the convenience of subscribers to this service, all forms to which reference is made in this Part 59 are reproduced immediately following this §59.170.

*End of Part 59*

Reserved