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Title 38, Parts 17, 46, 47, 51–53,
58–61, and 70

Medical

Veterans Benefits Administration

Supplement No. 54

Covering period of *Federal Register* issues
through May 5, 2010

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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, 58–61, and 70

Medical

Veterans Benefits Administration

Supplement No. 54

5 May 2010

Covering the period of Federal Register issues
through May 5, 2010

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,
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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new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.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. 54
May 5, 2010**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
Do not file this supplement until you confirm that all prior supplements have been filed		
59.INDEX-1 to 59. INDEX -2	59.INDEX-1 to 59. INDEX -2	Index to Part 59; auth. change
59.1-1 to 59.2-1	59.1-1 to 59.2-1	Auth. change; §59.2
59.40-1 to 59.40-2	59.40-1 to 59.40-2	§59.40

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HIGHLIGHTS

Book I, Supplement No. 54 May 5, 2010

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 April 2010, the VA published a final rule, effective 10 May 2010, to amend VA regulations regarding grants to States for construction or acquisition of State homes in order to update the maximum number of nursing home and domiciliary beds designated for each State, and to amend the definition of *State* for purposes of these grants to include Guam, the Northern Mariana Islands, and American Samoa. Changes:

- In §59.2, revised the definition of *State*; and
- In §59.40, revised paragraph (a).



Part 59

Grants to States for Construction or Acquisition of State Homes

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131-8138.

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, 8131-8138.

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, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

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).

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008; 75 FR 17860, Apr. 8, 2010]

Supplement *Highlights* reference: 54(1)

**§59.40 Maximum number of nursing home care and domiciliary care
beds for veterans by State.**

(a) Except as provided in paragraph (b) of this section, a state may not request a grant for a project to construct or acquire a new state home facility, to increase the number of beds available at a state home facility, or to replace beds at a state home facility if the project would increase the total number of state home nursing home and domiciliary beds in that state beyond the maximum number designated for that state, as shown in the following chart. The provisions of 38 U.S.C. 8134 require VA to prescribe for each state the number of nursing home and domiciliary beds for which grants may be furnished (i.e., the unmet need). A state's unmet need for state home nursing home and domiciliary beds is the number in the following chart for that state minus the sum of the number of nursing home and domiciliary beds in operation at state home facilities and the number of state home nursing home and domiciliary beds not yet in operation but for which a grant has either been requested or awarded under this part.

State	Maximum number of state home, nursing home & domiciliary beds based on 2020 projections
Alabama	1007
Alaska	179
Arizona	1520
Arkansas	653
California	4363
Colorado	1114
Connecticut	559
Delaware	207
District of Columbia	83
Florida	4049
Georgia	1975
Hawaii	268
Idaho	394
Illinois	1754
Indiana	1216
Iowa	578
Kansas	518
Kentucky	818
Louisiana	638
Maine	362
Maryland	1102
Massachusetts	944
Michigan	1786
Minnesota	1058
Mississippi	480
Missouri	1257
Montana	281
Nebraska	371
Nevada	649
New Hampshire	361

New Jersey	992
New Mexico	417
New York	2209
North Carolina	1900
North Dakota	137
Ohio	2143
Oklahoma	766
Oregon	907
Pennsylvania	2336
Puerto Rico	288
Rhode Island	157
South Carolina	1089
South Dakota	179
Tennessee	1311
Texas	4119
Utah	426
Vermont	142
Virginia	1903
Virgin Islands	12
Washington	1687
West Virginia	406
Wisconsin	1062
Wyoming	154
American Samoa	0
Guam	12
N. Mariana Islands	1

Note to paragraph (a): The provisions of 38 U.S.C. 8134 require that the “un-met need” numbers be based on a 10-year projection of demand for nursing home and domiciliary care by veterans who at such time are 65 years of age or older and who reside in that state. In determining the projected demand, VA must take into account travel distances for veterans and their families.

(b) A State may request a grant for a project that would increase the total number of State nursing home and domiciliary beds beyond the maximum number for that State, if the State submits to VA, documentation to establish a need for the exception based on travel distances of at least two hours (by land transportation or any other usual mode of transportation if land transportation is not available) between a veteran population center sufficient for the establishment of a State home and any existing State home. The determination regarding a request for an exception will be made by the Secretary. (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; 75 FR 17860, Apr. 8, 2010]

Supplement *Highlights* reference: 54(1)

Next Section is §59.50