

Standard), approved June 7, 1996; IBR approved for §§ 1281.3, and 1281.16.

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Dated: February 24, 2011.

**David S. Ferriero,**  
Archivist of the United States.

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AN41

#### Hospital and Outpatient Care for Veterans Released From Incarceration to Transitional Housing

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document affirms as final a proposed rule that amends the Department of Veterans Affairs (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. The final rule permits VA to work with these veterans while they are in these programs with the goal of continuing to work with them after their release, which will assist in preventing homelessness in this population of veterans.

**DATES:** This final rule is effective April 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** James McGuire, Program Manager, Healthcare for Re-entry Veterans, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1591. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1710(h), VA is not required "to furnish care to a veteran to whom another agency of Federal, State, or local government has a duty under law to provide care in an institution of such government." VA implemented this statute in 38 CFR 17.38(c)(5). Generally, § 17.38(c)(5) bars VA from providing "[h]ospital 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." Typically, government agencies have a duty to provide medical care to inmates who have been released from incarceration in a prison or jail to a temporary housing program (such as a community

residential re-entry center or halfway house).

This duty may exist even though the responsible government agency expects residents in these programs to arrange for their own medical care. Irrespective of whether a duty exists, however, VA wants to be able to provide hospital and outpatient care to eligible veterans in these programs. Under § 17.38(c)(5), VA cannot provide care to veterans in these programs if the other government agency has a duty to provide the care unless that agency is willing to pay VA for the care by contract.

In a proposed rule published May 12, 2010, we proposed to amend § 17.38 to establish that the exclusion in paragraph (c)(5) does not apply to any veteran who is released from incarceration to a temporary housing program. We explained that this amendment is necessary to authorize VA hospital and outpatient care for these veterans who often require additional assistance in successfully transitioning from incarceration.

VA wants to provide care to these veterans because VA has found that upon release from jail or prison these veterans are particularly at risk of not receiving adequate medical care, and in many cases become homeless, as a result of not receiving such care, after their release from temporary housing programs. Under 38 U.S.C. 2022(a), VA is charged with reaching out "to veterans at risk of homelessness, including particularly veterans who are being discharged or released from institutions after \* \* \* imprisonment." Outreach workers for the Veterans Health Administration report that veterans with acute or chronic medical or psychiatric problems who are treated while incarcerated, often have difficulty obtaining similar treatment during a transitional period. In particular, if mental health issues are not addressed during the transitional period, upon release, many of these veterans are rendered incapable of finding or maintaining appropriate housing.

In addition to being an important component of VA's duty to attempt to prevent veterans from becoming homeless, establishing that the exclusion in 38 CFR 17.38(c)(5) does not apply to veterans who are residents in temporary housing programs offers potentially significant public benefits and will further the success of other VA policies. For example, section 20 of VHA Handbook 1160.01 specifically requires VA to "engage with veterans being released from prison in need of care." VHA Handbook 1160.01, section 20(a)(2). As significant numbers of veterans in these programs have

difficulty obtaining medical treatment comparable to the treatment they received in prison, some begin to believe the only way they can obtain treatment is to violate the terms of their release and return to prison. A 2008 Urban Institute study of a large re-entry population cohort, found health care played a key role in the first months of community re-adjustment and reduced recidivism. Mallik-Kane, K., and Visher, C.A., *Health and prisoner re-entry: How physical, mental, and substance abuse conditions shape the process of re-integration*. Urban Institute Justice Policy Center: Washington, DC (2008). In particular, the study noted that access to medications for chronic health and mental health conditions is a low-cost powerful tool in preventing recidivism.

We received three comments on the proposed rule. All of the comments support the substance of the proposed rule. One commenter recommended that VA add a number of services to its medical benefits package, and made strategic recommendations for VA housing programs. This rulemaking simply removes a bar that prevented veterans, who are released from incarceration into temporary housing, from receiving outpatient and hospital care under the medical benefits package. Because the commenter suggested that additional services be added to this package, we do not believe that these comments are within the scope of this rulemaking. However, to the extent that the commenter seeks to connect veterans to needed care and support services, we note that VA currently provides a number of programs that provide housing and other support services to veterans. Nothing prevents formerly incarcerated veterans from taking advantage of any of the programs for which they qualify.

For the foregoing reasons, VA amends 38 CFR 17.38 to revise the exclusion in the VA medical benefits package for a veteran who is a patient or inmate in an institution of another government agency so that the exclusion does not apply to a veteran who is a resident of a temporary housing program. For purposes of this rule, a "temporary housing program," includes community residential re-entry centers, halfway houses, and similar residential facilities.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more

(adjusted annually for inflation) in any given year. This rule has no such effect on state, local and tribal governments, or on the private sector.

#### **Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action planned or taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### **Paperwork Reduction Act**

This rule does not contain any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule only affects individuals, not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.011, Veterans Dental Care; 64.012,

Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

#### **Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on February 24, 2011 for publication.

#### **List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: February 25, 2011.

**William F. Russo,**

*Director, Regulations Management,  
Department of Veterans Affairs.*

For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

#### **PART 17—MEDICAL**

- 1. The authority citation for part 17 continues to read as follows:

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

- 2. Revise § 17.38(c)(5) to read as follows:

#### **§ 17.38 Medical benefits package.**

\* \* \* \* \*

(c) \* \* \*

(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).

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#### **DEPARTMENT OF VETERANS AFFAIRS**

#### **38 CFR Part 51**

**RIN 2900-AN59**

#### **Update to NFPA 101, Life Safety Code, for State Home Facilities**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule without change the proposed rule to amend the Department of Veterans Affairs (VA) regulations governing the physical environment of State Home facilities. The final rule will require State Home facilities that receive a per diem for providing nursing home care to eligible veterans to meet certain provisions of the 2009 edition of the National Fire Protection Association’s NFPA 101, Life Safety Code. The change is designed to assure that State Home facilities meet current industry-wide standards regarding life safety and fire safety.

**DATES:** *Effective Date:* This final rule is effective April 1, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this rule as of April 1, 2011.

#### **FOR FURTHER INFORMATION CONTACT:**

Theresa Hayes at (202) 461-6771, Office of Geriatrics and Extended Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (The telephone number above is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on April 7, 2010 (75 FR 17644), VA proposed to amend 38 CFR 51.200, which governs the physical environment of facilities for which VA pays per diem to a state for providing nursing home care to eligible veterans. We proposed to update the regulation to require State Home facilities to meet certain provisions of the National Fire Protection Association’s NFPA 101, Life Safety Code (2009 edition) (NFPA 101), and proposed to incorporate that edition by reference. We provided a 60-day comment period and received one comment.

The comment was from the National Fire Protection Association. The commenter noted that there are several differences between the 2006 and 2009 editions of NFPA 101. The commenter noted that the 2009 edition clarifies the circumstances in which a “change in occupancy” classification would be considered when an existing building is