

By letter dated July 19, 1995, Lisa Harris-Moorhead, Virgin Islands' Commissioner of Labor indicated the state's agreement to voluntary relinquishment of the U.S. Virgin Islands State plan's final approval status under Section 18(e) of the Act and to reassertion of concurrent Federal enforcement jurisdiction. On behalf of the Governor and his new administration she committed the state to making the Virgin Islands' workplaces safe and healthful and to "marked improvement" in the state's program by December.

**Proposed Reconsideration of 18(e) Determination and Reinstatement of Concurrent Federal Enforcement Authority**

Section 18(f) of the Act requires the Assistant Secretary to make a continuing evaluation of the manner in which each state plan is being administered. Under regulations at 29 CFR 1902.32(e), after a State's plan has been given an affirmative 18(e) determination, the State is required to maintain a program which will meet the requirements of section 18(c) and will continue to be "as least as effective as" the Federal program. A failure to comply with this or other 18(e) requirements may result in the reconsideration and revocation or suspension of the affirmative 18(e) determination and the resumption of Federal enforcement authority, or, if circumstances warrant, the commencement of proceedings for the withdrawal of approval of the plan pursuant to 29 CFR Part 1955 and section 18(f) of the Act.

Under the authority of section 18 of the Act and 29 CFR 1902.32(f) and 1902.47 *et seq.*, the Assistant Secretary on his own initiative and in response to the state's request is seeking public comment on his proposal to reconsider the U.S. Virgin Islands State plan's affirmative 18(e) determination and reinstate concurrent Federal enforcement authority in order to assure adequate worker protection and the effective enforcement of safety standards and regulations. A decision revoking or suspending the state's 18(e) status would not terminate federal approval of the state plan and would not affect the legal authority of the Virgin Islands to carry on enforcement activities under the state plan. Instead, revocation/suspension of a state's 18(e) determination restores the state plan to "initial approval" status and permits the resumption of concurrent federal enforcement activity including independent Federal or joint state and Federal inspections resulting in the

issuance of appropriate Federal citations and penalties and the review of contested cases by the Occupational Safety and Health Review Commission (OSHRC). Federal enforcement activity will reflect all new OSHA compliance initiatives to promote voluntary compliance through common sense regulation and appropriately rewarding employers who take affirmative steps to assure worker protection. OSHA believes such action is an appropriate response to current circumstances in the Virgin Islands; restoring the state plan to its pre-1984 "initial approval" status acknowledges the deficiencies presently existing in the state program, which, while serious and extensive, do not in the Assistant Secretary's judgement warrant the commencement at this time of proceedings under 29 CFR Part 1955 and section 18(f) of the Act to entirely withdraw state plan approval. At the same time, reverting the state's federal approval status from final to initial approval would allow OSHA to exercise discretionary concurrent enforcement authority to compensate for the current deficiencies in state plan enforcement and allow the state sufficient time and assistance to improve its program. Pending a final decision, Federal OSHA compliance officers may accompany State inspectors, effective immediately, but no Federal citations will be issued until a final decision on this action is published.

Final approval status may be renewed or a process to withdraw Federal approval of the State plan may be initiated subsequently, depending on the results of State efforts to address the identified State plan deficiencies.

Signed at Washington, DC this 5th day of September, 1995.

**Joseph A. Dear,**

*Assistant Secretary of Labor.*

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

RIN 2900-AH61

**Adult Day Health Care Program; Community Residential Care Program; and Contract Program for Veterans With Alcohol and Drug Dependence Disorders**

**AGENCY:** Veterans Health Administration, VA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to update references to material incorporated by reference in the Department of Veterans Affairs regulations concerning the Adult Day Health Care Program, the Community Residential Care Program, and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders. These regulations incorporate by reference various editions of the National Fire Protection Association Life Safety Code entitled "NFPA 101, Life Safety Code" and "NFPA 101A, Guide on Alternative Approaches to Life Safety." It is proposed to substitute the current edition (1994) of the Life Safety Code and the current edition (1995) of the Guide on Alternative Approaches to Life Safety for earlier editions. The regulations are designed to ensure that buildings used for treatment and residential services for veterans meet the fire and safety requirements of the Life Safety Code and the Guide on Alternative Approaches to Life Safety. Also, this document amends the current "Contract Program for Veterans With Alcohol and Drug Dependence Disorders" regulations which, prior to the effective date of this document, provided that the Director, Facility Engineering, Planning, and Construction Office, was delegated authority to grant certain equivalencies or variances to building requirements. This delegation of authority is removed and instead such delegation of authority is granted to each of the Regional Directors of the Veterans Health Administration.

**DATES:** Comments must be received on or before November 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Schoeps, Chief, Community Care Programs, Veterans Health Administration, Department of Veterans Affairs, (202) 565-7530, for issues relating to the Adult Day Health Care Program and the Community Residential Care Program; Karen G. Boies, Ph.D., Deputy Associate Director for Addictive Disorders and Psychiatric Rehabilitation, Veterans Health Administration, Department of Veterans Affairs, (202) 565-7316, for issues relating to the Contract Program for Veterans With Alcohol and Drug Dependence Disorders.

**ADDRESSES:** Mail written comments concerning these proposed regulations to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, room 1176, 801 Eye Street NW., Washington, DC 20001. Comments should indicate that

they are submitted in response to "RIN 2900-AH61." All written comments will be available for public inspection in the Office of Regulations Management, room 1176, 801 Eye Street NW., Washington, DC 20001 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**SUPPLEMENTARY INFORMATION:** The regulations affected by this document are authorized under provisions of 38 U.S.C. as follows:

Adult Day Health Care Program—38 U.S.C. 1712; Community Residential Care Program—38 U.S.C. 1730; and Contract Program for Veterans With Alcohol and Drug Dependence Disorders—38 U.S.C. 501 and 38 U.S.C. 1720A

**Regulatory Flexibility Act**

The Secretary hereby certifies that the provisions of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. In all likelihood, only similar entities that are small entities would conduct activities affected by this rule. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

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

Alcoholism, Claims, Dental Health, Drug Abuse, Foreign Relations, Government Contracts, Grants Program—Health, Health Care, Health Facilities, Health Professions, Medical Devices, Medical Research, Mental Health Programs, Nursing Homes, Philippines, Veterans.

Approved: August 29, 1995.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

**PART 17—MEDICAL**

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

**Authority:** 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

2. In § 17.51e, paragraph (c)(2) is revised to read as follows:

**§ 17.51e Adult day health care in private facilities.**

\* \* \* \* \*

(c) \* \* \*

(2) The institution shall meet the requirements of chapters 1-7, 10-11, and 31 of the National Fire Protection Association's Life Safety Code, entitled NFPA 101 Life Safety Code 1994, dated February 11, 1994 (which is

incorporated by reference). Incorporation of the 1994 edition of the Life Safety Code was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and at the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from: National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.) The institution shall provide sufficient staff to assist patients in the event of fire or other emergency.

\* \* \* \* \*

3. In § 17.51j, paragraph (a)(2) is revised to read as follows:

**§ 17.51j Approval of community residential care facilities.**

\* \* \* \* \*

(a) \* \* \*

(2) Meet the requirements of chapters 1-7, 22-23, and 31 of the 1994 edition of the National Fire Protection Association's Life Safety Code, NFPA 101, and the 1995 edition of NFPA 101A, Guide on Alternative Approaches to Life Safety (which are incorporated by reference). The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of the 1994 edition of the Life Safety Code and the 1995 edition of NFPA 101A was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)

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4. In § 17.53b, paragraph (a)(1)(i) is revised to read as follows:

**§ 17.53b Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.**

(a) \* \* \*

(1) \* \* \*

(i) The building must meet the requirements of the applicable residential occupancy chapters 1-7, 22-23, and 31 of the Life Safety Code (NFPA 101) published by the National

Fire Protection Association (NFPA), Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1-800-344-3555.) The 1994 edition of the Life Safety Code is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

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5. In § 17.53c, paragraph (a)(1)(i) is revised to read as follows:

**§ 17.53c Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.**

(a) \* \* \*

(1) \* \* \*

(i) The building must meet the requirements of the applicable business occupancy chapters 1-7, 26-27, and 31 of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA), Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1-800-344-3555.) The 1994 edition of the Life Safety Code (NFPA 101) is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any Equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

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