

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 17**

RIN 2900-AH61

Community Residential Care Program and Contract Program for Veterans With Alcohol and Drug Dependence Disorders**AGENCY:** Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document updates the Department of Veterans Affairs (VA) regulations concerning the Community Residential Care Program and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders by incorporating by reference relevant portions of the latest 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." This is intended to ensure that buildings used for treatment and residential services for veterans meet appropriate fire and safety standards. Also, this document amends the regulations for such programs by delegating authority to each of the Veterans Integrated Service Network (VISN) Directors of the Veterans Health Administration to grant certain equivalencies or variances to building standards of the Life Safety Code. Further, this final rule does not adopt the portion of the proposed rule concerning the Adult Day Health Care Program since the Adult Day Health Care Program and the corresponding regulations are no longer in existence.

EFFECTIVE DATE: This rule is effective January 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1997.

FOR FURTHER INFORMATION CONTACT: James R. Kelley, Director, Extended Care Service, for issues relating to the Community Residential Care Program at (202) 273-6342 (this is not a toll-free number); and Richard T. Suchinsky, M.D., Associate Director for Addictive Disorders and Psychiatric Rehabilitation, for issues relating to the Contract Program for Veterans With Alcohol and Drug Disorders at (202) 273-8437 (this is not a toll-free number), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: On September 11, 1995, we published a

proposed rule concerning the Adult Day Health Care Program; the Community Residential Care Program; and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders (60 FR 47133). We proposed to update these regulations by incorporating by reference relevant portions of the latest 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." We also proposed changes to delegations of authority. We requested that comments to the proposed rule be submitted on or before November 13, 1995. The portion of the proposed rule concerning the Adult Day Health Care Program is not adopted and instead is withdrawn since the Adult Day Health Care Program and the corresponding regulations are no longer in existence (see 61 FR 21964). Based on the reasons stated in the proposed rule and this document, the provisions of the proposed rule concerning the Community Residential Care Program and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders are adopted in this final rule with changes as discussed below.

The Community Residential Care Program is authorized under 38 U.S.C. 1730 and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders is authorized under 38 U.S.C. 501 and 1720A.

We received thirteen comments, seven of which were identical. All of the comments concerned the Community Residential Care Program.

The commenters, in general, objected to any increased costs which may be associated with operating a residential care facility under the provisions of the proposed rule. For example, some commenters objected to the possibility that they would have to install sprinkler systems. One commenter asserted that his homeowner's insurance would be canceled if he had to install a sprinkler system. A number of commenters asserted that the Life Safety Code was never intended to apply to "mom and pop" operations and some commenters further asserted that small operations, such as those housing eight or fewer veterans, should be exempt from the provisions of the Life Safety Code. Some commenters asserted that the Life Safety Code is arbitrary in the manner in which increasingly stringent criteria are applied depending upon whether a facility has sleeping accommodations for more than three residents or more than 16 residents. No changes are made based on these comments except as discussed below.

The Life Safety Code was intended to apply to the "mom and pop" residential care facilities and we believe that the adoption of the current Life Safety Code is necessary to ensure minimum levels of fire safety for residential care facilities participating in VA programs. The Life Safety Code is a national consensus code based on actual fire experience across the country. The code adopts standards designed to protect the occupants from loss of life but yet is intended to avoid standards which might involve significant hardship or inconvenience while yielding little additional increases in safety. Providing a safe environment is just as much a part of enhancing a veteran's life as other requirements of these programs.

Although some facilities may face greater costs due to changes in the Life Safety Code, our belief is that the need to increase the life safety of veterans in participating programs takes first priority. However, the Life Safety Code does provide for relief in appropriate circumstances. In this regard, Appendix A, at A-1-4.4 provides:

In existing buildings, it is not always practical to strictly apply the provisions of this Code. Physical limitations may require disproportionate effort or expense with little increase in public safety. In such cases, the authority having jurisdiction should be satisfied that reasonable life safety is ensured.

In existing buildings, it is intended that any condition that represents a serious threat to life be mitigated by application of appropriate safeguards. It is not intended to require modifications for conditions that do not represent a significant threat to life, even though such conditions are not literally in compliance with the Code.

It was intended that all of Appendix A be included in the material incorporated by reference since it consists of explanatory material relating to provisions incorporated by reference. Accordingly, the final rule incorporates by reference the provisions set forth in Appendix A. Also, it was intended that any equivalencies or variances be required to be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director and this delegation is added to each of the regulatory provisions affected by this rule.

Identical submissions from a number of commenters asserted that the technical committee that serves the National Fire Protection Association (NFPA) in developing the requirements of the Life Safety Code should include a member from the community residential program. In response, we note that in our view the committee is

well balanced and does have representation from community providers. In this regard, representatives of the Association of Residential Resources in Minnesota and the American Network of Community and Options are members on NFPA's technical advisory committees responsible for developing standards. Further, the committees also have representation from the VA, insurance companies, and state regulatory officials.

Commenters asserted this rule might have a disproportionate effect and expense for small entities and that therefore a cost-benefit analysis should be undertaken. In our view, special consideration for small entities is not warranted since the rule already is designed for small entities and in all likelihood only small entities will conduct activities affected by this rule.

The section numbers for the regulations amended by this rulemaking are different from those in the proposed rule because they recently were changed. Sections 17.51j, 17.53b, and 17.53c were changed respectively to sections 17.63, 17.81, and 17.82 (see 61 FR 21964).

The Secretary hereby certifies that this final 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. The rule already is designed for small entities and in all likelihood only small entities will conduct activities affected by this rule. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Catalog

The Catalog of Federal Domestic Assistance Numbers are 64.015 and 64.019.

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 program—health, Grant program—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Medical health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 9, 1996.
Jesse Brown,
Secretary of Veterans Affairs.

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

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.63 paragraph (a)(2) is revised to read as follows:

§ 17.63 Approval of community residential care facilities.

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(a) * * *
(2) Meet the requirements of chapters 1-7, 22-23, and 31 and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition), and NFPA 101A, Guide on Alternative Approaches to Life Safety (1995 edition), 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 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 Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. 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.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

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3. In § 17.81, paragraph (a)(1)(i) is revised to read as follows:

§ 17.81 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) and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition) which are incorporated by reference. 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 Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. 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.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

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4. In § 17.82, paragraph (a)(1)(i) is revised to read as follows:

§ 17.82 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) and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition) which are incorporated by reference. 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 Regulations Management (02D), Room 1154, 810 Vermont Avenue, N.W., Washington, DC 20420. 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.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

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