

## Department of Veterans Affairs

## § 17.66

the rates for care shall not exceed 110 percent of the average rate for approved facilities in that State as of March 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year.

(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3)(i) through (ii) of this section upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency, if the approving official determines that the cost of care for the resident will be greater than the average cost of care for other residents, or if the resident chooses to pay more for the care provided at a facility which exceeds VA standards.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989, as amended at 54 FR 22754, May 26, 1989. Redesignated at 61 FR 21965, May 13, 1996, as amended at 61 FR 63720, Dec. 2, 1996; 69 FR 18803, Apr. 9, 2004]

### § 17.64 Exceptions to standards in community residential care facilities.

(a) Facilities which have participated in VA's community residential care program prior to (the effective date of these regulations) may continue to be approved when the standard for § 17.63(c)(3) and/or § 17.63(e)(2) of this part are not met if:

(1) All standards other than § 17.63(c)(3) and/or § 17.63(e)(2) of this part are met;

(2) There is at least one functional toilet, lavatory, and bathing or shower facility for every eight people living in the facility, including provider and staff;

(3) The resident's bedrooms measure, exclusive of closet space, at least 80 square feet for a single-resident room, or 65 square feet for each resident in a multiresident room.

(b) Community residential care facilities which do not meet the requirements for continued approval because they do not comply with paragraphs (a)(2) or (a)(3) of this section may apply in writing to the Secretary of Veterans Affairs for an exception. The application must include a detailed descrip-

tion of the facility, including a description of the toilet, lavatory and bathing and shower facilities and/or resident's bedroom size, and an analysis of alternative solutions.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996]

### § 17.65 Duration of approval.

(a) Approval may be valid for up to 24 months if VA finds that the facility complies with all standards during the current and all previous VA inspections and any necessary interim monitoring for a period of two years.

(b) Approval may be valid for up to 15 months if VA finds the facility has complied with all standards except the records standard set forth in § 17.51j(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(c) Approval may be valid for up to 12 months if the VA finds that the facility has complied with all standards except the laundry service standard set forth in § 17.63(d) and the records standard set forth in § 17.63(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(d) Approval may be valid for up to 9 months if the VA finds that the facility has complied with all standards except the laundry service standard set forth in § 17.63(d) of this part; the bedroom standard set forth in § 17.63(e) of this part; the activities standard set forth in § 17.63(g) of this part; and the records standard set forth in § 17.63(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996]

### § 17.66 Notice of noncompliance with VA standards.

If the hearing official determines that an approved community residential care facility does not comply with the standards set forth in § 17.63 of this part, the hearing official shall notify the community residential care facility in writing of:

**§ 17.67**

(a) The standards which have not been met;

(b) The date by which the standards must be met in order to avoid revocation of VA approval;

(c) The community residential care facility's opportunity to request an oral or paper hearing under §17.51n of this part before VA approval is revoked; and

(d) The date by which the hearing official must receive the community residential care facility's request for a hearing, which shall not be less than 10 calendar days and not more than 20 calendar days after the date of VA notice of noncompliance, unless the hearing official determines that noncompliance with the standards threatens the lives of community residential care residents in which case the hearing official must receive the community residential care facility's request for an oral or paper hearing within 36 hours of receipt of VA notice.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996]

**§ 17.67 Request for a hearing.**

The community residential care facility operator must specify in writing whether an oral or paper hearing is requested. The request for the hearing must be sent to the hearing official. Timely receipt of a request for a hearing will stay the revocation of VA approval until the hearing official issues a written decision on the community residential care facility's compliance with VA standards. The hearing official may accept a request for a hearing received after the time limit, if the community residential care facility shows that the failure of the request to be received by the hearing official's office by the required date was due to circumstances beyond its control.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated at 61 FR 21965, May 13, 1996]

**§ 17.68 Notice and conduct of hearing.**

(a) Upon receipt of a request for an oral hearing, the hearing official shall:

(1) Notify the community residential care facility operator of the date, time, and location for the hearing; and

**38 CFR Ch. I (7-1-07 Edition)**

(2) Notify the community residential care facility operator that written statements and other evidence for the record may be submitted to the hearing official before the date of the hearing. An oral hearing shall be informal. The rules of evidence shall not be followed. Witnesses shall testify under oath or affirmation. A recording or transcript of every oral hearing shall be made. The hearing official may exclude irrelevant, immaterial, or unduly repetitious testimony.

(b) Upon the receipt of a community residential care facility's request for a paper hearing, the hearing official shall notify the community residential care facility operator that written statements and other evidence must be submitted to the hearing official by a specified date in order to be considered as part of the record.

(c) In all hearings, the community residential care facility operator and VA may be represented by counsel.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated at 61 FR 21965, May 13, 1996]

**§ 17.69 Waiver of opportunity for hearing.**

If representatives of a community residential care facility which receive a notice of noncompliance under §17.66 of this part fail to appear at an oral hearing of which they have been notified or fail to submit written statements for a paper hearing in accordance with §17.68 of this part, unless the hearing official determines that their failure was due to circumstances beyond their control, the hearing official shall:

(a) Consider the representatives of the community residential care facility to have waived their opportunity for a hearing; and,

(b) Revoke VA approval of the community residential care facility and notify the community residential care facility of this revocation.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996]