

and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before one or more employees of the VA office having original jurisdiction over the claim who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

\* \* \* \* \*

**PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE**

■ 3. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

**Subpart H—Hearings on Appeal**

■ 4. Revise § 20.706 to read as follows:

**§ 20.706 Rule 706. Functions of the presiding Member.**

The presiding Member is responsible for the conduct of the hearing, in accordance with the provisions of subpart H of this part, administering the oath or affirmation, and ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that

the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior. The presiding Member is not bound by the procedures described in § 3.103(c) of this chapter, as those procedures only apply to hearings before the agency of original jurisdiction.

■ 5. Amend APPENDIX A TO PART 20—CROSS-REFERENCES table by:

■ a. Removing entries “20.1”; “38 CFR 3.103(a)”; and “Statement of policy.”.

■ b. Revising entry 20.1304 to read as follows:

**APPENDIX A TO PART 20—CROSS-REFERENCES**

Sec.	Cross-reference	Title of cross-referenced material or comment
20.1304	38 CFR 20.700–20.717	See also rehearings.

[FR Doc. 2011–21513 Filed 8–22–11; 8:45 am]  
BILLING CODE 8320–01–P

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 63**

**RIN 2900–AN73**

**Health Care for Homeless Veterans Program**

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

**SUMMARY:** This final rule establishes regulations for contracting with community-based treatment facilities in the Health Care for Homeless Veterans (HCHV) program of the Department of Veterans Affairs (VA). The HCHV program assists certain homeless veterans in obtaining treatment from non-VA community-based providers. The final rule formalizes VA’s policies and procedures in connection with this program and clarifies that veterans with substance use disorders may qualify for the program.

**DATES:** *Effective Date:* September 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Robert Hallett, Healthcare for Homeless Veterans Manager, c/o Bedford VA Medical Center, 200 Springs Road, Bldg.

12, Bedford, MA 01730; (781) 687–3187 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The HCHV program is authorized by 38 U.S.C. 2031, under which VA may provide outreach as well as “care, treatment, and rehabilitative services (directly or by contract in community-based treatment facilities, including halfway houses)” to “veterans suffering from serious mental illness, including veterans who are homeless.” One of VA’s National priorities is a renewed effort to end homelessness for veterans. For this reason, we are establishing regulations that are consistent with the current administration of this program.

The primary mission of the HCHV program is to use outreach efforts to contact and engage veterans who are homeless and suffering from serious mental illness or a substance use disorder. Many of the veterans for whom the HCHV program is designed have not previously used VA medical services or been enrolled in the VA health care system.

Through the HCHV program, VA identifies homeless veterans with serious mental illness and/or substance use disorder, usually through medical intervention, and offers community-based care to those whose conditions are determined, clinically, to be managed sufficiently that the individuals can participate in such care. We have assisted homeless veterans

with substance use disorders through this program because, based on our practical understanding and experience, the vast majority of homeless veterans have substance use disorders. Treating substance use as a mental disorder is consistent with the generally accepted “disease model” of alcoholism and drug addiction treatment, as well as the modern use of medical intervention to treat the condition. We believe that if a substance use disorder is a contributing cause of homelessness, then that disorder is serious; therefore, it is consistent to include such veterans in a program designed for “veterans suffering from serious mental illness, including veterans who are homeless.” 38 U.S.C. 2031(a).

Veterans who are identified and who choose to participate in this form of care as part of their treatment plan are then referred by VA to an appropriate non-VA community-based provider. In some cases, VA will continue to actively medically manage the veteran’s condition, while in other cases a VA clinician may determine that a veteran can be sufficiently managed through utilization of non-medical resources, such as 12-step programs.

To provide the community-based care, the HCHV program contracts with non-VA community-based providers, such as halfway houses, to provide to these veterans housing and mental health and/or substance use disorder

treatment. VA provides per diem payments to these non-VA community-based providers for the services provided to veterans. The services provided under these contracts are typically short-term, because during their stay veteran-participants are connected with other resources designed to provide longer-term housing. These contracts, and the per diem payment, are governed by the Federal Acquisition Regulations, and the VA supplements thereto contained in the Department of Veterans Affairs Acquisition Regulation, 48 CFR chapter 8. These are the rules that specifically govern requirements exclusive to VA contracting actions.

On December 20, 2010, we proposed to establish a new 38 CFR part 63 for the HCHV program because the program is unique and may be distinguished from therapeutic housing or other VA programs designed to end homelessness. 75 FR 79323. We included a 60-day comment period and invited interested persons to submit written comments on or before February 18, 2011. We received five comments from members of the public.

A commenter stated that she supported this rulemaking and that the HCHV “program has a solid foundation.” The commenter further stated that the program “should be successful in finding and helping these veterans in need.” We agree that this rulemaking will help VA better serve homeless veterans that have serious mental illness or substance use disorders.

Another commenter stated that we should minimize the paperwork burden on veterans by designing and implementing a single information technology program that agencies can use to share information about the veteran. Although we generally agree that technology increases the possibilities for reduced paperwork from veterans and increased information-sharing within the government, this comment is outside the scope of this rulemaking. The proposed rule addressed contracting with non-VA community-based providers to furnish services to certain homeless veterans while the comment addresses information sharing. We note that the only collection of information required by this rulemaking places obligations on the non-VA community based providers with whom VA would contract, not homeless veterans. Veterans will only have to meet the eligibility criteria in § 63.13(a).

The same commenter suggested that VA form “contract[s with] facilities that have multiple uses under one roof,

providing shelters, social and health services \* \* \*, and medical services” in a single facility, so that “the homeless veteran will only have to go to one facility to receive treatment and or live.” The commenter suggests that such a facility would eliminate the burden of travelling to different locations and repeating paperwork at each one.

Section 63.10(a) authorizes VA to “award per diem contracts to non-VA community-based providers who provide temporary residential assistance” and “who can provide the specific services” covered by the HCHV program regulations. In turn, § 63.15 identifies covered services as including therapeutic and rehabilitative services; structured group activities, such as group therapy and professional counseling; and residential room and board. Thus, the HCHV program offers veterans the opportunity to have many of their needs met at one particular facility; however, medical needs must be addressed at an appropriate medical facility. Moreover, rather than restrict the location of services to “one facility,” we encourage non-VA community-based providers to utilize community services because, based on our experience, we believe that the use of community resources is vital to the success of homelessness programs and in helping veterans return to the community as healthy, productive citizens. We also note that VA social workers and caseworkers work closely to place veterans in the HCHV program, providing assistance with any paperwork and/or logistical burdens.

Additionally, the rule clearly requires the contract facility to assist veterans in obtaining community resources and assistance, and applicants are scored based in part on proximity to public transportation and community interaction. Thus, we believe that this population of veterans is better served by organizations that encourage involvement in the community, rather than those that treat the population in a more institutionalized fashion by providing all services under one roof. We make no change based on the comment.

A commenter asked what happens to homeless veterans who do not meet the eligibility requirements for the HCHV program and recommended that the program be open to all homeless veterans.

The proposed rule addressed homeless veterans, who are seriously mentally ill and/or have substance use disorders, while the comment addresses other veterans who do not meet the eligibility criteria of the HCHV program. These criteria are prescribed by 38

U.S.C. 2031, which we interpret as authorizing VA authority to provide care to veterans who are both homeless and seriously mentally ill. Section 2031 does not authorize the broader program proposed by the commenter. We discuss this interpretation in greater detail in response to a later comment, and make no change based on this comment. However, we note that to the extent some homeless veterans will not be covered by this program because they are not seriously mentally ill, they will be eligible for a wide variety of VA programs designed to reduce or eradicate homelessness in our Nation’s veteran population, many of which are not specifically targeted to veterans that have serious mental illness. These include housing support programs such as the Grant and Per Diem Program, the Department of Housing and Urban Development and VA Supported Housing program, and the Supportive Services for Veteran Families program.

A commenter requested that VA prescribe rules regarding assistance for covered veterans after they receive the prescribed 6 months of treatment and regarding veterans who are not rehabilitated by the 6-month course of treatment.

The proposed rule addressed VA’s authority to contract with non-VA community-based providers in the administration of the HCHV program, which is designed to address the short-term, immediate needs of this veteran population, while, simultaneously, efforts are made to connect the population with resources that can provide assistance with permanent housing and other long-term needs that the HCHV program is not equipped to address.

VA anticipates that the vast majority of veterans who are the subject of a contract with a non-VA community based provider under this program will have transitioned to a longer term support structure at the end of the 6-month period prescribed by this rule. At that point, the veteran will likely still be receiving other VA benefits and services. It is possible that in some situations, VA will need additional time, beyond 6 months, to connect a veteran with a particularly challenging case to other services, whether provided by VA or not. In such a situation, the rule envisions the possibility of extending the contract period for “extraordinary circumstances” in § 63.10(c)(2). Therefore, we make no change based on this comment.

A commenter expressed concern that the proposed regulation “would enact a more restrictive interpretation regarding eligibility than Congress intended”

under 38 U.S.C. 2031(a) because it requires a veteran to be both homeless and have a serious mental disorder. The commenter argues, using statutory interpretation and arguments based on the legislative history of section 2031, that (1) “a veteran’s homeless condition is sufficient for assistance” without regard to the veteran having a serious mental illness; and (2) that the proposed rule would make the statutory homelessness requirement “surplusage.” The commenter cautions that if VA does not adopt their construction, a “costly adverse judicial determination” could result.

As the commenter points out, judicial review of an agency’s construction of a statute it administers is governed by *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). To state the law very briefly, *Chevron* envisions a two-step analysis. If the statute is plain, and the intent of Congress is clear, that is the end of the matter. If, however, the statute is ambiguous on the point at issue, a reviewing court asks whether the agency’s construction is reasonable.

We believe the statute is plain on this point. Section 2031(a) provides in pertinent part:

In providing care and services under [38 U.S.C. 1710] to veterans suffering from serious mental illness, including veterans who are homeless, [VA] may provide (directly or in conjunction with another governmental or other entity)—(1) outreach services; (2) care, treatment, and rehabilitative services (directly or by contract in community-based treatment facilities, including halfway houses); and (3) therapeutic transitional housing assistance \* \* \*

The statute clearly identifies homeless veterans as a subset of veterans who may be suffering from serious mental illness and therefore in need of medical care pursuant to 38 U.S.C. 1710. Under the plain language of the statute, Congress excluded homeless veterans who do not need medical care for a serious mental illness. Congress has authorized other programs to assist that segment of the homeless veteran population. The reference to section 1710 makes clear that programs authorized by section 2031 are for veterans suffering from serious mental illness only.

Even if the statute is ambiguous, our interpretation that it applies to veterans who are homeless and have a serious mental illness is consistent with Congress’ intent. Congress initially enacted what is now section 2031 at 38 U.S.C. 1711. Veterans Health Programs Improvement Act of 1997, Public Law 105–114, Title II, § 202(a). This section

was amended and renumbered without substantive change into current section 2031. Homeless Veterans Comprehensive Assistance Act of 2001, Public Law 107–95, § 5(b)(2). A separate House bill which preceded Public Law 105–114 contained language that is for all relevant purposes identical to current section 2031. H.R. 2206 § 2(a), 105th Cong. (1997).

The deliberations surrounding this prior bill clearly illuminate Congressional understanding of the language now found in section 2031. H. Rep. No. 105–293 (1997). Congress found there to be substantial “overlap and redundancy” among many prior VA statutory authorities “targeted primarily to providing psychiatric residential treatment to homeless, *mentally ill* veterans.” *Id.* at 10 (emphasis added). Congress therefore undertook to consolidate the authorities for three programs, including the contract halfway-house care program for veterans suffering from alcohol and drug dependence, the community-based residential care program for homeless chronically mentally ill veterans, and a program providing transitional therapeutic housing, into one statute. *Id.* at 12. Congress plainly intended current section 2031 to authorize psychiatric residential treatment to homeless veterans who are also mentally ill; all three authorities combined into current section 2031 dealt with treatment for veterans suffering from some kind of mental illness or otherwise requiring therapeutic residential treatment.

Furthermore, the legislative history presented in support of the comment is not persuasive. The commenter argues that Congress intended to reach veterans who are homeless without regard to their having a serious mental illness based on an interpretation of a prior version of the statute using definitions from 24 CFR 91.5, which are regulations promulgated by the Department of Housing and Urban Development (HUD), which is not charged with interpreting VA statutes. Thus, HUD’s definitions are simply inapplicable.

Additionally, the commenter’s argument, even taken at face value, would at most affect the proper understanding of the term “homeless” and would not on its own dictate the proper interpretation of section 2031. The commenter notes that former 38 U.S.C. 2001 indicates that 38 U.S.C. chapter 20 used to address “chronic homelessness,” which required as a criterion serious mental illness or some other kind of disability. The commenter argues this has been replaced with the more general term, “homeless.” Even if true, this analysis would only affect the

proper understanding of the term “homeless,” implying that term does not necessarily include serious mental illness. However, under our interpretation of section 2031, serious mental illness is a freestanding criterion. Since serious mental illness is a separate requirement in the statute, we do not believe the commenter’s argument affects our construction of the proper scope of this program. Our interpretation is reasonable because Congress could not have intended that homelessness alone indicates a severe mental illness requiring the kind of care authorized by sections 2031 and 1710. As the commenter points out, up to 20 percent of homeless veterans are homeless for reasons other than mental illness. This fact is irreconcilable with the idea that “homeless” is a subset, or type of, serious mental illness, which is the construction urged by the commenter. As for the comment that our rule would make homelessness surplusage, we must, again disagree. Pursuant to § 63.3(a)(1), eligibility is predicated on the veteran being homeless, and under § 63.10(a), contracts are authorized only to non-VA community-based providers who provide temporary residential assistance for homeless persons.

Finally, we note that the program as implemented by VA and described in this rule will reach most homeless veterans, up to 80 percent. As stated in the proposed rule, chronic homelessness is generally caused by substance abuse or serious mental illness. Congress determined for purposes of this program that VA should allocate some of its mental health care resources to target homelessness caused by serious mental illness. As described above, we do not interpret current law as authorizing VA to focus mental health care resources on those who are not mentally ill. Additionally, Congress has determined that veterans who are homeless for other reasons will qualify for other VA programs and services. *See, e.g.*, 38 U.S.C. 2021–23, 2041–44. This reinforces our view that section 2031 is intended to reach seriously mentally ill homeless veterans because this population is not specifically identified elsewhere in 38 U.S.C. chapter 20.

The commenter also hypothesizes that the additional expenditure of resources that would be required by the commenter’s interpretation of the law, expanding the program to cover homelessness regardless of mental illness, would be offset by savings in clinician time. The commenter argues that clinicians would not need to make any determination regarding mental

illness if the program covered every homeless veteran. As we explain above, we do not interpret section 2031 to authorize VA to allocate its limited mental health care resources to veterans who are not mentally ill. Therefore, the question of whether or not the reduction in “billable time” realized by not determining whether a veteran is seriously mentally ill adds up to more or less than the cost of paying per diem on behalf of that veteran for up to 6 months is not relevant.

The commenters also cited the numbers of homeless veterans who are not eligible for the HCHV program. We make no change based on the commenter's request that we amend the rules “to include a specific reference to programs” that address homeless veterans who are not seriously mentally ill. We have identified several such programs in this notice, but it would be unwise to include a definitive statement in the rule since VA's list of programs targeted at this difficult problem is constantly evolving, and it would be a needless waste of resources to have to amend and update 38 CFR part 63 every time VA altered or added an unrelated program. Further, the purpose of this rulemaking is to prescribe rules that govern a specific program. It is not intended as a general notice regarding the various benefits and services that may be available to homeless veterans. VA uses outreach and other methods to advise veterans regarding the benefits that may be available to them.

Although we are not making any changes to the rule based on the comments, we do make one minor administrative change. We are inserting a comma after the word “training” in the first sentence of § 63.15(b)(1). This fixes a typographical error of omission in the proposed rule. We are not altering the substantive content of the paragraph by making this change.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the technical change noted above.

#### **Paperwork Reduction Act**

This final rule at § 63.15(e)(3) contains a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). On December 20, 2010, in the proposed rule published in the **Federal Register**, we requested public comment on the new collection of information. We received no comments concerning the new collection of information. OMB has

approved the information collection requirement for § 63.15(e)(3) as a revision to OMB Control Number 2900–0091.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will 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 reason for this certification is that only a small portion of the business of health care providers, suppliers, or similar entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### **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 Executive Order classifies a “significant regulatory action,” requiring review by OMB unless OMB waives such a review, as any 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, or 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 regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### **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 the 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 final rule would have no such effect on State, local, and Tribal governments, or on the private sector.

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

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are: 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence.

#### **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, Department of Veterans Affairs, approved this document on July 27, 2011, for publication.

#### **List of Subjects in 38 CFR Part 63**

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Health care, Homeless, Housing, Individuals with disabilities, Low and moderate income housing, Public assistance programs, Public housing, Relocation assistance, Reporting and recordkeeping requirements, Veterans.

Dated: August 17, 2011.

#### **Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, VA amends 38 CFR chapter I by adding part 63 to read as follows:

#### **PART 63—HEALTH CARE FOR HOMELESS VETERANS (HCHV) PROGRAM**

Sec.

- 63.1 Purpose and scope.
- 63.2 Definitions.
- 63.3 Eligible veterans.
- 63.10 Selection of non-VA community-based providers.
- 63.15 Duties of, and standards applicable to, non-VA community-based providers.

**Authority:** 38 U.S.C. 501, 2031, and as noted in specific sections.

#### **§ 63.1 Purpose and scope.**

This part implements the Health Care for Homeless Veterans (HCHV) program. This program provides per diem payments to non-VA community-based facilities that provide housing, as well

as care, treatment and/or rehabilitative services, to homeless veterans who are seriously mentally ill or have a substance use disorder.

(Authority: 38 U.S.C. 501, 2031(a)(2))

### § 63.2 Definitions.

For the purposes of this part:

*Clinician* means a physician, physician assistant, nurse practitioner, psychiatrist, psychologist, or other independent licensed practitioner.

*Homeless* has the meaning given that term in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)).

*Non-VA community-based provider* means a facility in a community that provides temporary, short-term housing (generally up to 6 months) for the homeless, as well as services such as rehabilitation services, community outreach, and basic mental-health services.

*Participant* means an eligible veteran under § 63.3 for whom VA is paying per diem to a non-VA community-based provider.

*Serious mental illness* means diagnosed mental illness that actually or potentially contributes to a veteran's homelessness.

*Substance use disorder* means alcoholism or addiction to a drug that actually or potentially contributes to a veteran's homelessness.

(Authority: 501, 2002, 2031)

### § 63.3 Eligible veterans.

(a) *Eligibility*. In order to serve as the basis for a per diem payment through the HCHV program, a veteran served by the non-VA community-based provider must be:

- (1) Homeless;
- (2) Enrolled in the VA health care system, or eligible for VA health care under 38 CFR 17.36 or 17.37; and
- (3) Have a serious mental illness and/or substance use disorder,
  - (i) That has been diagnosed by a VA clinician,
  - (ii) Is "clinically managed" as determined by a VA clinician (clinical management of a condition may be achieved through non-medical intervention such as participation in a 12-step program), and
  - (iii) Impacts the veteran's ability for self-care and/or management of financial affairs as determined by a VA caseworker (*i.e.*, a clinician, social worker, or addiction specialist).

(b) *Priority veterans*. In allocating HCHV program resources, VA will give priority to veterans, in the following order, who:

- (1) Are new to the VA health care system as a result of VA outreach

efforts, and to those referred to VA by community agencies that primarily serve the homeless population, such as shelters, homeless day centers, and soup kitchens.

(2) Have service-connected disabilities.

(3) All other veterans.

(c) VA will refer a veteran to a non-VA community-based provider after VA determines the veteran's eligibility and priority.

(Authority: 38 U.S.C. 501, 2031)

### § 63.10 Selection of non-VA community-based providers.

(a) *Who can apply*. VA may award per diem contracts to non-VA community-based providers who provide temporary residential assistance for homeless persons with serious mental illness, and/or substance use disorders, and who can provide the specific services and meet the standards identified in § 63.15 and elsewhere in this part.

(b) *Awarding contracts*. Contracts for services authorized under this section will be awarded in accordance with applicable VA and Federal procurement procedures in 48 CFR chapters 1 and 8. Such contracts will be awarded only after the quality, effectiveness and safety of the applicant's program and facilities have been ascertained to VA's satisfaction, and then only to applicants determined by VA to meet the requirements of this part.

(c) *Per diem rates and duration of contract periods*.

(1) Per diem rates are to be negotiated as a contract term between VA and the non-VA community-based provider; however, the negotiated rate must be based on local community needs, standards, and practices.

(2) Contracts with non-VA community-based providers will establish the length of time for which VA may pay per diem based on an individual veteran; however, VA will not authorize the payment of per diem for an individual veteran for a period of more than 6 months absent extraordinary circumstances.

(Authority: 38 U.S.C. 501, 2031)

### § 63.15 Duties of, and standards applicable to, non-VA community-based providers.

A non-VA community-based provider must meet all of the standards and provide the appropriate services identified in this section, as well as any additional requirements set forth in a specific contract.

(a) *Facility safety requirements*. The facility must meet all applicable safety requirements set forth in 38 CFR 17.81(a).

(b) *Treatment plans and therapeutic/rehabilitative services*. Individualized treatment plans are to be developed through a joint effort of the veteran, non-VA community-based provider staff and VA clinical staff. Therapeutic and rehabilitative services must be provided by the non-VA community-based provider as described in the treatment plan. In some cases, VA may complement the non-VA community-based provider's program with added treatment services such as participation in VA outpatient programs. Services provided by the non-VA community-based provider generally should include, as appropriate:

(1) Structured group activities such as group therapy, social skills training, self-help group meetings or peer counseling.

(2) Professional counseling, including counseling on self care skills, adaptive coping skills and, as appropriate, vocational rehabilitation counseling, in collaboration with VA programs and community resources.

(c) *Quality of life, room and board*.

(1) The non-VA community-based provider must provide residential room and board in an environment that promotes a lifestyle free of substance abuse.

(2) The environment must be conducive to social interaction, supportive of recovery models and the fullest development of the resident's rehabilitative potential.

(3) Residents must be assisted in maintaining an acceptable level of personal hygiene and grooming.

(4) Residential programs must provide laundry facilities.

(5) VA will give preference to facilities located close to public transportation and/or areas that provide employment.

(6) The program must promote community interaction, as demonstrated by the nature of scheduled activities or by information about resident involvement with community activities, volunteers, and local consumer services.

(7) Adequate meals must be provided in a setting that encourages social interaction; nutritious snacks between meals and before bedtime must be available.

(d) *Staffing*. The non-VA community-based provider must employ sufficient professional staff and other personnel to carry out the policies and procedures of the program. There will be at a minimum, an employee on duty on the premises, or residing at the program and available for emergencies, 24 hours a day, 7 days a week. Staff interaction with residents should convey an attitude of genuine concern and caring.

(e) *Inspections.* (1) VA must be permitted to conduct an initial inspection prior to the award of the contract and follow-up inspections of the non-VA community-based provider's facility and records. At inspections, the non-VA community-based provider must make available the documentation described in paragraph (e)(3) of this section.

(2) If problems are identified as a result of an inspection, VA will establish a plan of correction and schedule a follow-up inspection to ensure that the problems are corrected. Contracts will not be awarded or renewed until noted deficiencies have been eliminated to the satisfaction of the inspector.

(3) Non-VA community-based providers must keep sufficient documentation to support a finding that they comply with this section, including accurate records of participants' lengths of stay, and these records must be made available at all VA inspections.

(4) Inspections under this section may be conducted without prior notice.

(f) *Rights of veteran participants.* The non-VA community-based provider must comply with all applicable patients' rights provisions set forth in 38 CFR 17.33.

(g) *Services and supplies.* VA per diem payments under this part will include the services specified in the contract and any other services or supplies normally provided without extra charge to other participants in the non-VA community-based provider's program.

(Authority: 38 U.S.C. 501, 2031)

(The Office of Management and Budget has approved the information collection

requirement in this section under control number 2900-0091.)

[FR Doc. 2011-21407 Filed 8-22-11; 8:45 am]

BILLING CODE 8320-01-P

## POSTAL SERVICE

### 39 CFR Part 912

#### Procedures To Adjudicate Claims for Personal Injury or Property Damage Arising Out of the Operation of the U.S. Postal Service

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Postal Service's regulations concerning tort claims to update the mailing address of the National Tort Center.

**DATES:** *Effective Date:* August 23, 2011.

**ADDRESSES:** Written communications should be directed to: General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155-9948.

**FOR FURTHER INFORMATION CONTACT:** Ruth A. Przybeck, Chief Counsel, Torts, (314) 345-5820.

**SUPPLEMENTARY INFORMATION:** Amendment of 39 CFR part 912 is necessary to update the mailing address of the National Tort Center. This rule is a change in agency rules of procedure that does not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for its adoption by the Postal Service to become effective immediately.

#### List of Subjects in 39 CFR Part 912

Administrative practice and procedure; Claims.

For the reasons set forth above, the Postal Service amends 39 CFR Part 912 as follows:

### PART 912—[AMENDED]

■ 1. The authority citation for 39 CFR part 912 continues to read as follows:

**Authority:** 28 U.S.C. 2671-2680; 28 CFR 14.1 through 14.11; 39 U.S.C. 409.

■ 2. In § 912.4, remove the address "Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63141-0640" and add "Chief Counsel, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155-9948" in its place.

■ 3. Amend § 912.9 as follows:

■ a. In paragraph (b), remove the address "Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63141-0640" and add "Chief Counsel, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155-9948" in its place.

■ b. In paragraph (c), remove the address "Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63141-0640" and add "Chief Counsel, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155-9948" in its place.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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