§ 17.63 Approval of community residential care facilities.

The approving official may approve a community residential care facility, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, if that facility meets the following standards:

(a) Health and safety standards. The facility must:
   (1) Meet all State and local regulations including construction, maintenance, and sanitation regulations;
   (2) Meet the requirements in the applicable provisions of NFPA 101 and NFPA 101A (incorporated by reference, see §17.1) and the other publications referenced in those provisions. The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director;
   (3) Have safe and functioning systems for heating and/or cooling, as needed (a heating or cooling system is deemed to be needed if VA determines that, in the county, parish, or similar jurisdiction where the facility is located, a majority of community residential care facilities or other extended care facilities have one), hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.
   (4) Meet the following additional requirements, if the provisions for One and Two-Family Dwellings, as defined in NFPA 101, are applicable to the facility:
      (i) Portable fire extinguishers must be installed, inspected, and maintained in accordance with NFPA 10 (incorporated by reference, see §17.1); and
      (ii) The facility must meet the requirements in section 33.7 of NFPA 101.
   (b) [Reserved]
   (c) Interior plan. The facility must:
      (1) Have comfortable dining areas, adequate in size for the number of residents;
      (2) Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents; and
      (3) Maintain at least one functional toilet and lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.
   (d) Laundry service. The facility must provide or arrange for laundry service.
   (e) Residents’ bedrooms. Residents’ bedrooms must:
      (1) Contain no more than four beds;
      (2) Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multiresident room; and
      (3) Contain a suitable bed for each resident and appropriate furniture and furnishings.
   (f) Nutrition. The facility must:
      (1) Provide a safe and sanitary food service that meets individual nutritional requirements and residents’ preferences;
      (2) Plan menus to meet currently recommended dietary allowances;
   (g) Activities. The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs.
   (h) Residents’ rights. The facility must have written policies and procedures that ensure the following rights for each resident:
      (1) Each resident has the right to:
         (i) Be informed of the rights described in this section;
         (ii) The confidentiality and nondisclosure of information obtained by community residential care facility staff on the residents and the residents’ records subject to the requirements of applicable law;
         (iii) Be able to inspect the residents’ own records kept by the community residential care facility;
         (iv) Exercise rights as a citizen; and
         (v) Voice grievances and make recommendations concerning the policies and procedures of the facility.
(2) Financial affairs. Residents must be allowed to manage their own personal financial affairs, except when the resident has been restricted in this right by law. If a resident requests assistance from the facility in managing personal financial affairs the request must be documented.

(3) Privacy. Residents must:

(i) Be treated with respect, consideration, and dignity;

(ii) Have access, in reasonable privacy, to a telephone within the facility;

(iii) Be able to send and receive mail unopened and uncensored; and

(iv) Have privacy of self and possessions.

(4) Work. No resident will perform household duties, other than personal housekeeping tasks, unless the resident receives compensation for these duties or is told in advance they are voluntary and the patient agrees to do them.

(5) Freedom of association. Residents have the right to:

(i) Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;

(ii) Make contacts in the community and achieve the highest level of independence, autonomy, and interaction in the community of which the resident is capable;

(iii) Leave and return freely to the facility, and

(iv) Practice the religion of their own choosing or choose to abstain from religious practice.

(6) Transfer. Residents have the right to transfer to another facility or to an independent living situation.

(i) Records. (1) The facility must maintain records on each resident in a secure place.

(2) Facility records must include:

(i) Emergency notification procedures; and

(ii) A copy of all signed agreements with the resident.

(3) Records may only be disclosed with the resident’s permission, or when required by law.

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(i) Staff requirements. (1) Sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.

(2) The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(k) Cost of community residential care.

(1) Payment for the charges of community residential care is not the responsibility of the United States Government or VA.

(2) The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.

(3) The charges for community residential care must be reasonable:

(i) For residents in a community residential care facility as of June 14, 1989, the rates charged for care are pegged to the facility’s basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year;

(ii) For community residential care facilities approved after July 31, 1987, 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)

§17.64 [Reserved]

§17.65 Approvals and provisional approvals of community residential care facilities.

(a) An approval of a facility meeting all of the standards in 38 CFR 17.63 based on the report of a VA inspection and any findings of necessary interim monitoring of the facility shall be for a 12-month period.

(b) The approving official, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, may provide a community residential care facility with a provisional approval if that facility does not meet one or more of the standards in 38 CFR 17.63, provided that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and VA agree to a plan of correcting the deficiencies in a specified amount of time. A provisional approval shall not be for more than 12 months and shall not be for more time than VA determines is reasonable for correcting the specific deficiencies.

(c) An approval may be changed to a provisional approval or terminated under the provisions of §§17.66 through 17.71 because of a subsequent failure to meet the standards of §17.63 and a provisional approval may be terminated under the provisions of §§17.66 through 17.71 based on failure to meet the plan of correction or failure otherwise to meet the standards of §17.63.

(d)(1) VA may waive one or more of the standards in 38 CFR 17.63 for the approval of a particular community residential care facility, provided that a VA safety expert certifies that the deficiency does not endanger the life or safety of the residents; the deficiency cannot be corrected as provided in paragraph (b) of this section for provisional approval of the community residential care facility; and granting the waiver is in the best interests of the veteran in the facility and VA’s community residential care program. In order to reach the above determinations, the VA safety expert may request supporting documentation from the community residential care facility.

(2) In those instances where a waiver is granted, the subject standard is deemed to have been met for purposes of approval of the community residential care facility under paragraphs (a) or (b) of this section. The waiver and date of issuance will be noted on each annual survey of the facility as long as the waiver remains valid and in place.

(3) A waiver issued under this section remains valid so long as the community residential care facility operates continuously under this program without a break. VA may, on the recommendation of an approving official, rescind a waiver issued under this section if a VA inspector determines that there has been a change in circumstances and that the deficiency can now be corrected, or a VA safety expert finds that the deficiency jeopardizes the health and safety of residents.

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

§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:

(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 §17.67 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