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DEPARTMENT OF VETERANS AFFAIRS 8320-01

38 CFR Part 17

RIN 2900-AP63

Approval criteria for rates charged for Community Residential Care

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) regulation governing standards applicable to a community residential care facility (CRC) approved by VA. This regulation also addresses the amount that a veteran may be charged for residence in a CRC and how VA determines whether that rate is appropriate. Payment for the charges of CRC care is not the responsibility of the federal government or VA. The cost of community residential care is financed by the veteran's own resources, and 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. VA reviews and has approval authority over this agreement. We propose to amend and update the criteria VA uses to determine whether the rate for care charged to a veteran residing in an approved CRC is appropriate, to clarify how VA determines whether a CRC rate should be approved, and to make the regulation consistent with current VA practice. In addition, we propose to define in regulation the level of care that must be provided to a veteran residing in a CRC.

DATES: Comment Date: Comments must be received by VA on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AP63 - Approval criteria for rates charged for Community Residential Care." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at http://www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Allman, Chief Consultant, Geriatrics and Extended Care Services (10NC4), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is authorized under 38 U.S.C. 1730 to assist veterans by referring them for placement, and aiding veterans in obtaining placement, in CRCs. A CRC is a form of enriched housing that provides health care supervision to

eligible veterans not in need of hospital or nursing home care, but who, because of medical, psychiatric and/or psychosocial limitations as determined through a statement of needed care, are not able to live independently and have no suitable family or significant others to provide the needed supervision and supportive care. Examples of CRC's enriched housing may include, but are not limited to: Medical Foster Homes, Assisted Living Homes, Group Living Homes, Family Care Homes, and psychiatric CRC Homes. CRC care consists of room, board, assistance with activities of daily living and supervision as required on an individual basis. The size of a CRC can vary from one bed to several hundred. VA maintains a list of approved CRCs. Employees of the CRC are not VA employees, and no employment relationship exists between employees of the CRC and VA.

A veteran may elect to reside in any CRC he or she wants; however, VA will only recommend CRCs that apply for approval and meet our standards. Once approved by the approving official, the CRC is placed on VA's referral list and VA refers veterans for whom CRC care is an option to listed CRCs when those veterans are determining where they would like to live. The term "approving official" is defined at 38 CFR 17.62(e) as the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility. Jurisdiction is based on whether the CRC is located within the geographical area covered by the Veterans Affairs Medical Center or Outpatient Clinic.

VA may directly provide care to a veteran at the CRC when it is medically appropriate to provide such home-based care. The provision of such home-based care

is not contingent upon VA approval of a CRC; a veteran's right to such care exists independent of the veteran's residence in a CRC.

To become approved, a CRC must meet the specified criteria in 38 CFR 17.63, which sets forth standards relating to the physical integrity of the facility, the health care provided at the CRC, the standard of living therein, costs charged directly to veteran residents of the CRC, and other criteria for approval. Paragraph (k) of this section addresses the amount that a veteran may be charged for residence in a CRC and how VA determines whether that rate is appropriate. VA proposes to amend and update § 17.63(k) to make it consistent with changes in the practices of approved CRCs since this provision became effective on June 14, 1989, and to clarify the criteria VA uses to determine whether the rate charged by the CRC is reasonable. Currently § 17.63 does not establish the level of care, and components of that care, that the CRC must provide to the veteran in exchange for the monies paid to the CRC. We address this as an initial matter.

It has been longstanding VA practice to require that in order to be an approved CRC the operators must provide, at a minimum, a base level of care in consideration of funds received from the veteran resident. The rate charged by an individual CRC for this base level of care is reflected in an executed agreement between the CRC and resident, and that agreement is reviewed and approved by the VA approving official. If the CRC agrees, at the resident's request, to provide additional care or services, the CRC may charge the resident additional fees, which are reflected in the signed agreement.

We would amend paragraph (b), which is currently reserved, to address the required base level of care as well as additional services and care provided to veteran residents. Consistent with current VA practice, paragraph (b) would state that the CRC must provide the resident, at a minimum, a base level of care to include room and board; nutrition consisting of three meals per day and two snacks, or as required to meet special dietary needs; laundry services; transportation (either provided or arranged) to VA and healthcare appointments; and accompanying the resident to appointments if needed; 24-hour supervision, if indicated; and care, supervision, and assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL).

ADL is a term commonly understood in the healthcare industry to refer to basic daily self-care activities. Health professionals routinely refer to the ability or inability to perform an ADL as a measurement of the functional status of a person, particularly in regards to people with disabilities and the elderly. Likewise, IADL is commonly understood in the healthcare industry to refer to activities that are not necessary for fundamental functioning, but allow an individual to live independently in a community.

The terms “activities of daily living” and “instrumental activities of daily living” are not currently defined for the purpose of §§ 17.61 through 17.72. Instead, the non-standard term “daily living activities” is defined at § 17.62(b) to include various activities that are classified by VA as being either an ADL or IADL. The various tasks listed in the current definition of daily living activities is not a comprehensive list of all activities that could be considered either an ADL or IADL, but is intended by VA to represent the range of activities that can be encompassed under those terms. We would remove the

definition of “daily living activities” and substitute the terms “activities of daily living” and “instrumental activities of daily living” where it is used in current §§ 17.61(b) and 17.62. We would define “activities of daily living” as basic daily tasks an individual performs as part of self-care which may be used as a measurement of the functional status of a person including: walking; bathing, shaving, brushing teeth, combing hair; dressing; eating; getting in or getting out of bed; and toileting. “Instrumental activities of daily living” would be defined as tasks that are not necessary for fundamental functioning, but allow an individual to live independently in a community. Instrumental activities of daily living include: housekeeping and cleaning room; meal preparation; taking medications; laundry; assistance with transportation; shopping- for groceries, clothing or other items; ability to use the telephone; ability to manage finances; writing letters; and obtaining appointments. The list of tasks in the definitions of ADL and IADL are not substantively different than that found in current § 17.62(b).

In addition, we would revise § 17.62 by removing the paragraph designations for the definitions in that section, arrange the defined terms in alphabetical order, and make non substantive changes to the definitions to make the introductory wording for each definition consistent with that of other defined terms in part 17.

Current 17.63(k) states that payment for the charges of CRC care is not the responsibility of the federal government or VA; the resident or an authorized personal representative and a representative of the CRC must agree upon the charge and payment procedures for CRC care; and the charges for community residential care must be reasonable. Current § 17.63(k)(3)(i) and (ii) establish different reference rates for residents who were in a CRC as of June 14, 1989 and CRCs that were approved

after July 31, 1987. For residents in a CRC as of June 14, 1989, the CRC rates are pegged to the facility's basic rate for care as of July 31, 1987. For a CRC approved after July 31, 1987, CRC rates are calculated based on the average rate for approved facilities in that State as of March 31, 1987.

VA's CRC program was established in 1951, but VA did not begin the process of publishing regulations governing the CRC program until August 1987. The final rule published May 15, 1989, with an effective date of June 14, 1989. (54 FR 20842, May 15, 1989). The intent of § 17.63(k)(3)(i) was to grandfather-in the rate charged for all residents in a CRC prior to the date the regulation became effective. There are no residents currently in a CRC who were in the CRC as of June 14, 1989. Both § 17.63(k)(3)(i) and § 17.63(k)(ii) use dates that are long in the past, and have little or no reasonable connection to the calculation of reasonable rates at the present time. We would address these issues by amending and reorganizing § 17.63(k) to update and clarify how VA determines whether a CRC rate should be approved, and to make the regulation consistent with current VA practice.

Proposed paragraph 17.63(k)(1) would remain the same as current (k)(1). The cost of community residential care is not the responsibility of the U.S. government. Proposed paragraph (k)(2) would state that the cost of community residential care should reflect the cost of providing the base level of care as defined in paragraph (b).

Proposed paragraph 17.63(k)(3) would retain the requirement, currently found in paragraph 17.63(k)(2), that 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. We would add in proposed

(k)(4), discussed below, standards for use by a VA approving official in reviewing and approving this agreement.

It has been VA's longstanding practice to use a multi-step approach in evaluating whether a proposed CRC rate will be approved, and we would amend § 17.63(k) to reflect VA's current practice. Under the proposed rule, VA would first review the resident's medical record to determine the level of care needed by the veteran residing in the CRC. VA would then refer to the current average rate for residential care in the State or Region for the same level of care provided to the resident. Each state has an agency responsible for residential care services provided under Medicare and Medicaid. These agencies publish approved rates in the state or region within the state for different levels of care within the continuum of residential care. These rates are updated annually. There is some variation in how the states refer to the various levels of care. Examples include Family Care Homes, Adult Care Homes, Medical Foster Homes, Residential Traumatic Brain Injury (TBI) Homes, Residential Care Homes, Personal Care Homes, Psychiatric Group Homes, Board and Care Homes, Boarding Homes, Group Homes, Rest Homes, Senior Homes, Assisted Living Homes, Retirement Centers, and Hospice Care Homes. VA would identify the relevant rate for residential care published by the state and compare this to the charge for care agreed on by the veteran or authorized personal representative and the CRC. The purpose of this inquiry is to ensure that the veteran residing in a VA-approved CRC is treated fairly and equitably by the CRC in terms of the dollar amount charged for CRC care relative to what a CRC would receive for care rendered to a non-veteran in the same state or region receiving the same level of care. We recognize that care plans are

individualized, and there may be some variation in the type or scope of care provided to different individuals receiving the same overall level of CRC care. Therefore, VA's inquiry would focus on whether the two rates are comparable, not equal. VA believes this language will provide flexibility to allow the approving official to consider each agreement on a case by case basis, taking into account both the base level of care the resident requires as well as the resident's individual needs.

VA recognizes that veterans residing in a CRC are, more often than not, living on a fixed or limited income. Healthcare sector costs, including that for community residential care, may rise at a greater annual rate than the overall inflation rate. Simply approving a new rate for CRC care because that rate is comparable to the published statewide rate could result in a strain on the veteran's financial status. To address this, VA would also compare the proposed CRC rate to the rate currently being charged to the veteran. We would retain the requirement that any year to year increase in the charge for care in a CRC for the same level of care may not exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year. This is consistent with current § 17.63(k)(3).

If VA determines, after considering all the above criteria, that the proposed CRC rate is reasonable, the approving official would approve the agreement between the veteran or authorized personal representative and the CRC.

VA also recognizes that there may be instances in which the CRC and the veteran or authorized personal representative agree to a rate that is lower than the current average rate for residential care in the State or Region for the same level of care. This type of arrangement could be beneficial to a veteran that is on a fixed or low

income. The proposed rule would allow the approving official to approve a lower rate of charges for care, provided such lower rate does not result in a lower level of care than the resident requires. While VA generally supports any agreement that may financially benefit the veteran, we also have an obligation to ensure that that the veteran receives a level of care commensurate with his or her condition.

Care plans are individualized in a CRC, and VA acknowledges that a veteran's care plan may not precisely match specific levels of care reflected in average rates for residential care published by the State. For instance, a state may publish average rates for care for residential care that differentiate between a low level of care and the next highest level. The veteran may require the lower level of care as well as only certain elements of the next highest level of care. In that case, the appropriate rate of charges for care should reflect that reality. Under paragraph 17.63(k)(4)(ii) of the proposed rule, the approving official would have the authority to approve a rate higher than the current average rate for residential care in the State or Region for the same level of care if the CRC and the resident or authorized personal representative agreed to such rate, and the higher rate is related to the individual needs of the resident which exceed the base level of care as defined in proposed paragraph (b). Examples of services which exceed the base level of care include, but are not limited to, handling disbursement of funds solely at the request of the resident; fulfilling special dietary requests by the resident or family member; accompanying the resident to an activity center; assisting in or providing scheduled socialization activities; supervision of an unsafe smoker; bowel and bladder care; intervention related to behavioral issues; and transportation other than for VA and healthcare appointments. A higher rate could be paid in those cases in which additional

services are necessary, or the veteran has special needs that must be addressed. This would ensure that the veteran receives the individualized level of care required, and that the CRC is compensated for the level of care provided.

Since the veteran's needs may change over time and the cost of care fluctuates, VA proposes in paragraph 17.63(k)(3) that the charge for care in a CRC must be reviewed annually by the facility and VA, or as required due to changes in care needs. We believe that this requirement, combined with the obligation to consider the required level of care and comparative cost of that care, adequately addresses concerns reflected in current § 17.63(k)(3)(iii). That subparagraph states, in part, that the approving official may approve a deviation from the requirements of current § 17.63(k)(3)(i) and (ii) upon request from a CRC 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. Under the proposed rule, the deciding factor is not whether the cost of care for the individual veteran is greater than the average cost of care for other residents in the facility. Rather, the primary focus is on the level of care the veteran requires, and how the proposed cost for that care compares to that of non-veteran community residential care residents in the same State or Region receiving the same level of care. Any change in the level of care may be brought to the attention of the approving official by VA, the CRC, the veteran, or authorized personal representative. Regardless of which party raises the issue, there must be a pre-existing agreement between the veteran or personal representative and the CRC regarding cost of care, and the approving official has review and approval authority over that agreement.

We also address the remaining exception in current § 17.63(k)(3)(iii). There may be instances where a veteran residing in a CRC elects to, notwithstanding the veteran's need, request a level of care from the CRC that exceeds VA standards. This is addressed in current § 17.63(k)(3)(iii), which provides, in part, that the approving official may approve a deviation from the requirements of current § 17.63(k)(3)(i) and (ii) if the resident chooses to pay more for the care provided at a facility which exceeds VA standards. We would renumber this portion of current 17.63(k)(3)(iii) as paragraph (5) and amend the internal citation and clarify that this exception addresses situations where the veteran is electing to receive and pay for a level of care greater than what that veteran requires.

Finally, we would make a technical edit to §§ 17.61 through 17.74. We would remove the statutory authority citation at the end of each of these sections, and amend the introductory "Authority" section of part 17 to state that §§ 17.61 through 17.74 are authorized under 38 U.S.C. 501 as well as 38 U.S.C. 1730. We would make this change consistent with guidance from the Office of Federal Register.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). Under 38 CFR 17.63(i), a CRC must maintain records on each resident, to include a copy of all signed agreements with the resident. This would include any agreement between the CRC and the resident regarding the rate charged for residence in the facility, which is the subject of this proposed rule. This information collection is already approved under OMB control number 2900-0491.

Regulatory Flexibility Act

The Secretary hereby certifies that this 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, 5 U.S.C. 601-612. This proposed rule would directly affect only individuals and those small entities that seek inclusion on VA's approved list of CRCs. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive

impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such 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 taken or planned 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 this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at http://www.regulations.gov, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at http://www.va.gov/orpm, by following the link for "VA Regulations Published." This proposed rule is not expected to be an EO 13771 regulatory action because this proposed rule is not significant under EO 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 one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles affected by this document are 64.011 - Veterans Dental Care; 64.012 - Veterans Prescription Service; 64.013 - Veterans Prosthetic Appliances; 64.029 - Purchase Care Program; 64.035 - Veterans Transportation Program; 64.041 - VHA Outpatient Specialty Care; 64.044 - VHA Home Care; 64.045 - VHA Outpatient Ancillary Services; 64.047 - VHA Primary Care; 64.048 - VHA Mental Health clinics; 64.050 - VHA Diagnostic Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

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. Jacquelyn Hayes-Byrd, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on April 16, 2018, for publication.

Dated: April 18, 2018

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Consuela Benjamin
Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

PART 17 – MEDICAL

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

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

Section 17.38 is also issued under 38 U.S.C. 101, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Sections 17.61 through 17.74 are also issued under 38 U.S.C. 1730.

Section 17.169 is also issued under 38 U.S.C. 1712C.

Sections 17.380, 17. 390 and 17.412 are also issued under sec. 260, Pub. L. 114-223, 130 Stat. 857.

Section 17.410 is also issued under 38 U.S.C. 1787.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Sections 17.640 and 17.647 are also issued under sec. 4, Pub. L. 114-2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Pub. L. 114-2, 129 Stat. 30.

Section 17.655 is also issued under 38 U.S.C. 501(a) 7304 and 7405.

2. Amend § 17.61 by:

a. Removing in paragraph (b) the words “daily living activities” and adding in its place the words “activities of daily living and instrumental activities of daily living” and

b. Removing the statutory authority citation at the end of the section.

3. Revise § 17.62 to read as follows:

§17.62 Definitions.

For the purpose of §§17.61 through 17.72:

Activities of daily living means basic daily tasks an individual performs as part of self-care which may be used as a measurement of the functional status of a person including: walking; bathing, shaving, brushing teeth, combing hair; dressing; eating; getting in or getting out of bed; and toileting.

Approving official means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

Community residential care means the monitoring, supervision, and assistance, in accordance with a statement of needed care, of the activities of daily living activities and instrumental activities of daily living, of referred veterans in an approved home in the community by the facility's provider.

Hearing official means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

Instrumental activities of daily living are tasks that are not necessary for fundamental functioning, but allow an individual to live independently in a community. Instrumental activities of daily living include: housekeeping and cleaning room; meal preparation; taking medications; laundry; assistance with transportation; shopping- for groceries, clothing or other items; ability to use the telephone; ability to manage finances; writing letters; and obtaining appointments.

Oral hearing means the in person testimony of representatives of a community residential care facility and of VA before the hearing official and the review of the written evidence of record by that official.

Paper hearing means a review of the written evidence of record by the hearing official.

4. Amend § 17.63 by:

a. Revising paragraph (b) and paragraph (k) and

b. Removing the statutory authority citation at the end of the section.

The revisions read as follows:

§ 17.63 Approval of community residential care facilities.

* * * * *

(b) Level of care. The community residential care facility must provide the resident, at a minimum, a base level of care to include room and board; nutrition consisting of three meals per day and two snacks, or as required to meet special dietary needs; laundry services; transportation (either provided or arranged) to VA and healthcare appointments; and accompanying the resident to appointments if needed; 24-hour supervision, if indicated; and care, supervision, and assistance with activities of daily living and instrumental activities of daily living. In those cases where the resident requires more than a base level of care, the medically appropriate level of care must be provided.

* * * * *

(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 cost of community residential care should reflect the cost of providing the base level of care as defined in paragraph (b) of this section.

(3) 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. Any agreement between the resident or an authorized personal representative and the community residential care facility must be approved by the approving official. The charge for care in a community residential care

facility must be reviewed annually by the facility and VA, or as required due to changes in care needs.

(4) The charges for community residential care must be reasonable and comparable to the current average rate for residential care in the State or Region for the same level of care provided to the resident. Notwithstanding, any year to year increase in the charge for care in a community residential care facility for the same level of care may not exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year. In establishing an individual residential rate, consideration should be given to the level of care required and the individual needs of the resident. The approving official may approve a rate:

(i) lower than the current average rate for residential care in the State or Region for the same level of care if the community residential care facility and the resident or authorized personal representative agreed to such rate, provided such lower rate does not result in a lower level of care than the resident requires;

(ii) higher than the current average rate for residential care in the State or Region for the same level of care if the community residential care facility and the resident or authorized personal representative agreed to such rate, and the higher rate is related to the individual needs of the resident which exceed the base level of care as defined in paragraph (b) of this section. Examples of services which exceed the base level of care include, but are not limited to, handling disbursement of funds solely at the request of the resident; fulfilling special dietary requests by the resident or family member; accompanying the resident to an activity center; assisting in or providing scheduled socialization activities; supervision of an unsafe smoker; bowel and bladder

care; intervention related to behavioral issues; and transportation other than for VA and healthcare appointments.

(5) The approving official may approve a deviation from the requirements of paragraph (k)(4) of this section if the resident chooses to pay more for care at a facility which exceeds the base level of care as defined in paragraph (b) of this section notwithstanding the resident's needs.

* * * * *

5. Amend §§ 17.64 through 17.74 by removing the statutory authority citation at the end of each section.

[FR Doc. 2018-08386 Filed: 4/23/2018 8:45 am; Publication Date: 4/24/2018]