

Community Residential Care

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify legal or administrative requirements that necessitate the collection of 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 Community Residential Care facilities (CRC). Under that authority, VA maintains a list of approved CRCs, and conducts periodic inspection of those facilities to ensure that the facility is maintained per standards published at 38 CFR 17.63.

On November 12, 2015, VA published a proposed rule Ensuring a Safe Environment for Community Residential Care Residents (80 FR 69909), which includes recordkeeping requirements. Current § 17.63(i) addresses recordkeeping requirements for a CRC. Information collection under this paragraph was approved by OMB under OMB control number 2900-0491; however that approval has expired. We propose amending paragraph (i) to address not only the recordkeeping requirements currently in that paragraph, but also recordkeeping requirements under paragraph (j)(1) – (3).

Paragraph (i)(1) would require the CRC to maintain records on each resident, to include a copy of all signed agreements with the resident. We estimate the annual burden related to this information collection to be one hour per year.

Paragraph (i)(2) would state that the CRC must maintain and make available upon request of the approving official, records establishing compliance with paragraphs (j)(1) and (2). These paragraphs relate to CRC staff requirements, and provide that the CRC must have sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident. The CRC provider and staff must have adequate education, training, or experience to maintain the facility. We estimate that the annual burden related to information collection required to establish that the CRC has sufficient, qualified staff, and that the CRC provider and staff have adequate training and education, would be two hours.

Paragraph (i)(2) would also require the CRC to maintain records related to proposed paragraph (j)(3). Proposed § 17.63(j)(3) would require CRCs to immediately, meaning no more than 24 hours after the provider becomes aware of the alleged violation, report all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property to the approving official. We would require that the report, at a minimum, must include the facility name, address, telephone number, and owner; the date and time of the alleged violation; a summary of the alleged violation; the name of any public or private officials or VHA program offices that have been notified of the alleged violations, if any; whether additional investigation is necessary to provide VHA with more information about the alleged violation; and contact information for a person who can provide additional details at the community residential care provider, including a name, position, location, and phone number.

We would require the CRCs to document and thoroughly investigate evidence of an alleged violation. The results of all investigations must be reported to the approving official within 5 working days of the incident and to other officials in accordance with State law. It would also require facilities to develop and implement written policies and procedures to prohibit the mistreatment, neglect, and abuse of residents and misappropriation of resident property. The approving VA official may request the facility to produce such written policies and procedures.

The most current data available to VA (Q4 FY2012) reflects that we have 1,293 approved CRCs, 493 of which are Medical Foster Homes at the 1 to 3 bed size. The total number of staff working in these facilities is 5,614. This aggregate number of CRC staff is distributed in CRCs as follows: 2.5 staff for a 1 to 3 bed facility, 4 staff for a 4 to 15 bed facility, 5 staff for a 15 to 26 bed facility and 11 staff for a 26 to 100+ bed facility.

CRCs would be required to report information under this proposed rule when the facility: (1) has an alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; or, (2) is reporting the results of an investigation into that alleged violation. The CRCs would

also be required to document and investigate evidence of any alleged violation. We view the reporting, documenting, and investigating of an alleged incident and the subsequent report of the results of the investigation to be one collection of information, as it focuses on one set of alleged facts and the facility's investigation of those facts.

VA does not currently require CRCs to report to the approving official allegations of resident abuse or neglect. VA surveyed CRC coordinators at the VA medical facilities that approve CRC sponsors. Based on information from CRC coordinators, we believe that VA currently receives fewer than one report of alleged mistreatment, neglect, or abuse, including injuries of unknown source, or misappropriation of resident property from CRCs in any given year. This proposed rule would formalize the reporting and investigation requirement and we believe this would more likely than not result in an increase in the number of reports of alleged abuse mistreatment, neglect, or abuse, including injuries of unknown source, or misappropriation of resident property per year. However, for purposes of this estimate, we will assume that a CRC will have one incident per year related to an alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; or, reporting the results of an investigation into that alleged violation. The estimated average burden for an alleged violation response is three hours.

All approved CRCs would be required to develop and implement written policies and procedures to prohibit the mistreatment, neglect, and abuse of residents and misappropriation of resident property. On inspection of a CRC, VA would require the facility to produce such written policies and procedures. The written policies would have to be developed once, although it is possible that a promulgated policy could require revision in the future. VA intends to develop sample policies and boilerplate that could be adapted by a CRC to meet the facility's individual requirements. This would decrease the burden of this proposed information collection. VA estimates that the information collection burden on a CRC utilizing a sample policy or boilerplate developed by VA would be two hours.

Finally, paragraph (i)(2) would require the CRC to maintain a record of emergency notification procedures. This is consistent with current § 17.63(i)(2)(i). Once emergency notification procedures are in place, there may be instances in which the CRC may periodically review and modify the existing procedures. We estimate the annual burden of this information collection to be 0.5 hours.

2. Indicate how, by whom, and for what purposes the information is to be used; indicate actual use the agency has made of the information received from current collection.

The information will be used solely by VA as part of the process used to determine whether a CRC meets the standards for approval.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

This collection does not involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The records would be maintained by the individual CRC, and would be available for review by VA.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

See discussion in response to question 5, below, regarding criminal background checks.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This proposed rule impacts small entities operating as CRCs seeking inclusion on VA's list of approved CRCs. The costs associated with this proposed rule are minimal, consisting of the administrative requirement to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property; ensure that no employees are employed in contravention to the proposed rule; report to VA any alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; and investigate alleged resident abuse, take steps to prevent further harm, and implement appropriate corrective measures.

A CRC may elect to order background checks on employees from commercial sources or local law enforcement agencies. The cost of an individual background check varies dependent on the vendor, but VA believes the average cost is \$50. VA believes that 75 percent of CRCs are required to, or could obtain, criminal background checks on employees through one or more existing federal or state programs. This includes: (1) the state grant program administered by the Centers for Medicare and Medicaid Services (CMS) for conducting federal and state criminal background checks on direct patient access employees of long-term care facilities and providers (42 U.S.C. 1320a-71); (2) the CMS requirement applicable to facilities receiving Medicare and Medicaid funds; and (3) various state laws or regulations mandating criminal background screening for employment to work with the elderly or disabled. In addition, many CRCs that are currently servicing veterans already, voluntarily, have policies and procedures in place to review the backgrounds of their employees and make employment decisions consistent with this rulemaking as one way to ensure resident safety.

The remaining 25 percent of CRCs (324) would more likely than not opt to obtain criminal background checks on CRC staff in order to be approved by VA. The median number of staff in CRCs currently approved by VA is five. We estimate the cost that would be incurred for obtaining criminal background checks on CRC staff is \$250 per CRC.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently as well as any technical or legal obstacles to reducing burden.

VA would not be responsive to the needs of the patient and to the legal requirement to release of information if information were collected less frequently.

7. Explain any special circumstances that would cause an information collection to be conducted more often than quarterly or require respondents to prepare written responses to a collection of information in fewer than 30 days after receipt of it; submit more than an original and two copies of any document; retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years; in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study and require the use of a statistical data classification that has not been reviewed and approved by OMB.

There are no such special circumstances.

8. a. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the sponsor's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the sponsor in responses to these comments. Specifically address comments received on cost and hour burden.

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b. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure or reporting

format, and on the data elements to be recorded, disclosed or reported. Explain any circumstances which preclude consultation every three years with representatives of those from whom information is to be obtained.

Outside consultation is conducted with the public through publication of the proposed rule, which includes discussion of the proposed information collection.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift is provided to respondents.

10. Describe any assurance of privacy, to the extent permitted by law, provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Privacy of these records is ensured under VA regulations at 38 CFR 17.63(i)(3). The records may only be disclosed with the resident's permission, or when required by law.

11. Provide additional justification for any questions of a sensitive nature (Information that, with a reasonable degree of medical certainty, is likely to have a serious adverse effect on an individual's mental or physical health if revealed to him or her), such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private; include specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Estimate of the hour burden of the collection of information:

a. The number of respondents, frequency of responses, annual hour burden, and explanation for each form is reported as follows:

VA Form 10-XXXXX	No. of respondents	x No. of responses	x No. of hours	=	Number of Hours
N/A. No form is used for this information collection	1,293 operators of CRCs	Once in a 12-month period	8.5 hours	=	10,991 hours

b. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB 83-I.

See chart in subparagraph 12a above.

c. Provide estimates of annual cost to respondents for the hour burdens for collections of information. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

VA does not require any additional recordkeeping. We estimate the cost that would be incurred annually for obtaining criminal background checks on CRC staff is \$250 per CRC. For the remainder of the collection, the cost to the respondents for completing these forms is $23 \times 8.5 = \$195.50$ per respondent.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- a. There is no capital, start-up, operation or maintenance costs.
- b. Cost estimates are not expected to vary widely. The only cost is that for the time of the respondent.
- c. There is no anticipated recordkeeping burden.

14. Provide estimates of annual cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operation expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

Not applicable.

15. Explain the reason for any burden hour changes or adjustments reported in items 13 or 14 of the OMB form 83-1.

This is a new collection and all burden hours are considered a program increase.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

VA does not intend to publish this data.

17. If seeking approval to omit the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-I.

There are no exceptions.