



**NATIONAL COALITION *for* HOMELESS VETERANS**

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September 21, 2017

Mr. Michael Shores  
Director, Regulations Management (00REG)  
Department of Veterans Affairs  
810 Vermont Ave NW  
Room 1068  
Washington, D.C. 20420

Re: RIN 2900–AP54—VA Homeless Providers Grant and Per Diem Program

Mr. Shores,

The National Coalition for Homeless Veterans (NCHV) is a national non-profit organization dedicated to ending homelessness among veterans by shaping public policy, promoting collaboration, and building the capacity of service providers. We were founded to accomplish this mission in 1990, and have since grown to represent hundreds of members and over 2,100 service providers across the country who are likewise dedicated to that mission. Our founding members were instrumental in the creation the Grant and Per Diem (GPD) program, the focus on the proposed rule published in the Federal Register on July 25 of this year. We write to share with you our comments on this rule.

NCHV firmly believes that the GPD program and its grantees must be well integrated with the modern continuum of services provided to end and prevent homelessness among veterans. We likewise support the goal of ensuring that GPD funding is spent as effectively as possible, and that those dollars serve to end the homelessness of as many veterans as possible.

NCHV generally agrees with the goals of this proposed rule and understands the proposed changes were well intentioned. However, NCHV respectfully submits comments on the effectiveness of several of the proposed changes, to avoid unintended consequences and achieve our shared goals. We strongly urge VA to reconsider these particular changes, in order to effectively and safely achieve our shared goals while developing a final rule.

Our comments have been made following intense information gathering and collaboration with a broad representative sample of our membership. During this collaboration we took into account and achieved diversity in: program size, length of time the provider has held a GPD grant, type of grant (PDO or Capital), population currently served, new models chosen for FY 2018, location of program (rural or urban), administration of program (independent or part of a national organization), and presence/absence of complimentary Continuum of Care resources. This diversity has allowed us to make comments on this proposed rule which are representative of all GPD providers across the country, and which is the consensus of our body.

What follows are our comments on various proposed revisions to the regulations, including their unintended consequences and suggested clarifications or corrections:

1. **Proposed changes to 38CFR61.80 paragraph (c), specifically the new subsection proposed at 38CFR61.80(c)(3)(v).**

This change reduces the amount of deviation programs may have around performance goals before corrective action is triggered to 5%, down from the current level of 15%. Again, NCHV states that it strongly supports the goal of raising performance levels of programs across the board and the goal of ensuring that program funds are spent on providers who supply quality and effective programs. This reduction may have unintended effects on providers. Furthermore, these unintended effects would disproportionately affect small and rural programs.

Take for instance a performance goal of 70% of veterans exiting to permanent housing in a program with 10 beds, whose beds are at full capacity over the course of all or part of two quarters with the same individuals. If this program exits seven of those individuals to permanent housing, they will be safely above their performance target. However, if only six of those individuals successfully exit to permanent housing, the program will fall below the allowed deviation from the performance target for those two quarters.

Though of course any difference between meeting and failing to meet a performance target may always come down to one individual, in a small or rural program for instance, that one individual accounts for 10% of all veterans served in that program for those two quarters. This disproportionate impact would be unintended consequence of a well-intentioned effort to tighten performance targets whose effect will be to negatively impact small programs. In the recent award notice alone, more than 220 grants awarded had ten or fewer beds.

NCHV proposes this target be modified to no more than 10% deviation from the performance target. This solution both meets the goal of tightening metrics, as well as provides some relief from the disproportionate impacts this change would have on small and rural programs.

2. **Proposed changes to 38CFR61.80 paragraph (c), specifically the new subsections proposed at 38CFR61.80(c)(3)(v) and 38CFR61.80(c)(3)(vi).**

NCHV firmly supports the CAP mechanism, and the two quarter review period for a CAP to be put in place. However, there is a logical flaw in these two subsections as currently written. The currently proposed language states [in 38CFR61.80(c)(3)(v) as proposed] that VA may take a variety of actions via award revision if a program fails to meet the performance goal identified in that subsection. It makes no reference to those corrective actions being contingent on a programs response to being placed on a CAP.

Placement on a CAP, as described in the proposed 38CFR61.80(c)(3)(vi), requires two consecutive quarters of failure to meet performance goals. As these subsections are currently written, it is possible for VA to take corrective actions via award revision against a program, without having to place that program on a CAP. Those corrective actions could be levied on the basis of a single quarter's metrics. This negates the purpose of the CAP provision identified in the proposed 38CFR61.80 (c)(3)(vi).

NCHV insists that all corrective actions outlined in 38CFR61.61(c)(3)(v), as proposed, must be contingent upon failure to address faults identified in a CAP. This oversight would be solved by simply inserting into the proposed 38CFR61.61(c)(3)(v) a phrase that indicates all corrective actions are contingent on failure to address CAPs.

### 3. **Proposed changes to 38CFR61.33, specifically proposed paragraph (e).**

This proposed change concerns the payments to providers for the unexpected absence (of up to 72 hours) of a veteran in their program. More commonly known as the 72 hour rule, this rule was created to allow for intake of veterans on a weekend, or to cover 3-day program passes or short stays in the hospital. The 72 hour rule has been wrongly used by some programs, as described in the proposed rule. NCHV strongly supports appropriate use of the 72 hour payments, and supports VA in its effort to remove the ability to misuse this provision. The fix for this issue must preserve the original intent of the provision, and any changes to this provision should be carefully constructed to first do no harm.

Unfortunately, the proposed rule would allow these 72 hour passes for the “scheduled absence of a veteran.” This language would completely disallow the use of these passes for any unscheduled absence – which is the very nature of the purpose of the original provision. Veterans who need to be admitted to the hospital are often there in an unexpected manner. Their absence would not be planned, and therefore the provider would receive no funds for this time of absence through no fault of their own or of the veteran. More importantly to the veteran, however, the stay would be terminated and would count towards one of their three allowed entrances to the GPD program.

Providers cited this exact situation as occurring constantly in their programs. Smaller providers in particular voiced resistance to this change. With such funding margins, they state that they will be forced to choose between absorbing the cost of the unexcused absence – something which many could not afford to do – or “eating the negative exit.” The latter choice would also of course have dramatic and negative effects on the veteran. Most would choose the former, but cited examples of times when they would have no real choice but to negatively exit the veteran. This must be avoided at all cost; a well-intentioned change must not create situations in which veterans are needlessly discharged from programs.

To achieve the stated goals of this proposed change, without negatively impacting providers and veterans, NCHV suggests foregoing the new proposed paragraph at 38CFR61.33(e). Instead, the original language of the provision, currently located in 38CFR61.33(f), should be amended to include an explicit statement preventing the use of this provision for veterans who go AWOL and exit the program.

### 4. **Proposed changes to 38CFR61.80(c).**

NCHV strongly supports the efforts to align GPD oversight and review with data-based and collaborative outcomes of performance. However, the proposed changes to 38CFR61.80(c), and in particular the narrative front-matter regarding those changes supplied in the proposed rule on pages 33459 and 33460 in the Federal Register, have met with universal resistance from providers.

The issue in every case is the reliance of the proposed review system on data that VA plans to provide to their grantees during the review process. Every provider interviewed for this comment expressed reservations about the integrity and accuracy of VA data, and worry at the importance which is being placed on it in relation to their performance evaluations. Feedback to NCHV was universally negative when the topic of VA data accuracy was addressed, particularly in regard to population, demographics, and services received, and in nearly every case was brought up voluntarily by the provider.

That said, all providers supported the new review system in concept, and expressed the need for

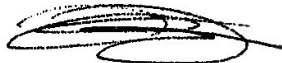
VA to focus on data integrity within this platform. Further, they want to be ensured of a mechanism to challenge VA data if they believe it is inaccurate and that inaccuracy will impact their performance reviews. This mechanism would act as an appeal process to any award revision based on what the grantee believes to be faulty data. Also, in any case where that data is challenged during a review, they want to be ensured that there is a continuity of payment to the grantee during the appeal.

NCHV strongly encourages the introduction of a subsection in 38CFR61.80(c) which creates a mechanism for grantees to challenge the accuracy of the data VA has provided on their performance. Such a mechanism would allow for a comparison between grantee-provided data and that of the VA, as well as ensuring a continuity of payment while that mechanism was in use.

In closing, NCHV thanks VA for their serious and well-intentioned efforts to modernize the GPD program's regulations. We are committed partners in VA's efforts to integrate the GPD program more seamlessly into the modern continuum of services that VA and other agencies provide with the goal of ending and preventing homelessness among veterans. We can all agree that GPD funds must be spent in the most effective and impactful way possible, in order to best serve the veterans who are in such desperate need of this resource.

NCHV believes that with the proper changes, as outlined above, the proposed changes to the regulations will achieve these goals – without causing unnecessary damage to a complex system. It is vitally important to retain and protect those aspects of the program which work exceptionally well, while at the same time correcting past deficiencies and forging a new path forward. NCHV looks forward to our continued partnership with VA as we all strive for the best and strongest possible homeless response system for veterans.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn Monet', with a stylized flourish at the end.

Kathryn Monet  
Chief Executive Officer  
National Coalition for Homeless Veterans