

Department of Veterans Affairs

§ 51.30

Facility means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of nursing home care or a building or any part of a building which VA has recognized as a State home for the provision of nursing home care.

Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses' Association.

Nursing home care means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

Physician assistant means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and other clinical tasks under appropriate physician supervision which is approved by the primary care physician.

Primary physician or primary care physician means a designated generalist physician responsible for providing, directing and coordinating all health care that is indicated for the residents.

State means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State home means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when

the State home also provides domiciliary and/or nursing home care.

VA means the U.S. Department of Veterans Affairs.

Subpart B—Obtaining Per Diem for Nursing Home Care in State Homes

§ 51.10 Per diem based on recognition and certification.

VA will pay per diem to a State for providing nursing home care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility and facility management meet the standards of subpart D of this part. Also, after recognition has been granted, VA will continue to pay per diem to a State for providing nursing home care to eligible veterans in such a facility for a temporary period based on a certification that the facility and facility management provisionally meet the standards of subpart D.

(Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

§ 51.20 Application for recognition based on certification.

To apply for recognition and certification of a State home for nursing home care, a State must:

- (a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;
- (b) Allow VA to survey the facility as set forth in § 51.30(c); and
- (c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

§ 51.30 Recognition and certification.

- (a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center

of jurisdiction regarding whether, based on a VA survey, the facility and facility management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the facility, the State official authorized to oversee operations of the State home, the VA Network Director (10N 1-22), Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and facility management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical care center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or facility management does not meet one or more of the standards in subpart D, that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the facility, the State official authorized to oversee the operations of the State home, the VA Network Director (10N 1-22), Chief Network Officer (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) of the certification, provisional certification, or noncertification.

(b) Once a facility has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or facility management does not meet the standards of subpart D. Recognition of

a facility will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and facility management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the facility that have a bearing on compliance with any of the requirements of this part (including any reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home facility management must submit to the director a completed VA Form 10-3567, Staffing Profile, set forth at § 58.10 of this chapter. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or facility management does not meet the standards of this part, the director will notify the State home facility in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N 1-22), the Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit the appeal to the Under Secretary for Health in writing, within 30 days of receipt of the notice of failure to meet the standards.

In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of VA medical center of jurisdiction will immediately report this to the VA Network Director (10N 1-22), Chief Network Officer (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

§ 51.31 Automatic recognition.

Notwithstanding other provisions of this part, a facility that already is recognized by VA as a State home for nursing home care at the time this part becomes effective, automatically will continue to be recognized as a State home for nursing home care but will be subject to all of the provisions of this part that apply to facilities that have achieved recognition, including the provisions requiring that the facility meet the standards set forth in subpart D and the provisions for withholding per diem payments and withdrawal of recognition.

Subpart C—Per Diem Payments

§ 51.40 Monthly payment.

(a)(1) VA will pay per diem monthly for nursing home care provided to an eligible veteran in a facility recognized as a State home for nursing home care. During Fiscal Year 2000, VA will pay the lesser of the following:

(i) One-half of the cost of the care for each day the veteran is in the facility; or

(ii) \$50.55 for each day the veteran is in the facility.

(2) Per diem will be paid only for the days that the veteran is a resident at the facility. For purposes of paying per diem, VA will consider a veteran to be a resident at the facility during each full day that the veteran is receiving care at the facility. VA will not deem the veteran to be a resident at the facility if the veteran is receiving care outside the State home facility at VA expense. Otherwise, VA will deem the veteran to be a resident at the facility during any absence from the facility that lasts for no more than 96 consecutive hours. This absence will be considered to have ended when the veteran returns as a resident if the veteran's stay is for at least a continuous 24-hour period.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10-5588, State Home Report and Statement of Federal Aid Claimed. This form is set forth in full at § 58.11 of this chapter.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA Forms 10-10EZ, Application for Medical Benefits, and 10-10SH, State Home Program Application for Care—Medical Certification, at the time of admission and with any request for a change in the