

### § 51.30

### 38 CFR Ch. I (7–1–11 Edition)

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)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

[65 FR 968, Jan. 6, 2000, as amended at 74 FR 19432, Apr. 29, 2009]

#### § 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 recommendation 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 recognition survey will be conducted only after the new facility either has at least 21 residents or has a number of residents that consist of at least 50 percent of the new bed capacity of the new facility.

(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, Office of Geriatrics and Extended Care (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.

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(d) If, during the process for recognition and certification, the director of the VA medical center of jurisdiction recommends that the State home facility or facility management does not meet the standards of this part or if, after recognition and certification have been granted, 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 (114). The letter will include the reasons for the recommendation or decision and indicate that the State has the right to appeal the recommendation or 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 the recommendation or decision regarding the failure to meet the standards. In its appeal, the State must explain why the recommendation or 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 recommendation or 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 (or not grant recognition and certification and not pay per diem if the appeal occurs during the recognition process). The decision of the Under Secretary for Health will constitute a final decision that may be appealed to the Board of Veterans' Appeals (see 38 U.S.C. 7104 and

7105 and 38 CFR part 20). 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, Office of Geriatrics and Extended Care (114) and State official authorized to oversee operations of the State home.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0160)

[65 FR 968, Jan. 6, 2000, as amended at 74 FR 19432, Apr. 29, 2009]

### § 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 Basic per diem.

Except as provided in § 51.41 of this part,

(a) During Fiscal Year 2008 VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility: