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## 38 CFR Ch. I (7–1–14 Edition)

- (2) Be well ventilated;
- (3) Be adequately furnished; and
- (4) Have sufficient space to accommodate all activities.

(h) *Other environmental conditions.* The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must—

- (1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;
- (2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
- (3) Equip corridors with firmly secured handrails on each side; and
- (4) Maintain an effective pest control program so that the facility is free of pests and rodents.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743) [65 FR 968, Jan. 6, 2000, as amended at 74 FR 19434, Apr. 29, 2009; 76 FR 11340, Mar. 2, 2011]

### §51.210 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident.

(a) *Governing body.* (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body or State official with oversight for the facility appoints the administrator who is—

- (i) Licensed by the State where licensing is required; and
- (ii) Responsible for operation and management of the facility.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Office of Geriatrics and Extended Care (114), VA Headquarters, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;

(2) The State home administrator; and

(3) The State employee responsible for oversight of the State home facility if a contractor operates the State home.

(c) *Required Information.* The facility management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current or as specified:

(1) The copy of legal and administrative action establishing the State-operated facility (e.g., State laws);

(2) Site plan of facility and surroundings;

(3) Legal title, lease, or other document establishing right to occupy facility;

(4) Organizational charts and the operational plan of the facility;

(5) The number of the staff by category indicating full-time, part-time and minority designation (annual at time of survey);

(6) The number of nursing home patients who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities (annual at time of survey);

(7) Annual State Fire Marshall's report;

(8) Annual certification from the responsible State Agency showing compliance with Section 504 of the Rehabilitation Act of 1973 (Public Law 93–112) (VA Form 10–0143A, which is available at any VA medical center and at <http://www.va.gov/vaforms>);

(9) Annual certification for Drug-Free Workplace Act of 1988 (VA Form 10–0143, which is available at any VA medical center and at <http://www.va.gov/vaforms>);

(10) Annual certification regarding lobbying in compliance with Public Law 101–121 (VA Form 10–0144, which is available at any VA medical center and at <http://www.va.gov/vaforms>); and

(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 as incorporated in Title 38 CFR 18.1–18.3 (VA Form 10–0144A, which

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is available at any VA medical center and at <http://www.va.gov/vaforms>).

(d) *Percentage of Veterans.* The percent of the facility residents eligible for VA nursing home care must be at least 75 percent veterans except that the veteran percentage need only be more than 50 percent if the facility was constructed or renovated solely with State funds. All non-veteran residents must be spouses of veterans, or parents any of whose children died while serving in the Armed Forces.

(e) *Management Contract Facility.* If a facility is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time onsite basis.

(f) *Licensure.* The facility and facility management must comply with applicable State and local licensure laws.

(g) *Staff qualifications.* (1) The facility management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility management must have that service furnished to residents by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the facility management assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(1) *Medical director.* (1) The facility management must designate a primary care physician to serve as medical director.

(2) The medical director is responsible for—

(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;

(ii) Directing and coordinating medical care in the facility;

(iii) Helping to arrange for continuous physician coverage to handle medical emergencies;

(iv) Reviewing the credentialing and privileging process;

(v) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the administrator; and

(vi) Monitoring employees' health status and advising the administrator on employee-health policies.

(j) *Credentialing and Privileging.* Credentialing is the process of obtaining, verifying, and assessing the qualifications of a health care practitioner, which may include physicians, podiatrists, dentists, psychologists, physician assistants, nurse practitioners, licensed nurses to provide patient care services in or for a health care organization. Privileging is the process whereby a specific scope and content of patient care services are authorized for a health care practitioner by the facility management, based on evaluation of the individual's credentials and performance.

(1) The facility management must uniformly apply credentialing criteria to licensed practitioners applying to provide resident care or treatment under the facility's care.

(2) The facility management must verify and uniformly apply the following core criteria: current licensure; current certification, if applicable, relevant education, training, and experience; current competence; and a statement that the individual is able to perform the services he or she is applying to provide.

(3) The facility management must decide whether to authorize the independent practitioner to provide resident care or treatment, and each credentials file must indicate that these criteria are uniformly and individually applied.

(4) The facility management must maintain documentation of current credentials for each licensed independent practitioner practicing within the facility.

(5) When reappointing a licensed independent practitioner, the facility management must review the individual's record of experience.

(6) The facility management systematically must assess whether individuals with clinical privileges act within the scope of privileges granted.

(k) *Required training of nursing aides.*

(1) Nurse aide means any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or a volunteer who provide such services without pay.

(2) The facility management must not use any individual working in the facility as a nurse aide whether permanent or not unless:

(i) That individual is competent to provide nursing and nursing related services; and

(ii) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State.

(3) *Registry verification.* Before allowing an individual to serve as a nurse aide, facility management must receive registry verification that the individual has met competency evaluation requirements unless the individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(4) *Multi-State registry verification.* Before allowing an individual to serve as a nurse aide, facility management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes will include information on the individual.

(5) *Required retraining.* If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and com-

petency evaluation program or a new competency evaluation program.

(6) *Regular in-service education.* The facility management must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and

(iii) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(l) *Proficiency of Nurse aides.* The facility management must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(m) *Level B Requirement Laboratory services.* (1) The facility management must provide or obtain laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet all applicable certification standards, statutes, and regulations for laboratory services.

(ii) If the facility provides blood bank and transfusion services, it must meet all applicable certification standards, statutes, and regulations.

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of services and meet certification standards, statutes, and regulations.

(iv) The laboratory performing the testing must have a current, valid CLIA number (Clinical Laboratory Improvement Amendments of 1988). The facility management must provide VA surveyors with the CLIA number and a copy of the results of the last CLIA inspection.

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(v) Such services must be available to the resident seven days a week, 24 hours a day.

(2) The facility management must—

(i) Provide or obtain laboratory services only when ordered by the primary physician;

(ii) Promptly notify the primary physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record laboratory reports that are dated and contain the name and address of the testing laboratory.

(n) *Radiology and other diagnostic services.* (1) The facility management must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet all applicable certification standards, statutes, and regulations.

(ii) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services. The services must meet all applicable certification standards, statutes, and regulations.

(iii) Radiologic and other diagnostic services must be available 24 hours a day, seven days a week.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services when ordered by the primary physician;

(ii) Promptly notify the primary physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(o) *Clinical records.* (1) The facility management must maintain clinical records on each resident in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge when there is no requirement in State law.

(3) The facility management must safeguard clinical record information against loss, destruction, or unauthorized use;

(4) The facility management must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract;

(iv) The resident or;

(v) The resident's authorized agent or representative.

(5) The clinical record must contain—

(i) Sufficient information to identify the resident;

(ii) A record of the resident's assessments;

(iii) The plan of care and services provided;

(iv) The results of any pre-admission screening conducted by the State; and

(v) Progress notes.

(p) *Quality assessment and assurance.*

(1) Facility management must maintain a quality assessment and assurance committee consisting of—

(i) The director of nursing services;

(ii) A primary physician designated by the facility; and

(iii) At least 3 other members of the facility's staff.

(2) The quality assessment and assurance committee—

(i) Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(ii) Develops and implements appropriate plans of action to correct identified quality deficiencies; and

(3) Identified quality deficiencies are corrected within an established time period.

(4) The VA Under Secretary for Health may not require disclosure of the records of such committee unless

such disclosure is related to the compliance with requirements of this section.

(q) *Disaster and emergency preparedness.* (1) The facility management must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility management must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(r) *Transfer agreement.* (1) The facility management must have in effect a written transfer agreement with one or more hospitals that reasonably assures that—

(i) Residents will be transferred from the nursing home to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the primary physician; and

(ii) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the nursing home or the hospital, will be exchanged between the institutions.

(2) The facility is considered to have a transfer agreement in effect if the facility has an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(s) *Compliance with Federal, State, and local laws and professional standards.* The facility management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (Title 31, Section 7501 *et seq.*) and the Cash Management Improvement Acts of 1990 and 1992 (Public Laws 101–453 and 102–589, see 31 USC 3335, 3718, 3720A, 6501, 6503)

(t) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this sub-

part, facilities are obliged to meet the applicable provisions of other Federal laws and regulations, including but not limited to those pertaining to non-discrimination on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993, Public Law 93–112; Drug-Free Workplace Act of 1988, 38 CFR part 48; section 319 of Public Law 101–121; Title VI of the Civil Rights Act of 1964, 38 CFR 18.1–18.3. Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(u) *Intermingling.* A building housing a facility recognized as a State home for providing nursing home care may only provide nursing home care in the areas of the building recognized as a State home for providing nursing home care.

(v) *VA Management of State Veterans Homes.* Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing nursing home care.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 8135; Pub. L. 111–246)

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

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## PART 52—PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

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