DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17, 51, and 58

RIN 2900–AE87

Per Diem for Nursing Home Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations regarding the payment of per diem to State homes that provide nursing home care to eligible veterans. The intended effect of the final rule is to ensure that veterans receive high quality care in State homes.

DATES: *Effective date:* February 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 7, 2000.

FOR FURTHER INFORMATION CONTACT: L. Nan Stout, Chief, State Home Per Diem Program (114), Veterans Health Administration, 202–273–8538.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 9, 1998 (63 FR 60227), we proposed to establish a new part 51 setting forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. We provided a 60-day comment period which ended January 8, 1999. We received responses from 20 commenters. The issues raised in the comments are discussed below.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule with changes explained below. Under the final rule, 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 VA certification that the facility meets the standards set forth in subpart D.

Section 51.2 Definitions

We proposed to define ''physician assistant'' to mean a person who meets the applicable State requirements for physician assistants, 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.

One commenter asserted that the definition should not include a requirement that a physician assistant be currently certified by the National Commission on Certification of Physician Assistants. In this regard, the commenter argued that the imposition of a national certification requirement would be cumbersome to administer and create confusion regarding which physician assistants regulated by the State could provide services to veterans in State homes. No changes are made based on this comment. We believe this certification is necessary to ensure that physician assistants meet uniform standards necessary to ensure that they are qualified to provide adequate care at a State nursing home facility. In our view, this will not cause significant administrative work. The State home merely will have to determine whether the individual has the appropriate certification.

Under the proposed definition of ''State home,'' a State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Also, under the definition, hospital care may be provided only when the State home also provides domiciliary and/or nursing home care.

One commenter asserted the definition should replace ''domiciliary care'' with ''assisted living.'' No changes are made based on this comment. The statutory authority for levels of care at State homes includes domiciliary care, but not assisted living. (See 38 U.S.C. 1741–1743).

Section 51.10 Per Diem based on Recognition and Certification

The provisions of § 51.10 state that 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. One commenter asked how long the temporary period would be if a facility receives a ''provisionally meets'' certification.

The temporary period related to provisionally meeting the standards could vary. Under the provision of § 51.30(a)(2) the temporary period is based on time frames provided by the State home in a written plan of correction and approved by the director of VA medical center of jurisdiction.

Section 51.30 Recognition and Certification

The provisions of § 51.30 state that 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.

Commenters asserted that we should establish a time limit for the determination for recognition, initial certification, notification regarding failure to meet standards, and re-certification by VA. No changes are made based on these comments. We are committed to making decisions as quickly as possible. However, VA must take whatever time is necessary to make accurate decisions. Section 51.30 provides for recognition and certification based on surveys establishing that the standards in subpart D are met.

One commenter asserted that § 51.30 is reactive and punitive by anticipating deficiencies and precluding a deficiency-free review. The commenter further stated that a paper compliance review should be established for the year following a review that did not cite deficiencies. No changes are made based on these comments. We believe that the yearly review must be adequate to ensure compliance with the provision in subpart D. This will require more than a paper review regardless of previous compliance.

With respect to the provisions of § 51.30(a)(2), one commenter inquired about when a facility would be determined to ''provisionally'' meet the standards and continue to receive per diem. In this regard, the provisions of § 51.30(a)(2) allow for provisional certification only if all of the following are met: 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). If the facility does not meet one or more of the standards in subpart D and also does not meet the criteria for provisional certification, VA must take action to withhold per diem payments and withdraw recognition.

One commenter asserted that the final rule should provide for an informal dispute resolution process regarding the existence and scope of potential deficiencies. No changes are made based on this comment. The authority and responsibility for the per diem program have been delegated solely to VA by statute. (See 38 U.S.C. 1741–1743). There is no basis for delegating this authority outside VA.

One commenter questioned whether Veterans Integrated Service Network (VISN) entities would conduct annual certification surveys. No changes are made based on this comment. The director of the VA Medical Center of jurisdiction is responsible for the annual certification survey and may delegate any qualified VA official to conduct the survey.

One commenter asserted that VA should accept Joint Commisson on Accreditation Healthcare Organizations (JCAHO) and Medicaid/Medicare inspections in lieu of annual VA inspections. The commenter also asserted that State homes that are licensed as nursing homes by the State should be exempt from annual VA inspections. The commenter further asserted that annual VA inspections should occur only if there is reason to believe that a facility is not substantially in compliance with VA regulations. No changes are made based on this comment. It is solely VA's responsibility to ensure that VA's regulations are met. Further, non-VA inspections do not cover all of the standards in the final rule and compliance with State standards would not be sufficient to ensure compliance with all of the standards in the final rule. Furthermore, we believe that in order to ensure compliance with our standards, VA must conduct reviews at least on a yearly basis. Even so, under § 51.30(a) the judgement of VA officials concerning compliance with the requirements of the final rule may be made in part based on reviews of reports of inspection by other entities.

Section 51.31 Automatic Recognition

Under the final rule VA would 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 VA certification that the facility meets the standards set forth in subpart D. One commenter questioned whether previously recognized facilities would be required to submit a new request for recognition and certification under the final rule.

We have added a new § 51.31 to explain that a facility that already is recognized by a 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. This new section further explains that even though the facility would continue to be recognized, it is subject to all of the provisions of this part that apply to facilities that have achieved recognition, including the provisions for withholding payment and withdrawal of recognition.

Section 51.40 Monthly Payment

The provisions of § 51.40(a)(1) specify that during fiscal year 2000 VA will pay monthly one-half of the cost of each eligible veteran's nursing home care for each day the veteran is in a facility recognized as a State home for nursing home care, not to exceed $50.55 per diem. Five commenters asserted that the currently applicable rate should not be included in the regulations. In this regard, they were concerned that a delay in publishing changed amounts could delay the receipt of increases in per diem. No changes are made based on these comments. The amount of per diem to be paid is based on provisions of 38 U.S.C. 1741. We intend to change the per diem amount in the regulations as quickly as possible after there is a basis for doing so.

The provisions of § 51.40(a)(5) state that as a condition for receiving payment of per diem the State must submit to the VA medical center of jurisdiction for each veteran 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 level of care (domiciliary, hospital, or adult day health care). The 10–10SH form provides that it is to be completed by the ''primary physician assigned'' at the State facility. One commenter suggested that any physician (State, VA, or personal) should be allowed to complete the form. They further asserted that this could be a hardship for veterans ''who live around the State''. No changes are made based on this comment. The purpose of the forms, among other things, is to obtain information regarding whether the veteran has been admitted to the nursing home as a resident and whether the veteran meets eligibility criteria for per diem payments. It was not intended to be used by the State facility for an earlier State determination concerning whether a veteran should become a resident at the facility.

The commenter further questioned whether VA would conduct any screening of applicants for admission to State homes. The commenter further questioned whether the facility needs to obtain prior approval before admitting a veteran as a resident or whether they can assume approval based on the submission of the appropriate forms. No changes are made based on these comments. In our view, the provisions for determining eligibility for placement for nursing home care are sufficiently clear so that State homes can make appropriate determinations without prior approval of residents by VA.

The provisions of § 51.40(a)(5) also provide that if the facility is eligible to receive per diem payments for a veteran, VA will pay per diem from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the veteran was admitted to the facility if the completed forms are received within 10 days after admission. One commenter asserted that the 10-day requirement is too short because information required by form 10–10EZ ''may be difficult to get.'' No changes are made based on this comment. The information requested is the basic information required for eligibility determinations. We do not see any reason why the information requested cannot be obtained at the time the veteran is admitted to a State home.

As noted above, § 51.40(a)(5) provides that if the forms are submitted to the VA medical center of jurisdiction within 10 days after admission, VA will pay per diem from the day on which the veteran was admitted. One commenter suggested that VA clarify who in VA must receive the completed forms. No changes are made based on this comment. All that is necessary is that the forms be received by the VA medical center of jurisdiction and if received within the 10 day period, the requirement will be met. Officials at the medical center will ensure that the forms are sent to the appropriate VA officials for processing.

A veteran may be VA approved for nursing home care, then be approved for a different level of care (domiciliary, hospital, or adult day health care) for a period of time, and then be readmitted to nursing home care. One commenter asserted that the initial approval should be sufficient for any subsequent readmission. No changes are made based on this comment. The provisions of § 51.40(a)(5) state that information must be submitted for each admission. This is necessary to ensure that the veteran still meets VA requirements for

payment of per diem for that level of care.

Section 51.50 Eligible Veterans

Per diem payments may be paid only for eligible veterans. Section 51.50 specifies which individuals are eligible veterans. This includes paragraph (j) which consists of veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g). Four commenters asserted that paragraph (j) should be deleted. No changes are made based on these comments. The eligibility requirements are established by statute (*see* 38 U.S.C. 1710(a)). Accordingly, the requirement for this category of eligible veterans cannot be changed by regulation.

Section 51.70 Resident Rights

The advance directive provisions of § 51.70(b)(7) of this rule and the provisions of a separate VA proposed rulemaking regarding advanced directives (63 FR 58678) would not prohibit an advance directive from being honored at a VA facility if it has not been signed by a notary public or Justice of the Peace. One commenter noted that such an advance directive might not be effective if the veteran were moved to a State home in which a State law requires the use of a notary public or Justice of the Peace. No changes are made based on this comment. Since VA cannot reasonably administer all State laws regarding advanced directives, we believe the responsibility for ensuring that advanced directives are effective in State homes rests within State home officials and not VA.

One commenter asserted that § 51.70(b)(7) presents a dilemma. The commenter asserted that if a person is incapacitated and unable to receive/understand information on advanced directives and does not have a power of attorney, he/she would be unable to give informed consent to moving to the home in the first place and their right to ''self-determination'' § 51.70(7) would be violated. No changes are made based on this comment. The provisions of § 51.70(7) cover the issue of incapacitation. Section 51.70(7) states: ''If an individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating conditions) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State laws.''

The provisions of § 51.70(c)(1) state that the residents have a right to manage their financial affairs, and the facility and facility management may not require residents to deposit their personal funds with the facility. Commenters asserted that nursing home facilities should be allowed to require residents to deposit funds with the facility for payment of personal items. No changes are made based on these comments. Although many residents may choose to deposit an amount with the facility for personal items, we believe that residents should be allowed to pay for their personal items by check or other means they deem appropriate.

One commenter suggested that a resident who insists on carrying large sums of cash should be required to sign a waiver for lost or misplaced funds. No changes are made in § 51.70(c)(3) based on this comment. The final rule does not prohibit nursing homes from establishing such a policy.

The provisions of proposed § 51.70(c)(3) stated that the facility management must deposit any residents' personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.) One commenter asserted that any resident's personal funds held by facility management should be allowed to accrue interest for projects for the benefit of all residents if allowed by State law. No changes are made based on this comment. In our view, the interest generated from personal funds belongs to the owner of the funds and, therefore, should be held for the owner.

One commenter suggested that the $50 threshold amount should be raised to $100. We agree and have changed the final rule accordingly. The larger amount will allow more flexibility for veterans and State homes and will still provide a reasonable threshold for requiring amounts to be placed in interest bearing accounts.

The provisions of § 51.70(c)(4)(ii) state that individual financial records must be available through quarterly statements and on request from the resident or legal representative. One commenter asserted that there is no need for any reports until requested. No changes are made based on this comment. We believe that residents who would not otherwise review their accounts would be more likely to do so if statements were received on a periodic basis. Further, this will help to ensure that any differences would be resolved in a timely manner.

The provisions of proposed § 51.70(c)(5) stated that upon the death of a resident with personal funds deposited with the facility, the facility management must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate. One commenter asserted that sometimes the cost to the family or interested parties to probate an estate may be prohibitive compared to what is left in the estate. This commenter indicated that at least one State allows for the transfer of balances to an appropriate family member. We have changed our final rule to allow for this possibility.

The provisions of § 51.70(i) state that a State home resident must have the right to privacy in written communications, including the right to send and promptly receive mail that is unopened. One commenter stated that facility officials need to be allowed to open VA and Social Security mail with permission of the veteran. The commenter further asserted that otherwise the veteran might miss appointments. No changes are made based on this comment. The final rule merely states that a veteran has the right to send and receive mail that is unopened. This does not prohibit an agreement between the facility and the resident to allow the facility to open the veteran's mail.

The provisions of § 51.70(j)(1) state that a resident must have the right to, and the facility management must provide, immediate access to a physician of the resident's choice. One commenter asserted that a physician, acting as a physician on behalf of a resident should not be allowed to provide care to a resident in the nursing home if the physician is not approved by the Medical Director to practice in the nursing home. The final rule at § 51.210(j) already requires physicians practicing at the nursing home to be credentialed and privileged by the nursing home. The provisions of § 51.70(j)(1) are amended to clarify this issue.

The provisions of § 51.70(l) states that the resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents. One commenter asserted that the retention of personal furnishings should be at the sole discretion of the facility. No

changes are made based on this comment. The final rule allows the resident to retain and use personal possessions ''as space permits.'' This gives the facility the needed discretion to ensure order within the facility.

Section 51.80 Admission, Transfer and Discharge Rights

The provisions of § 51.80(a)(1) state that transfer and discharge includes movement of a resident to a bed outside of the facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same facility. One commenter asserted that the regulations were unclear as whether there would be transfer or discharge if a resident were moved from one level of care to another level of care in the same building or in the same complex of buildings. No changes are made based on this comment. The provisions of § 51.80(a)(1) read in conjunction with the definition of facility in § 51.2 clearly provide that a movement outside of the facility is any movement outside of the nursing home portion of the complex.

Section 51.100 Quality of Life

The provisions of § 51.100(g)(1)(2)(i) and (ii) state that the facility management must provide an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident. The provisions require that the activities program be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who is licensed or registered, if applicable, by the State in which practicing; and is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body. Two commenters asserted that these provisions are too stringent and that qualified personnel would be prohibited from working at the facility. No changes are made based on these comments. We believe these are the minimal criteria necessary to ensure that the ongoing program of activities is sufficient to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychological well-being of each veteran.

The proposed provisions of § 51.100(h)(3) stated that a social worker at a facility must have the following: a bachelor's degree in social work from a school accredited by the Council of Social Work Education and a social work license from the State in which the State home is located, if offered by the State, and a minimum of one year of supervised social work experience, under the supervision of a social worker with a master's degree, in a health care setting working directly with individuals. Six commenters opposed the provision that would require the experience to be under the supervision of a social worker with a master's degree. We agree and eliminated this provision. We believe that a social worker can provide adequate service without meeting such requirement.

The provisions of § 51.100(i)(6) state that facility management must provide comfortable and safe temperature levels. In this regard, it states that facilities must maintain a temperature range of 71–81 degrees Fahrenheit. One commenter asserted that this requirement should be waived in older facilities where central air conditioning is not available. No changes are made based on this comment. The specified temperatures are necessary to ensure that residents are comfortable and safe.

Section 51.110 Resident Assessment

The provisions of § 51.110(b)(1)(iii) state that the facility management must make a comprehensive assessment of a resident's needs using the Health Care Financing Administration Long Term Care Resident Assessment Instrument Version 2.0; and describing the resident's capability to perform daily life functions, strengths, performances, needs as well as significant impairments in functional capacity. All nursing homes must be in compliance with this standard by no later than January 1, 2000. Two commenters asserted that the compliance date of January 1, 2000, must be extended. The commenters essentially asserted that more time is needed to computerize the process and train staff. No changes are made based on these comments. Most facilities report that they already are in compliance. Compliance is needed to ensure that facilities have standardized comprehensive assessments of resident needs.

Section 51.120 Quality of Care

The proposed provisions of § 51.120(a)(3) state that the facility management must report sentinel events to the director of the VA medical center of jurisdiction, VA Network Director (10N 1–22), Chief Network Officer (10N), and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) within 24 hours of identification. Nine commenters objected to reporting the same information to so many VA entities. They asserted that they should have to report only to one VA entity and that VA could report internally as it sees fit. We agree and have changed the final rule to provide for reporting to the VA medical center of jurisdiction. We also have added language requiring the VA medical center to immediately report to the other listed VA entities.

One commenter also asserted that the report should be required to be submitted within 7 days rather than with 24 hours of identification of the event. No changes are made based on this comment. The sentinel events often reflect need for immediate review.

Section 51.130 Nursing Services

The provisions of § 51.130(d) state that the facility management must provide nursing services to ensure that there is direct care nurse staffing of no less than 2.5 hours per patient per 24 hours, 7 days per week. One commenter questioned whether managers would be included for calculating the 2.5 hours. No changes are made based on this comment. The provisions of paragraph (d) made clear that the 2.5 hours consist only of ''direct care nurse staffing''. Supervisory nurses normally would not meet these criteria.

One commenter questioned whether the 2.5 hours requirement would be based on a facility-wide average or based on each individual nursing station. This was intended to apply to all or portion of a facility where the direct care nurses would have immediate access to nursing home care. In our view, this would be accomplished if the 2.5 hours requirement were met for all of any building providing nursing home care. We have clarified the final rule accordingly.

In the past, we administratively imposed a 2.0 hours per patient per day requirement. One commenter asserted that we should retain the 2.0 hour requirement. No changes are based on this comment. Although the 2.0 hour requirement was appropriate in the past, there has been a significant increase in patient acuity that requires the increase to 2.5 hours.

One commenter asserted that the 2.5 hours requirement should not become effective until January 2000. No changes are based on this comment. Almost all State homes providing nursing home care currently meet the 2.5 hours requirement. Further, we believe this is a minimal requirement for ensuring adequate care for nursing home care patients.

One commenter asserted that the 2.5 hours requirement should be allowed to include paid staff break times. No changes based on this comment. Breaks,

including lunch, are not included. The 2.5 hours constitute minimum criteria for ensuring the availability of adequate care.

One commenter asserted that an increase from the 2.0 hours requirement to a 2.5 hours requirement constitutes an unfunded mandate and, consequently, is subject to Federal unfunded mandate requirements. No changes are made based on this comment. The provisions of 2 U.S.C. 658 exclude from any Federal unfunded mandate requirements any regulation that imposes a duty on a State as a condition of Federal Assistance and (with exceptions not relevant to this care) any regulation that imposes a duty arising from participation in a voluntary Federal Program.

One commenter questioned whether certain circumstances might require 3.0 hours per patient. No changes are made based on this comment. The 2.5 hours requirement is a minimum requirement. The provision of paragraph (e) also require that nursing care must be adequate for meeting the standards of part D. A high patient acuity could require more nursing care than those set forth as minimum standards.

The provisions of § 51.130(e) state that nurse staffing must be based on a staffing methodology that applies case-mix and is adequate for meeting the standards of this part. One commenter argued that the final rule should establish a specific standard for staffing methodology. No changes are made based on this comment. Although the staffing methodology must apply case mix and be adequate for meeting the standards of subpart D, we believe that several methodologies would be adequate for meeting the requirement.

Section 51.140 Dietary Services

The provisions of § 51.140(f)(2) state that there must be no more than 14 hours between a substantial evening meal and breakfast the following day, except that the 14 hour period may be extended to 16 hours if a resident group agrees to the extension and a nourishing snack is provided at bedtime. Two commenters noted that some residents wish to sleep late and have a late breakfast that may exceed the 14 hours. They indicated that the breakfast meal should merely be available within the 14 hour time period. We agree and have made appropriate changes to the final rule.

Section 51.150 Physician Services

The provisions of § 51.150(d) state that the facility management must provide or arrange for the provision of physician services 24 hours a day, 7 days per week, in case of an emergency. One commenter asserted that physician assistants should be able to act for physicians within their scope of practice. No changes are made based on this comment. This must be limited to physicians since a need could arise that would be beyond the scope of practice of physician assistants.

Under the provisions of proposed § 51.150(e) the primary physician may not delegate a task when the regulations specify that the primary physician must perform it personally or when the delegation is prohibited under State law or by the facility's own policies. Otherwise, under these provisions a primary physician may delegate tasks to a certified physician assistant or a certified nurse practitioner, or a clinical nurse specialist who is acting within the scope of practice as defined by State law and who is under the supervision of the physician. These provisions also include a note stating that a certified clinical nurse specialist with experience in long term care is preferred. Two commenters asserted that the note should be clarified to reflect that experience in long term care is preferred for physician assistants and certified nurse practitioners as well as clinical nurse specialist. We have amended the note accordingly.

Section 51.180 Pharmacy Services

The provisions of § 51.180 state that the facility management must employ or obtain the services of a pharmacist licensed in a State in which the facility is located. One commenter asserted that the final rule should allow facilities to obtain the services of a VA pharmacist under a VA contract arrangement even if the VA pharmacist is not licensed in the State. We agree and have made appropriate changes. The purpose of this limitation is to ensure that the facility is able to obtain information for drug reviews and otherwise ensure appropriate on-site drug services. This purpose can be accomplished with VA pharmacist under VA contract.

Section 51.200 Physical Environment

The provisions of § 51.200(d) state that resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents. Bedrooms must accommodate no more than four residents; must measure at least 115 net square feet per resident in multiple resident bedrooms; must measure at least 150 net square feet in single resident bedrooms; must measure at least 245 net square feet in small double resident bedrooms; and measure at least 305 net square feet in large double resident bedrooms used for spinal cord injury residents. It is recommended that the facility have one large double resident bedroom for every 30 resident bedrooms. Six commenters asserted that these square footage requirements should be reduced or apply only to new construction. No changes are made based on these comments. We believe that the square footage requirements are necessary to ensure sufficient space for normal daily living activities, including adequate room for movements of wheel chairs.

The provisions of § 51.200(d)(x) state that resident rooms must have a floor at or above grade level. One commenter asserted they have one subgrade unit that should be exempted from the requirement in § 51.200(d)(x). No changes are made based on this comment. We believe that nursing home care units must be at floor level or above to help ensure the availability of natural ventilation and opportunity for seeing outside.

Section 51.210 Administration

The provisions of proposed § 51.210(b)(3) provide that the State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) at the time of the change of the State home director of nursing. One commenter argued that there is no need to give notice of a change regarding the State home director of nursing. We agree and have changed § 51.210(b)(3) accordingly. The notification requirement was intended to ensure that VA had a point of contact at the facility. The final rule requires written notice of a change in a State home administrator and the State employee responsible for oversight of the State home facility if a contractor operates the State home. This is sufficient for ensuring that VA has a current point of contact.

The provisions of § 51.210(c), among other things, state that the facility management must submit the following to the director of the VA medical center of jurisdiction as often as necessary to be current: The number of the staff by category indicating full-time, part-time and minority designation and 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.

One commenter suggested that changes should be required to be reported only on a semi-annual or annual basis. We have changed § 51.210(c) to state that the facility must submit the information in question annually. The reporting requirements raised by the commenter are necessary

for determining whether facilities continue to meet the standards in subpart D, for determining whether facilities meet the criteria for obtaining per diem, and to help ensure compliance with civil rights laws. We believe that annual reporting is sufficient to meet the intended purpose.

The provisions of § 51.210(d) state that 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. This paragraph further states that all non-veteran residents must be spouses of veterans or parents all of whose children died while serving in the armed forces of the United States.

One commenter asserted that the definition of State home should include language stating that care may be provided for a spouse of a veteran as allowed by individual State law. Three commenters argued that honorably discharged members of the National Guard and certain non-listed individuals related to veterans should be allowed to be included as nonveterans at State nursing homes. No changes are made based on these comments. The requirements concerning non-veterans are necessary to ensure that the State homes are used for veterans as required by 38 U.S.C. 101(19). We believe the narrow exceptions are necessary for the well being of veterans and we do not believe that it is in the best interests of veterans to expand this further.

The provisions of proposed § 51.210(j) stated that the facility management must uniformly apply credentialing criteria to licensed independent practitioners applying to provide resident care or treatment under the facility's care. The provisions of proposed § 51.210(j) further state that the facility management must verify and uniformly apply the following core criteria: Current license; 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. One commenter asserted that the word ''independent'' be deleted so that credentialing criteria would apply to physician assistants. We agree and have deleted the word ''independent'' since physician assistants may be credentialed. Another commenter asserted that the requirements of § 51.210(j) are too stringent. No changes are made based on this comment. The required information is basic information needed to ensure that the practitioners caring for the veterans are qualified to do so.

The provisions of proposed § 51.210(j)(5) stated that when reappointing a licensed independent practitioner, the facility management must review the individual's track record. Two commenters asserted that the term ''track record'' was too colloquial and should be replaced with ''record of experience.'' We agree and have changed the final rule accordingly.

The provisions of proposed § 51.210(n)(2)(i) stated that the facility must provide or obtain radiology and other diagnostic services only when ordered by the primary physician. One commenter asserted that the final rule should reflect that radiology and other diagnostic services may be ordered by a physician assistant. We agree and have deleted the word ''only.'' The authority and limitations for a physician assistant to order radiology and other diagnostic services are set forth at § 51.150(e) of the final rule.

VA Form 10–10SH

VA Form 10–10SH, State Home Program Application for Veteran Care—Medical Certification, provides a medical certification for individuals admitted to a State nursing home facility and for the State applying for per diem payments. The form is required to be signed by the primary physician as well as other staff members. One commenter asserted that the form should be amended to allow physician assistants to conduct medical evaluations and to sign the medical evaluation form. No changes are made based on this comment. Physician assistants would not have the privileges necessary for admitting patients.

Incorporation by Reference

In § 51.200, paragraphs (a), (b)(2), and (b)(4) incorporate by reference the National Fire Protection Association's NFPA 101, Life Safety Code, 1997 edition and the NFPA 99, Standard for Health Care Facilities, 1996 edition. This action would require State homes providing nursing home care to eligible veterans to comply with a national code based on actual fire experience across the country. This is necessary to help ensure that veterans are placed in facilities that are adequately protected against fires and the final rule is designed to ensure that State homes meet the fire and safety provisions of the Life Safety Code.

Forms

We have placed all forms that apply to this rule in a new Part 58 for the purpose of making it easier to find the forms.

Executive Order 12866

This document was reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule will have no consequential effect on State, local or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. All of the entities that are subject to this final rule are State government entities under the control of State governments. Of the 93 State homes, all are operated by State governments except for 16 that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of §§ 603 and 604.

Paperwork Reduction Act of 1995

The collection of information contained in the notice of the proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3540(h)). The information collections subject to this rulemaking are set forth in the provisions of §§ 51.20, 51.30, 51.40, 51.70, 51.80, 51.90, 51.100, 51.110, 51.120, 51.150, 51.160, 51.180, 51.190 and 51.210 of this final rule.

In this regard, the final rule requires facilities to supply various kinds of information regarding facilities providing nursing home care to ensure that high quality care is furnished to veterans who are residents in such facilities. The information includes an application for recognition based on certification; appeal information; application and justification for payment; records and reports which facility management must maintain regarding activities of residents; to include information relating to whether the facility meets standards concerning

residents rights and responsibilities prior to admission, during admission, and upon discharge; the records and reports which facility management and health care professionals must maintain regarding residents and employees; various types of documentation pertaining to the management of the facility; food menu planning; pharmaceutical records; and life safety documentation.

Interested parties were invited to submit comments on the collection of information. We received two comments from two commenters. One comment is discussed above under the heading VA Form 10–10SH. One commenter suggested that VA provide for electronic transmission of forms. No changes are made based on this comment. We are working on a system to allow the electronic transmission of forms. This is not available yet from VA.

One commenter asserted that the proposed rule did not identify how often information is required to be collected. No changes are made based on this comment. Each of the sections containing collections of information specify how often the information must be collected.

The proposed rule states that the average burden per collection is 14 minutes and that the annual reporting and recordkeeping burden for each State home is slightly less than 1 hour (12,467 total hours and 13,136 respondents). One commenter asserted that these numbers may not be accurate. No changes are made based on these comments. These figures are based on sampling in the field.

OMB has approved this information collection under control number 2900–0160 except for VA Form 10–10EZ which is approved under 2900–0091. This approval is through January 31, 2002, except for VA Form 10–10EZ, which is approved through October 31, 2001. VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

List of Subjects in 38 CFR Parts 17, 51, and 58

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: August 13, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reason set out in the preamble, 38 CFR Chapter I is amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.190 [Amended]

2. In § 17.190, the introductory text is amended by removing ''hospital, domiciliary or nursing home'' and adding, in its place, ''hospital or domiciliary;'' paragraph (a) is amended by removing ''or nursing home care;'' paragraph (b) is amended by removing ''nursing home care patients or;'' and paragraph (d) is removed.

§ 17.191 [Amended]

3. Section 17.191 is amended by removing ''domiciliary, nursing home'' and adding, in its place, ''domiciliary.''

§ 17.192 [Amended]

4. Section 17.192 is amended by removing ''nursing home or''.

§ 17.193 [Amended]

5. Section 17.193 is amended by removing the second sentence thereof.

§ 17.195 [Removed]

6. Section 17.195 is removed.

§ 17.197 [Amended]

7. Section 17.197 is amended by removing ''section 1741(a)(2) for nursing home care;.''

§ 17.198 [Amended]

8. Section 17.198 is amended by removing ''hospital, domiciliary or nursing home'' and adding, in its place, ''hospital or domiciliary.''

§§ 17.190 through 17.199 [Amended]

9. A ''Note'' is added immediately following the undesignated center heading above § 17.190 to read as follows:

Note: Sections 17.190 through 17.200 do not apply to nursing home care in State homes. The provisions for nursing home care in State homes are set forth in 38 CFR part 51.

10. Part 51 is added to read as follows:

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

Subpart A—General

Sec.
51.1 Purpose.
51.2 Definitions.

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

51.10 Per diem based on recognition and certification.
51.20 Application for recognition based on certification.
51.30 Recognition and certification.
51.31 Automatic recognition.

Subpart C—Per Diem Payments

51.40 Monthly payment.
51.50 Eligible veterans.

Subpart D—Standards

51.60 Standards applicable for payment of per diem.
51.70 Resident rights.
51.80 Admission, transfer and discharge rights.
51.90 Resident behavior and facility practices.
51.100 Quality of life.
51.110 Resident assessment.
51.120 Quality of care.
51.130 Nursing services.
51.140 Dietary services.
51.150 Physician services.
51.160 Specialized rehabilitative services.
51.170 Dental services.
51.180 Pharmacy services.
51.190 Infection control.
51.200 Physical environment.
51.210 Administration.

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743.

Subpart A—General

§ 51.1 Purpose.

This part sets forth the mechanism for paying per diem to State homes providing nursing home care to eligible veterans and is intended to ensure that veterans receive high quality care in State homes.

§ 51.2 Definitions.

For purposes of this part:

Clinical nurse specialist means a licensed professional nurse with a master's degree in nursing with a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing and at least 2 years of successful clinical practice in the specialized area of nursing practice following this academic preparation.

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 level of care (domiciliary, hospital care or adult day health care). These forms are set forth in full at §§ 58.12 and 58.13 of this chapter, respectively, of this part. If the facility is eligible to receive per diem payments for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the veteran was admitted to the facility if the completed forms are received within 10 days after admission.

(b) Total per diem costs for an eligible veteran's nursing home care consist of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of patients at the nursing home. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments.''

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

§ 51.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran needs nursing home care and the veteran is within one of the following categories:

(a) Veterans with service-connected disabilities;

(b) Veterans who are former prisoners of war;

(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(d) Veterans who receive disability compensation under 38 U.S.C. 1151;

(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);

(h) Veterans of the Mexican border period or of World War I;

(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C. 1710(e);

(j) Veterans who agree to pay to the United States the applicable co-payment

determined under 38 U.S.C. 1710(f) and 1710(g).

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

Subpart D—Standards

§ 51.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and facility management must meet for the State to receive per diem for nursing home care.

§ 51.70 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The facility management must protect and promote the rights of each resident, including each of the following rights:

(a) *Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility management in exercising his or her rights.

(3) The resident has the right to freedom from chemical or physical restraint.

(4) In the case of a resident determined incompetent under the laws of a State by a court of jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(5) In the case of a resident who has not been determined incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

(b) *Notice of rights and services.* (1) The facility management must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and periodically during the resident's stay.

(2) The resident or his or her legal representative has the right:

(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of his or her records for review, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and with 2 working days advance notice to the facility management.

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status;

(4) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (b)(7) of this section; and

(5) The facility management must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services to be billed to the resident.

(6) The facility management must furnish a written description of legal rights which includes:

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A statement that the resident may file a complaint with the State (agency) concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.

(7) The facility management must have written policies and procedures regarding advance directives (*e.g.,* living wills) that include provisions to inform and provide written information to all residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law. If an individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating conditions) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility management is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(8) The facility management must inform each resident of the name and way of contacting the primary physician responsible for his or her care.

(9) Notification of changes. (i) Facility management must immediately inform the resident; consult with the primary physician; and if known, notify the resident's legal representative or an interested family member when there is—

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (*i.e.,* a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (*i.e.,* a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 51.80(a) of this part.

(ii) The facility management must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is—

(A) A change in room or roommate assignment as specified in § 51.100(f)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The facility management must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) *Protection of resident funds.* (1) The resident has the right to manage his or her financial affairs, and the facility management may not require residents to deposit their personal funds with the facility.

(2) Management of personal funds. Upon written authorization of a resident, the facility management must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3) through (c)(6) of this section.

(3) Deposit of funds. (i) Funds in excess of $100. The facility management must deposit any residents' personal funds in excess of $100 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(ii) Funds less than $100. The facility management must maintain a resident's

personal funds that do not exceed $100 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(4) Accounting and records. The facility management must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available through quarterly statements and on request from the resident or his or her legal representative.

(5) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility management must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; or other appropriate individual or entity, if State law allows.

(6) Assurance of financial security. The facility management must purchase a surety bond, or otherwise provide assurance satisfactory to the Under Secretary for Health, to assure the security of all personal funds of residents deposited with the facility.

(d) *Free choice.* The resident has the right to—

(1) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(2) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *Privacy and confidentiality.* The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Residents have a right to personal privacy in their accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility management to give a private room to each resident.

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when—

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(f) *Grievances.* A resident has the right to—

(1) Voice grievances without discrimination or reprisal. Residents may voice grievances with respect to treatment received and not received; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) *Examination of survey results.* A resident has the right to—

(1) Examine the results of the most recent VA survey with respect to the facility. The facility management must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(h) *Work.* The resident has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) *Mail.* The resident must have the right to privacy in written communications, including the right to—

Send and promptly receive mail that is unopened; and

(2) Have access to stationery, postage, and writing implements at the resident's own expense.

(j) *Access and visitation rights.* (1) The resident has the right and the facility management must provide immediate access to any resident by the following:

(i) Any representative of the Under Secretary for Health;

(ii) Any representative of the State;

(iii) Physicians of the resident's choice (to provide care in the nursing home, physicians must meet the provisions of § 51.210(j));

(iv) The State long term care ombudsman;

(v) Immediate family or other relatives of the resident subject to the resident's right to deny or withdraw consent at any time; and

(vi) Others who are visiting subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(2) The facility management must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility management must allow representatives of the State Ombudsman Program, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, subject to State law.

(k) *Telephone.* The resident has the right to reasonable access to use a telephone where calls can be made without being overheard.

(l) *Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(m) *Married couples.* The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(n) *Self-Administration of Drugs.* An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 51.110(d)(2)(ii) of this part, has determined that this practice is safe.

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

§ 51.80 Admission, transfer and discharge rights.

(a) *Transfer and discharge.* (1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same facility.

(2) Transfer and discharge requirements. The facility management must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the

resident no longer needs the services provided by the nursing home;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice to pay for a stay at the facility; or

(vi) The nursing home ceases to operate.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section, the primary physician must document this in the resident's clinical record.

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) Timing of the notice. (i) The notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged, except when specified in paragraph (a)(5)(ii) of this section,

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered;

(B) The health of individuals in the facility would be otherwise endangered;

(C) The resident's health improves sufficiently so the resident no longer needs the services provided by the nursing home;

(D) The resident's needs cannot be met in the nursing home;

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State official designated by the State; and

(v) The name, address and telephone number of the State long term care ombudsman.

(7) Orientation for transfer or discharge. A facility management must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(b) *Notice of bed-hold policy and readmission.* (1) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility management must provide written information to the resident and a family member or legal representative that specifies—

(i) The duration of the facility's bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility; and

(ii) The facility's policies regarding bed-hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.

(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, facility management must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b)(1) of this section.

(3) Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility immediately upon the first availability of a bed in a semi-private room, if the resident requires the services provided by the facility.

(c) *Equal access to quality care.* The facility management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) *Admissions policy.* The facility management must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract to pay the facility from the resident's income or resources.

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

§ 51.90 Resident behavior and facility practices.

(a) *Restraints.* (1) The resident has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body. Bed rails and vest restraints are examples of physical restraints.

(2) The facility management uses a system to achieve a restraint-free environment.

(3) The facility management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, a restraint must be safely and appropriately used.

(b) *Abuse.* The resident has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(1) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(2) Physical abuse includes hitting, slapping, pinching, or kicking. Also includes controlling behavior through corporal punishment.

(3) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(4) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Includes withholding or inadequately providing food and hydration (without physician, resident, or surrogate approval), clothing, medical care, and good hygiene. May also include placing the individual in unsafe or unsupervised conditions.

(5) Involuntary seclusion is a resident's separation from other residents or from the resident's room against his or her will or the will of his or her legal representative.

(c) *Staff treatment of residents.* The facility management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(1) The facility management must:

(i) Not employ individuals who—

(A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and

(ii) Report any knowledge it has of actions by a court of law against an

employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.

(2) The facility management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures.

(3) The facility management must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or the designated representative and to other officials in accordance with State law within 5 working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

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

§ 51.100 Quality of life.

A facility management must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) *Dignity.* The facility management must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The resident has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the facility; and

(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(c) *Resident Council.* The facility management must establish a council of residents that meet at least quarterly. The facility management must document any concerns submitted to the management of the facility by the council.

(d) *Participation in resident and family groups.* (1) A resident has the right to organize and participate in resident groups in the facility;

(2) A resident's family has the right to meet in the facility with the families of other residents in the facility;

(3) The facility management must provide the council and any resident or family group that exists with private space;

(4) Staff or visitors may attend meetings at the group's invitation;

(5) The facility management must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(6) The facility management must listen to the views of any resident or family group, including the council established under paragraph (c) of this section, and act upon the concerns of residents, families, and the council regarding policy and operational decisions affecting resident care and life in the facility.

(e) *Participation in other activities.* A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. The facility management must arrange for religious counseling by clergy of various faith groups.

(f) *Accommodation of needs.* A resident has the right to—

(1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(2) Receive notice before the resident's room or roommate in the facility is changed.

(g) *Patient Activities.* (1) The facility management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who—

(i) Is licensed or registered, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body.

(h) *Social Services.* (1) The facility management must provide medically related social services to attain or maintain the highest practicable mental and psychosocial well-being of each resident.

(2) A nursing home with 100 or more beds must employ a qualified social worker on a full-time basis.

(3) Qualifications of social worker. A qualified social worker is an individual with—

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred), and

(ii) A social work license from the State in which the State home is located, if offered by the State, and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The facility management must have sufficient support staff to meet patients' social services needs.

(5) Facilities for social services must ensure privacy for interviews.

(i) *Environment.* The facility management must provide—

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Clean bed and bath linens that are in good condition;

(4) Private closet space in each resident room, as specified in § 51.200(d)(2)(iv) of this part;

(5) Adequate and comfortable lighting levels in all areas;

(6) Comfortable and safe temperature levels. Facilities must maintain a temperature range of 71–81 degrees Fahrenheit; and

(7) For the maintenance of comfortable sound levels.

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

§ 51.110 Resident assessment.

The facility management must conduct initially, annually and as required by a change in the resident's condition a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(a) *Admission orders.* At the time each resident is admitted, the facility management must have physician orders for the resident's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the resident's condition, not to exceed 72 hours after admission, except when an examination was performed within five days before admission and the findings were recorded in the medical record on admission.

(b) *Comprehensive assessments.* (1) The facility management must make a

comprehensive assessment of a resident's needs:

(i) Using the Health Care Financing Administration Long Term Care Resident Assessment Instrument Version 2.0; and

(ii) Describing the resident's capability to perform daily life functions, strengths, performances, needs as well as significant impairments in functional capacity.

(iii) All nursing homes must be in compliance with the use of the Health Care Financing Administration Long Term Care Resident Assessment Instrument Version 2.0 by no later than January 1, 2000.

(2) Frequency. Assessments must be conducted—

(i) No later than 14 days after the date of admission;

(ii) Promptly after a significant change in the resident's physical, mental, or social condition; and

(iii) In no case less often than once every 12 months.

(3) Review of assessments. The nursing facility management must examine each resident no less than once every 3 months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(4) Use. The results of the assessment are used to develop, review, and revise the resident's individualized comprehensive plan of care, under paragraph (d) of this section.

(c) *Accuracy of assessments.* (1) Coordination—

(i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse that signs and certifies the completion of the assessment.

(2) Certification. Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(d) *Comprehensive care plans.* (1) The facility management must develop an individualized comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following—

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under § 51.120; and

(ii) Any services that would otherwise be required under § 51.120 of this part but are not provided due to the resident's exercise of rights under § 51.70, including the right to refuse treatment under § 51.70(b)(4) of this part.

(2) A comprehensive care plan must be—

(i) Developed within 7 calendar days after completion of the comprehensive assessment;

(ii) Prepared by an interdisciplinary team, that includes the primary physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, the participation of the resident, the resident's family or the resident's legal representative; and

(iii) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each resident's written plan of care.

(e) *Discharge summary.* Prior to discharging a resident, the facility management must prepare a discharge summary that includes—

(1) A recapitulation of the resident's stay;

(2) A summary of the resident's status at the time of the discharge to include items in paragraph (b)(2) of this section; and

(3) A post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

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

§ 51.120 Quality of care.

Each resident must receive and the facility management must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Reporting of Sentinel Events.* (1) Definition. A sentinel event is an adverse event that results in the loss of life or limb or permanent loss of function.

(2) Examples of sentinel events are as follows:

(i) Any resident death, paralysis, coma or other major permanent loss of function associated with a medication error; or

(ii) Any suicide of a resident, including suicides following elopement (unauthorized departure) from the facility; or

(iii) Any elopement of a resident from the facility resulting in a death or a major permanent loss of function; or

(iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or

(v) Assault, homicide or other crime resulting in patient death or major permanent loss of function; or

(vi) A patient fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall.

(3) The facility management must report sentinel events to the director of VA medical center of jurisdiction within 24 hours of identification. The VA medical center of jurisdiction must report sentinel events by calling VA Network Director (10N 1–22) and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) within 24 hours of notification.

(4) The facility management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event is to prevent injuries to residents, visitors, and personnel, and to manage those injuries that do occur and to minimize the negative consequences to the injured individuals and facility.

(b) *Activities of daily living.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to—

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Talk or otherwise communicate.

(2) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section; and

(3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) *Vision and hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident—

(1) In making appointments, and

(2) By arranging for transportation to and from the office of a practitioner

specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) *Pressure sores.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(e) *Urinary and Fecal Incontinence.* Based on the resident's comprehensive assessment, the facility management must ensure that—

(1) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary;

(2) A resident who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible; and

(3) A resident who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) *Range of motion.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A resident with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) *Mental and Psychosocial functioning.* Based on the comprehensive assessment of a resident, the facility management must ensure that a resident who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) *Enteral Feedings.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident who has been able to adequately eat or take fluids alone or with assistance is not fed by enteral feedings unless the resident's clinical condition demonstrates that use of enteral feedings was unavoidable; and

(2) A resident who is fed by enteral feedings receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, nasal-pharyngeal ulcers and other skin breakdowns, and to restore, if possible, normal eating skills.

(i) *Accidents.* The facility management must ensure that—

(1) The resident environment remains as free of accident hazards as is possible; and

(2) Each resident receives adequate supervision and assistance devices to prevent accidents.

(j) *Nutrition.* Based on a resident's comprehensive assessment, the facility management must ensure that a resident—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(k) *Hydration.* The facility management must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(l) *Special needs.* The facility management must ensure that residents receive proper treatment and care for the following special services:

(1) Injections;

(2) Parenteral and enteral fluids;

(3) Colostomy, ureterostomy, or ileostomy care;

(4) Tracheostomy care;

(5) Tracheal suctioning;

(6) Respiratory care;

(7) Foot care; and

(8) Prostheses.

(m) *Unnecessary drugs.* (1) General. Each resident's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or

(ii) For excessive duration; or

(iii) Without adequate monitoring; or

(iv) Without adequate indications for its use; or

(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(vi) Any combinations of the reasons above.

(2) Antipsychotic Drugs. Based on a comprehensive assessment of a resident, the facility management must ensure that—

(i) Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(ii) Residents who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(n) *Medication Errors.* The facility management must ensure that—

(1) Medication errors are identified and reviewed on a timely basis; and

(2) strategies for preventing medication errors and adverse reactions are implemented.

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

§ 51.130 Nursing services.

The facility management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by resident assessment and individualized comprehensive plans of care, of all patients within the facility 24 hours a day, 7 days a week.

(a) The nursing service must be under the direction of a full-time registered nurse who is currently licensed by the State and has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff.

(b) The facility management must provide registered nurses 24 hours per day, 7 days per week.

(c) The director of nursing service must designate a registered nurse as a supervising nurse for each tour of duty.

(1) Based on the application and results of the case mix and staffing methodology, the director of nursing may serve in a dual role as director and as an onsite-supervising nurse only when the facility has an average daily occupancy of 60 or fewer residents in nursing home.

(2) Based on the application and results of the case mix and staffing methodology, the evening or night supervising nurse may serve in a dual role as supervising nurse as well as provides direct patient care only when the facility has an average daily occupancy of 60 or fewer residents in nursing home.

(d) The facility management must provide nursing services to ensure that there is direct care nurse staffing of no less than 2.5 hours per patient per 24 hours, 7 days per week in the portion of any building providing nursing home care.

(e) Nurse staffing must be based on a staffing methodology that applies case

mix and is adequate for meeting the standards of this part.

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

§ 51.140 Dietary services.

The facility management must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(a) *Staffing.* The facility management must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(1) If a dietitian is not employed, the facility management must designate a person to serve as the director of food service who receives at least a monthly scheduled consultation from a qualified dietitian.

(2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.

(b) *Sufficient staff.* The facility management must employ sufficient support personnel competent to carry out the functions of the dietary service.

(c) *Menus and nutritional adequacy.* Menus must—

(1) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(2) Be prepared in advance; and

(3) Be followed.

(d) *Food.* Each resident receives and the facility provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to residents who refuse food served.

(e) *Therapeutic diets.* Therapeutic diets must be prescribed by the primary care physician.

(f) *Frequency of meals.* (1) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(2) There must be no more than 14 hours between a substantial evening meal and the availability of breakfast the following day, except as provided in (f)(4) of this section.

(3) The facility staff must offer snacks at bedtime daily.

(4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day.

(g) *Assistive devices.* The facility management must provide special eating equipment and utensils for residents who need them.

(h) *Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and (3) Dispose of garbage and refuse properly.

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

§ 51.150 Physician services.

A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician.

(a) *Physician supervision.* The facility management must ensure that—

(1) The medical care of each resident is supervised by a primary care physician;

(2) Each resident's medical record lists the name of the resident's primary physician, and

(3) Another physician supervises the medical care of residents when their primary physician is unavailable.

(b) *Physician visits.* The physician must—

(1) Review the resident's total program of care, including medications and treatments, at each visit required by paragraph (c) of this section;

(2) Write, sign, and date progress notes at each visit; and

(3) Sign and date all orders.

(c) *Frequency of physician visits.*

(1) The resident must be seen by the primary physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter, or more frequently based on the condition of the resident.

(2) A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required.

(3) Except as provided in paragraphs (c)(4) of this section, all required physician visits must be made by the physician personally.

(4) At the option of the physician, required visits in the facility after the initial visit may alternate between personal visits by the physician and visits by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(d) *Availability of physicians for emergency care.* The facility management must provide or arrange for the provision of physician services 24 hours a day, 7 days per week, in case of an emergency.

(e) *Physician delegation of tasks.* (1) Except as specified in paragraph (e)(2) of this section, a primary physician may delegate tasks to:

(i) a certified physician assistant or a certified nurse practitioner, or

(ii) a clinical nurse specialist who—

(A) Is acting within the scope of practice as defined by State law; and

(B) Is under the supervision of the physician.

Note to paragraph (e): An individual with experience in long term care is preferred.

(2) The primary physician may not delegate a task when the regulations specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

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

§ 51.160 Specialized rehabilitative services.

(a) *Provision of services.* If specialized rehabilitative services such as but not limited to physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the resident's comprehensive plan of care, facility management must—

(1) Provide the required services; or

(2) Obtain the required services from an outside resource, in accordance with § 51.210(h) of this part, from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

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

§ 51.170 Dental services.

(a) A facility must provide or obtain from an outside resource, in accordance with § 51.210(h) of this part, routine and emergency dental services to meet the needs of each resident;

(b) A facility may charge a resident an additional amount for routine and emergency dental services; and

(c) A facility must, if necessary, assist the resident—

(1) In making appointments;

(2) By arranging for transportation to and from the dental services; and

(3) Promptly refer residents with lost or damaged dentures to a dentist.

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

§ 51.180 Pharmacy services.

The facility management must provide routine and emergency drugs

and biologicals to its residents, or obtain them under an agreement described in § 51.210(h) of this part. The facility management must have a system for disseminating drug information to medical and nursing staff.

(a) *Procedures.* The facility management must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(b) *Service consultation.* The facility management must employ or obtain the services of a pharmacist licensed in a State in which the facility is located or a VA pharmacist under VA contract who—

(1) Provides consultation on all aspects of the provision of pharmacy services in the facility;

(2) Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

(3) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(c) *Drug regimen review.* (1) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(2) The pharmacist must report any irregularities to the primary physician and the director of nursing, and these reports must be acted upon.

(d) *Labeling of drugs and biologicals.* Drugs and biologicals used in the facility management must be labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date when applicable.

(e) *Storage of drugs and biologicals.* (1) In accordance with State and Federal laws, the facility management must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(2) The facility management must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse.

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

§ 51.190 Infection control.

The facility management must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(a) *Infection control program.* The facility management must establish an infection control program under which it—

(1) Investigates, controls, and prevents infections in the facility;

(2) Decides what procedures, such as isolation, should be applied to an individual resident; and

(3) Maintains a record of incidents and corrective actions related to infections.

(b) *Preventing spread of infection.* (1) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility management must isolate the resident.

(2) The facility management must prohibit employees with a communicable disease or infected skin lesions from engaging in any contact with residents or their environment that would transmit the disease.

(3) The facility management must require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice.

(c) *Linens.* Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

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

§ 51.200 Physical environment.

The facility management must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (1997 edition) and the NFPA 99, Standard for Health Care Facilities (1996 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101. (For ordering information, call toll-free 1–800–344–3555.)

(b) *Emergency power.* (1) An emergency electrical power system must be provided to supply power adequate for illumination of all exit signs and lighting for the means of egress, fire alarm and medical gas alarms, emergency communication systems, and generator task illumination.

(2) The system must be the appropriate type essential electrical system in accordance with the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (1997 edition) and the NFPA 99, Standard for Health Care Facilities (1996 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these materials is described in paragraph (a) of this section.

(3) When electrical life support devices are used, an emergency electrical power system must also be provided for devices in accordance with NFPA 99, Standard for Health Care Facilities (1996 edition).

(4) The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources in accordance with the National Fire Protection Association's NFPA 101, Life Safety Code (1997 edition) and the NFPA 99, Standard for Health Care Facilities (1996 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these materials is described in paragraph (a) of this section.

(c) *Space and equipment.* Facility management must—

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Resident rooms.* Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents: (1) Bedrooms must—

(i) Accommodate no more than four residents;

(ii) Measure at least 115 net square feet per resident in multiple resident bedrooms;

(iii) Measure at least 150 net square feet in single resident bedrooms;

(iv) Measure at least 245 net square feet in small double resident bedrooms; and

(v) Measure at least 305 net square feet in large double resident bedrooms used for spinal cord injury residents. It is recommended that the facility have one large double resident bedroom for every 30 resident bedrooms.

(vi) Have direct access to an exit corridor;

(vii) Be designed or equipped to assure full visual privacy for each resident;

(viii) Except in private rooms, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;

(ix) Have at least one window to the outside; and

(x) Have a floor at or above grade level.

(2) The facility management must provide each resident with—

(i) A separate bed of proper size and height for the safety of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(e) *Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities. It is recommended that public toilet facilities be also located near the resident's dining and recreational areas.

(f) *Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) *Dining and resident activities.* The facility management must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(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)

§ 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, Geriatrics and Extended Care Strategic Healthcare Group (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 set forth at § 58.14 of this chapter);

(9) Annual certification for Drug-Free Workplace Act of 1988 (VA Form 10–0143 set forth at § 58.15 of this chapter);

(10) Annual certification regarding lobbying in compliance with Public Law 101–121 (VA Form 10–0144 set forth at § 58.16 of this chapter); 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 located at § 58.17 of this chapter).

(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 all of whose children died while serving in the armed forces of the United States.

(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.

(i) *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 competency 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 specialities 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.

(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 subpart, facilities are obliged to meet the applicable provisions of other Federal laws and regulations, including but not limited to those pertaining to nondiscrimination 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 44, section 44.100 through 44.420; 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)

11. Part 58 is added to read as follows:

PART 58—FORMS

Sec.

58.10 VA Form 10–3567—State Home Inspection: Staffing Profile.

58.11 VA Form 10–5588—State Home Report and Statement of Federal Aid Claimed.

58.12 VA Form 10–10EZ—Application for Health Benefits.

58.13 VA Form 10–10SH—State Home Program Application for Veteran Care—Medical Certification.

58.14 VA Form 10–0143A—Statement of Assurance of Compliance with Section 504 of The Rehabilitation Act of 1973.

58.15 VA Form 10–0143—Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.

58.16 VA Form 10–0144—Certification Regarding Lobbying.

58.17 VA Form 10–0144A—Statement of Assurance of Compliance with Equal Opportunity Laws.

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743.

BILLING CODE 8320–01–C

§ 58.10 VA Form 10–3567—State Home Inspection Staffing Profile.

OMB Approved No. 2900-0160
Estimated Burden Avg. 20 min.

Department of Veterans Affairs

STATE HOME INSPECTION

NAME OF HOME	DATE OF INSPECTION

PART I	TOTAL FACILITY	HOSPITAL	NHC	DOM
OPERATING BEDS				
AUTHORIZED APPROVALS				
PATIENT CENSUS				
POSITIONS AUTHORIZED				
STAFF AVAILABLE				
PART II - STAFF	**TOTAL FACILITY**	**HOSPITAL**	**NHC**	**DOM**
PHYSICIANS:				
PHYSICIANS ASSISTANTS				
DENTISTS				
SOCIAL WORK: MSW				
BSW				
SOCIAL WORK ASSISTANT				
PHARMACY: REG. PHARMACIST				
DIETETICS: REG. DIETITIAN				
FOOD SUPERVISOR				
DIETARY ASSISTANTS				
NURSING:				
NURSING ADM./SUP.				
DIRECT CARE: CERT. N.P./C.N.S.				
R.N.				
L.P.N./L.V.N.				
N.A.				
REHABILITATION THERAPY				
REG. P.T./P.T. AIDES				
REG. O.T./O.T. AIDES				
MENTAL HEALTH: PSYCHOLOGIST				
PSYCHIATRIST				
PSYCHIATRIC SOCIAL WORKER				
COUNSELOR				
SPEECH AND AUDIOLOGY				
OPHTHALMOLOGY/OPTOMETRY				
PODIATRY				
RADIOLOGY/LABORATORY				
RECREATION/ACTIVITIES				
DIRECTOR				
ASSISTANTS				
VOLUNTEERS				
CHAPLAIN				
ADMINISTRATION				
ENGINEERING				
MAINTENANCE/HOUSEKEEPING				
MEDICAL RECORDS				
OTHER *(Specify)*				

VA FORM MAY 1998 (RS) **10-3567** **SEE REVERSE**

NAME OF HOME	DATE OF INSPECTION

NURSING SERVICE STAFFING PATTERN

(Four Week Average)

PART III **HOSPITAL** ***(Average hours Hosp. _____)***

SHIFT	SUNDAY			MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY		
	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA
DAY																					
EVENING																					
NIGHT																					

PART IV **NURSING HOME** ***(Average hours NHC _____)***

SHIFT	SUNDAY			MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY		
	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA
DAY																					
EVENING																					
NIGHT																					

PART V **DOMICILIARY** ***(Average hours Dom. _____)***

SHIFT	SUNDAY			MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY		
	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA
DAY																					
EVENING																					
NIGHT																					

NAME OF HOME	DATE OF INSPECTION

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

§ 58.11 VA Form 10–5588—State Home Report and Statement of Federal Aid Claimed.

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

Department of Veterans Affairs

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED

TO	VA FACILITY	FROM	NAME AND ADDRESS OF STATE HOME

PAY TO	FOR MONTH ENDING

LINE NO.		ITEM	DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
1		TOTAL VETERAN RESIDENTS REMAINING AT END OF PRIOR MONTH				
2	GAINS	ADMISSIONS *(Change of status)*				
3	GAINS	ADMISSIONS *(Other)*				
4	GAINS	RETURNS FROM LEAVE OF ABSENCE OF MORE THAN 96 HOURS				
5	LOSSES	DISCHARGES *(Change of status)*				
6	LOSSES	DISCHARGES *(Other)*				
7	LOSSES	DEATHS				
8	LOSSES	LEAVES OF ABSENCE OF MORE THAN 96 HOURS				
9		TOTAL VETERAN RESIDENTS REMAINING AT END OF THE MONTH				
10		TOTAL VETERAN DAYS OF CARE FURNISHED				
11		FEMALE VETERAN RESIDENTS REMAINING AT END OF THE MONTH				
12		**NON-VETERAN** RESIDENTS REMAINING AT END OF THE MONTH				

MONTHLY STATEMENT OF ACCOUNT

LINE NO.	FEDERAL AID CLAIMED UNDER SEC.1741, TITLE 38, U.S.C., AS AMENDED	DAYS OF CARE (J)	AVERAGE DAILY CENSUS (K)	TOTAL PER DIEM COST (L)	PER DIEM CLAIMED (M)	TOTAL AMOUNT CLAIMED (N)
13	DOMICILIARY CARE			$	$	$
14	NURSING HOME CARE			$	$	$
15	HOSPITAL CARE			$	$	$
16	ADULT DAY HEALTH CARE			$	$	$
17	**TOTAL AMOUNT CLAIMED**					$

FOR DEPARTMENT OF VETERANS AFFAIR USE ONLY

RECEIVING REPORT - Services authorized under provisions of Sec. 1741, 1742 and 1743, Title 38, U.S.C., have been rendered in the quantity claimed and payment is recommended except as follows:

SIGNATURE AND TITLE OF STATE HOME COORDINATOR	DATE

ACCOUNTING CERTIFICATION - AUDIT BLOCK

AMOUNT DUE	DATE	VOUCHER AUDITOR

VA FORM SEP 1998 (RS) **10-5588** **PAGE 1**

Department of Veterans Affairs

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED

I certify that this report is correct, that all residents included in the report were physically present during the period for which Federal aid is claimed, except for authorized absences of 96 hours or less, and that facility management has complied with all provisions of Title VI, Public Law 88-352, entitled Civil Rights Act of

TOTAL STATE OPERATING BEDS AT END OF THE MONTH

DOMICILIARY CARE	NURSING HOME CARE	HOSPITAL CARE	ADULT DAY HEALTH CARE

BED CAPACITY APPROVED BY VA

DOMICILIARY CARE	NURSING HOME CARE	HOSPITAL CARE	ADULT DAY HEALTH CARE

SIGNATURE OF STATE HOME ADMINISTRATOR	DATE

SIGNATURE OF STATE EMPLOYEE WHEN APPLICABLE	DATE

REMARKS

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

VA FORM SEP 1998 (RS) **10-5588** PAGE 2

§ 58.12 VA Form 10–10EZ—Application for Health Benefits

OMB Approved No. 2900-0091
Estimated Burden Avg. 20 min

Department of Veterans Affairs

APPLICATION FOR HEALTH BENEFITS

SECTION I - GENERAL INFORMATION

1A. TYPE OF BENEFIT(S) APPLIED FOR *(You may check more than one)*
☐ HEALTH SERVICES ☐ NURSING HOME ☐ DOMICILIARY ☐ DENTAL ☐ ENROLLMENT

1B. IF APPLYING FOR HEALTH SERVICES, WHICH VA MEDICAL CENTER OR OUTPATIENT CLINIC DO YOU PREFER

2. VETERAN'S NAME *(Last, First, MI)*	3. OTHER NAMES USED	4. GENDER *(Check one)* ☐ M ☐ F

5. SOCIAL SECURITY NUMBER	6. CLAIM NUMBER	7. DATE OF BIRTH *(mm/dd/yyyy)*	8. RELIGION

9A. CURRENT MAILING ADDRESS *(Street)*	9B. CITY	9C. STATE	9D. ZIP

9E. COUNTY	10. HOME TELEPHONE NUMBER ( )	11. WORK TELEPHONE NUMBER ( )

12. CURRENT MARITAL STATUS *(Check one)* ☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED ☐ UNKNOWN

13A. LAST BRANCH OF SERVICE	13B. LAST ENTRY DATE	13C. LAST DISCHARGE DATE	13D. DISCHARGE TYPE	13E. MILITARY SERVICE NUMBER

14. CIRCLE YES OR NO

A. ARE YOU A FORMER PRISONER OF WAR	YES	NO	H. DO YOU HAVE A MILITARY DENTAL INJURY	YES	NO
B. DO YOU HAVE A VA SERVICE-CONNECTED RATING	YES	NO	I. DO YOU HAVE A SPINAL CORD INJURY	YES	NO
B1. IF YES, WHAT IS YOUR RATED PERCENTAGE		%	J. ARE YOU ELIGIBLE FOR MEDICAID	YES	NO
C. ARE YOU RECEIVING A VA PENSION	YES	NO	K. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A	YES	NO
D. ARE YOU RETIRED FROM THE MILITARY	YES	NO	K1. EFFECTIVE DATE		
D1. WAS YOUR RETIREMENT THE RESULT OF A DISABILITY	YES	NO	L. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART B	YES	NO
D2. WERE YOU REGULARLY RETIRED (20+ yrs)	YES	NO	L1. EFFECTIVE DATE		
E. WERE YOU EXPOSED TO TOXINS IN THE GULF WAR	YES	NO	M. MEDICARE CLAIM NUMBER		
F. WERE YOU EXPOSED TO AGENT ORANGE	YES	NO	N. NAME EXACTLY AS IT APPEARS ON YOUR MEDICARE CARD		
G. WERE YOU EXPOSED TO RADIATION	YES	NO			

15A. VETERAN'S EMPLOYMENT STATUS *(check one)* ☐ NOT EMPLOYED ☐ EMPLOYED ☐ RETIRED — *If employed or retired, complete item 15B* — / / *Date of retirement*	15B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER
16A. SPOUSE'S EMPLOYMENT STATUS *(check one)* ☐ NOT EMPLOYED ☐ EMPLOYED ☐ RETIRED — *If employed or retired, complete item 16B* — / / *Date of retirement*	16B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER
17A. VETERAN'S HEALTH INSURANCE COMPANY	18A. SPOUSE'S HEALTH INSURANCE COMPANY
17B. NAME OF POLICY HOLDER	18B. NAME OF POLICY HOLDER
17C. POLICY NUMBER / 17D. GROUP CODE	18C. POLICY NUMBER / 18D. GROUP CODE
19A. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN	19B. NEXT OF KIN'S HOME TELEPHONE NUMBER ( ) / 19C. NEXT OF KIN'S WORK TELEPHONE NUMBER ( )
20A. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT	20B. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER ( ) / 20C. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER ( )

21. I DESIGNATE THE FOLLOWING INDIVIDUAL TO RECEIVE POSSESSION OF ALL MY PERSONAL PROPERTY LEFT ON PREMISES UNDER VA CONTROL AFTER MY DEPARTURE OR AT THE TIME OF MY DEATH. *(Check one)* ***(This does not constitute a will or transfer of title.)***
☐ EMERGENCY CONTACT ☐ NEXT OF KIN

22A. IS NEED FOR CARE DUE TO ON THE JOB INJURY *(Check one)*	22B. IS NEED FOR CARE DUE TO ACCIDENT *(Check one)*
☐ YES ☐ NO	☐ YES ☐ NO

APPLICATION FOR HEALTH BENEFITS, Continued

VETERAN'S NAME

SOCIAL SECURITY NUMBER

SECTION II - FINANCIAL ASSESSMENT

IIA - DEPENDENT INFORMATION *(Use a separate sheet for additional dependents)*

1. SPOUSE'S NAME *(Last, First, MI)*

2. CHILD'S NAME *(Last, First, MI)*

3. SPOUSE'S SOCIAL SECURITY NUMBER

4. SPOUSE'S DATE OF BIRTH *(mm/dd/yyyy)*

5. CHILD'S DATE OF BIRTH *(mm/dd/yyyy)*

6. SPOUSE'S ADDRESS *(Street, City, State, ZIP)*

7. CHILD'S SOCIAL SECURITY NUMBER

8. SPOUSE'S TELEPHONE NUMBER

9. CHILD'S RELATIONSHIP TO YOU *(Circle one)*
Son *Daughter* *Stepson* *Stepdaughter*

10. DATE OF MARRIAGE *(mm/dd/yyyy)*

11. DATE CHILD BECAME YOUR DEPENDENT

12. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR, ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT
SPOUSE $ CHILD $

13. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING *(tuition, books, materials, etc.)*
$

14. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18?
☐ YES ☐ NO

15. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR? ☐ YES ☐ NO

IIB - FINANCIAL DISCLOSURE

You are not required to provide the financial information in this Section. However, current law may require VA to consider your household financial situation to determine your eligibility for enrollment and/or cost-free care of your nonservice-connected (NSC) conditions. If you are 0% SC noncompensable or NSC (and are not an Ex-POW, WWI veteran or VA pensioner) and your annual household income (or combined income and net worth) exceeds the established threshold, you must agree to pay VA co-payments for care of your NSC conditions to be eligible for enrollment. See Section III - Consent and Signature.

☐ **YES,** I WILL PROVIDE SPECIFIC INCOME AND/OR ASSET INFORMATION TO HAVE ELIGIBILITY FOR CARE DETERMINED. *Complete all sections below that apply to you with last calendar year's information. Sign and date the application.*

☐ **NO,** I DO NOT WISH TO PROVIDE MY DETAILED FINANCIAL INFORMATION. *I understand I will be assigned the appropriate enrollment priority based on nondisclosure of my financial information. By checking NO and signing below, I am agreeing to pay the applicable VA co-payment. Sign and date the application.*

IIC - PREVIOUS CALENDAR YEAR GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN

	VETERAN	SPOUSE	CHILDREN
1. WHAT WAS YOUR GROSS ANNUAL INCOME FROM EMPLOYMENT *(wages, bonuses, tips, etc.)*, AS WELL AS INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	$	$	$
2. LIST OTHER INCOME AMOUNTS *(Social Security, compensation, pension, interest, dividends) Exclude welfare*	$	$	$
3. WAS INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS *(If yes, refer to page 2, Section IIC of the instructions.)* ☐ YES ☐ NO			

IID - DEDUCTIBLE EXPENSES

1. NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE *(payments for doctors, dentists, drugs, Medicare, health insurance, hospital and nursing home)*	$
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD *(Also enter spouse or child's information in Section IIA)*	$
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES *(tuition, books, fees, materials, etc.) DO NOT LIST YOUR DEPENDENTS' EDUCATIONAL EXPENSES.*	$

IIE - NET WORTH

	VETERAN	SPOUSE
1. CASH, AMOUNT IN BANK ACCOUNTS *(Checking and savings accounts, certificates of deposit, individual retirement accounts, etc.)*	$	$
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. *Do not count your primary home. Include value of farm, ranch, or business assets.*	$	$
3. STOCKS AND BONDS AND VALUE OF OTHER PROPERTY OR ASSETS *(art, rare coins, etc.)* MINUS THE AMOUNT YOU OWE ON THESE ITEMS. *Exclude household effects and family vehicles.*	$	$

SECTION III - CONSENT AND SIGNATURE

CO-PAYMENT NOTICE: If you are a 0% service-connected noncompensable or a nonservice-connected veteran (and are not an Ex-POW, WWI veteran or VA pensioner) **and** your household income (or combined income and net worth) exceeds the established threshold, you may be eligible for enrollment only if you agree to pay VA co-payments for treatment of your NSC conditions. By signing this application you are agreeing to pay the applicable VA co-payment if required by law.

I CERTIFY THE FOREGOING STATEMENT(S) ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND ABILITY.

SIGN HERE

(Signature of applicant or applicant's representative)

DATE *(mm/dd/yyyy)*

THE LAW PROVIDES SEVERE PENALTIES FOR WILLFUL SUBMISSION OF FALSE INFORMATION.

§ 58.13 VA Form 10–10SH—State Home Program Application for Veteran Care Medical Certification.

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

Department of Veterans Affairs

STATE HOME PROGRAM APPLICATION FOR VETERAN CARE MEDICAL CERTIFICATION

PART I - ADMINISTRATIVE

STATE HOME FACILITY	DATE ADMITTED	GENDER M F
RESIDENT'S NAME (*Last, First, Middle*)	SOCIAL SECURITY NUMBER	
RESIDENT'S STREET ADDRESS	AGE	DATE OF BIRTH
CITY, STATE AND ZIP CODE	ADVANCED MEDICAL DIRECTIVE NO YES	

PART II - HISTORY AND PHYSICAL ***(Use separate sheet if necessary)***

HISTORY

HEIGHT	WEIGHT	TEMP	PULSE	BP	HEAD/EYES/EAR/NOSE AND THROAT

NECK	CARDIOPULMONARY
ABDOMEN	GENITOURINARY
RECTAL	EXTREMITIES
NEUROLOGICAL	ALLERGY/DRUG SENSITIVITY

X-RAY/ LAB	CHEST X-RAY	DATE:	RESULTS	CBC	DATE:	RESULTS
	SEROLOGY					
	URINALYSIS	DATE	ALBUMEN	SUGAR	ACETONE	

CHECK ALL BOXES THAT APPLY OR CIRCLE NA

IS DEMENTIA THE PRIMARY DIAGNOSIS	IS THERE A DIAGNOSIS OF MENTAL ILLNESS	HAS RESIDENT RECEIVED MENTAL SERVICES WITHIN THE PAST 2 YEARS	IS CLIENT A DANGER TO SELF OR OTHERS
YES NO	YES NO	YES NO	YES NO

IS THERE ANY PRESSING EVIDENCE OF MENTAL ILLNESS SUCH AS:

SCHIZOPHRENIA PARANOIA OTHER PSYCHOTIC OR MENTAL DISORDERS LEADING TO CHRONIC DISABILITY
MOOD SWINGS SOMATOFORM DISORDER PANIC OR SEVERE ANXIETY DISORDER PERSONALITY DISORDER

OXYGEN		TUBE FEEDING	DECUBITUS ULCERS	FOLEY CATHETER
MASK	PRN	OSTOMY	DRAINING WOUND	TEMPORARY
NASAL CANULAR	CONTINUOUS	TRACHOSTOMY	WOUND CULTURED	PERMANENT

REFERRING PHYSICIAN	PRIMARY DIAGNOSIS
SECONDARY DIAGNOSIS	TERTIARY DIAGNOSIS

TYPE OF CARE RECOMMENDED: SKILLED NURSING HOME CARE DOMICILIARY CARE ADULT DAY HEALTH CARE HOSPITAL

MEDICATION AND TREATMENT ORDERS ON ADMISSION, CONTINUE ON SEPARATE SHEET IF NECESSARY

PRINTED OR TYPED NAME OF PRIMARY PHYSICIAN ASSIGNED	SIGNATURE OF PRIMARY PHYSICIAN ASSIGNED

VA FORM JUL 1998 **10-10SH** **PAGE 1**

STATE HOME PROGRAM APPLICATION FOR VETERAN CARE - MEDICAL CERTIFICATION, CONTINUED

RESIDENT'S NAME (*Last, First, Middle*)	SOCIAL SECURITY NUMBER

EVALUATION (Circle appropriate number in each category)

COMMUNICATION	1. Transmits messages/receives information 2. Limited ability 3. Nearly or totally unable	**SPEECH**	1. Speaks clearly with others of same language 2. Limited ability 3. Unable to speak clearly or not at all
HEARING	1. Good 2. Hearing slightly impaired. 3. Limited hearing (e.g.- must speak loudly) 4. Virtually/completely deaf	**SIGHT**	1. Good 2. Vision adequate - Unable to read/see details 3. Vision limited - Gross object differentiation 4. Blind
TRANSFER	1. No assistance 2. Equipment only 3. Supervision only 4. Requires human transfer w/wo equipment 5. Bedfast	**AMBULATION**	1. Independence w/wo assistive device 2. Walks with supervision 3. Walks with continuous human support 4. Bed to chair (total help) 5. Bedfast
ENDURANCE	1. Tolerates distances (250 feet sustained activity) 2. Needs intermittent rest 3. Rarely tolerates short activities 4. No tolerance	**MENTAL AND BEHAVIOR STATUS**	1. Alert 2. Confused 3. Disoriented 4. Comatose 5. Agreeable 6. Disruptive 7. Apathetic 8. Well motivated
TIOLETING	1. No assistance 2. Assistance to and from and transfer 3. Total assistance including personal hygiene, help with clothes A. Bathroom B. Bedside commode C. Bedpan	**BATHING**	1. No assistance 2. Supervision only 3. Assistance 4. Is bathed A. Tub B. Shower C. Sponge bath
DRESSING	1. Dresses self 2. Minor assistance 3. Needs help to complete dressing 4. Has to be dressed	**FEEDING**	1. No assistance 2. Minor assistance, needs tray set up only 3. Help feeding/encouraging 4. Is fed
BLADDER CONTROL	1. Continent 2. Rarely incontinent 3. Occasional - once/week or less 4. Frequent - up to once a day 5. Total incontinence 6. Catheter, indwelling	**BOWEL CONTROL**	1. Continent 2. Rarely incontinent 3. Occasional - once/week or less 4. Frequent, - up to once a day 5. Total incontinence 6. Ostomy
SKIN CONDITION	1. Intact 2. Dry/Fragile 3. Irritations (Rash) 4. Open wound 5. Decubitus Number _____ Stage _____	**WHEEL CHAIR USE**	1. Independence 2. Assistance in difficult maneuvering 3. Wheels a few feet 4. Unable to use ☐ **NA**

SIGNATURE OF REGISTERED NURSE OR REFERRING PHYSICIAN	DATE

PHYSICAL THERAPY ***(To be completed by Physical Therapist or Referring Physician*** ☐ NEW REFERRAL ☐ CONTINUATION OF THERAPY

SENSATION IMPAIRED	RESTRICT ACTIVITY	PRECAUTIONS	FREQUENCY OF TREATMENT
☐ **YES** ☐ **NO**	☐ **YES** ☐ **NO**	☐ CARDIAC ☐ (OTHER *Specify*)	

TREATMENT GOALS:

☐ STRETCHING	☐ ACTIVE	☐ COORDINATING ACTIVITIES	☐ FULL WEIGHT BEARING	☐ WHEELCHAIR INDEPENDENT
☐ PASSIVE ROM	☐ ACTIVE ASSISTIVE	☐ NON-WEIGHT BEARING	☐ PROGRESS BED TO WHEELCHAIR	☐ COMPLETE AMBULATION
	☐ PROGRESSIVE RESISTIVE	☐ PARTIAL WEIGHT BEARING	☐ RECOVERY TO FULL FUNCTION	

ADDITIONAL THERAPIES	SIGNATURE OF AND TITLE OF THERAPIST	DATE
☐ **O.T.** ☐ **SPEECH** ☐ **DIETARY**		

SOCIAL WORK ASSESSMENT ***(To be completed by Social Worker)***

PRIOR LIVING ARRANGEMENTS	LONG RANGE PLAN	
ADJUSTMENT TO ILLNESS OR DISABILITY	SIGNATURE OF SOCIAL WORKER	DATE

VA AUTHORIZATION FOR PAYMENT

DATE RECEIVED BY VA	ELIGIBILITY FOR PER DIEM PAYMENT	LEVEL OF CARE RECOMMENDED	
	☐ APPROVED ☐ DISAPPROVED	☐ NHC ☐ DOMICILIARY ☐ HOSPITAL ☐ ADHC	
REASON FOR DISAPPROVAL		☐ APPROVED ☐ DISAPPROVED	REASON FOR DISAPPROVAL
SIGNATURE OF VA OFFICIAL	DATE	SIGNATURE OF VA PHYSICIAN	DATE

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

PAPERWORK REDUCTION ACT AND PRIVACY ACT NOTICE

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

Privacy Act Information The information requested on this form is solicited under the authority of Title 38, U.S.C., Sections 1741, 1742 and 1743. It is being collected to enable us to determine your eligibility for medical benefits in the State Home Program and will be used for that purpose. The income and eligibility you supply may be verified through a computer matching program at any time and information may be disclosed outside the VA as permitted by law; possible disclosures include those described in the "routine uses" identified in the VA system of records 24VA136, Patient Medical Record-VA, published in the Federal Register in accordance with the Privacy Act of 1974. Disclosure is voluntary; however, the information is required in order for us to determine your eligibility for the medical benefit for which you have applied. Failure to furnish the information will have no adverse affect on any other benefits to which you may be entitled. Disclosure of Social Security number(s) of those for whom benefits are claimed is requested under the authority of Title 38, U.S.C., and is voluntary. Social Security numbers will be used in the administration of veterans benefits, in the identification of veterans or persons claiming or receiving VA benefits and their records and may be used for other purposes where authorized by Title 38, U.S.C., and the Privacy Act of 1974 (5 U.S.C. 552a) or where required by other statute.

VA FORM JUL 1998 **10-10SH**

§ 58.14 VA Form 10–0143A—Statement of Assurance of Compliance with Section 504 of The Rehabilitation Act of 1973.

OMB Number: 2900-0160
Estimated Burden: 5 minutes

Department of Veterans Affairs

STATEMENT OF ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 5 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

_____(hereinafter called the "Signatory")

(Name and location of State Veterans Home)

HEREBY AGREES THAT

It will comply with section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112) and all regulations adopted pursuant to such section, for instance, VA Regulations 7800 Series (38 CFR Section 18), to the end that no person in the United States shall, on the ground of handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of the Signatory receiving Federal financial assistance or other benefits under statues administered by the VA; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate the agreement.

If any real property or structure thereon is provided or improved with the aid of the Federal financial assistance extended to the Signatory by the VA, this assurance shall obligate the Signatory, or in the case of transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In all cases this assurance shall obligate the Signatory for the period during which the Federal financial assistance is extended to any of its programs by the VA.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining Federal financial assistance, including facilities furnished or payments made under Section 1741 of Title 38 USC. Federal financial assistance is understood to include benefits paid directly to the Signatory, and/or benefits paid to a beneficiary contingent upon such beneficiary being enrolled in a program offered by the Signatory.

The Signatory recognizes and agrees that such Federal financial assistance or other benefits will be extended in reliance on the representations and agreements made in this assurance, and that the VA will withhold financial assistance, facilities, or other benefits to ensure fulfillment of this assurance of compliance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Signatory, its successors, transferees, and assignees. The person or persons whose signatures appear below are authorized to sign this assurance.

SIGNATURE OF AUTHORIZED OFFICIAL	
TITLE	DATE
MAILING ADDRESS	

VA FORM SEP1998 (R) **10-0143A** **REPRODUCE LOCALLY** JetForm

§ 58.15 VA Form 10–0143—Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.

OMB Number: 2900-0160
Estimated Burden: 5 minutes

Department of Veterans Affairs

DEPARTMENT OF VETERANS AFFAIRS CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS FOR GRANTEES OTHER THAN INDIVIDUALS

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 5 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 38 CFR 44, Subpart F. The regulations, published in the January 31, 1989, Federal Register (pages 4950-4952) require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see CFR Part 44, Section 44.100 through 44.420).

The grantee certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2) Establishing a drug-free awareness program to inform employees about

(a) The dangers of drug abuse in the workplace;
(b) The grantee's policy of maintaining a drug-free workplace;
(c) Any available drug counseling, rehabilitation, and employee assistance programs; and
(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) Abide by the terms of the statement; and
(b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5) Notifying the agency within ten days after receiving notice under subparagraph (4) (b) from an employee or otherwise receiving actual notice of such convictions;

(6) Taking one of the following actions, within 30 days of receiving notice under subparagraph (4) (b), with respect to any employee who is so convicted;

(a) Taking appropriate personnel action against such employee, up to and including termination; or
(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5) and (6).

VA FORM SEP1998 (R) **10-0143** **REPRODUCE LOCALLY** JetForm

OMB Number: 2900-0188
Estimated Burden: 15 minutes

Department of Veterans Affairs

DEPARTMENT OF VETERANS AFFAIRS CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS FOR GRANTEES OTHER THAN INDIVIDUALS

Places of Performance: The grantee shall insert in the space provided below the site(s) for performance of work done in connection with the specific grant (street address, city, county, state, zip code)

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ORGANIZATION NAME	GRANT NUMBER OR NAME
NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

VA FORM SEP1998 (R) **10-0143** **REPRODUCE LOCALLY** JetForm

§ 58.16 VA Form 10–0144—Certification Regarding Lobbying.

OMB Number: 2900-0160
Estimated Burden: 5 minutes

Department of Veterans Affairs

CERTIFICATION REGARDING LOBBYING

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 5 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

This certification is made in compliance with Section 319 of Public Law 101-121; and pursuant to the Interim Final guidance published as part VII of the December 20, 1989, Federal Register (Pages 57306-52332).

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certified, to the best of their knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Forms-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

SIGNATURE OF CERTIFYING OFFICIAL	DATE
NAME AND TITLE OF CERTIFYING OFFICIAL	PROJECT (FAI NUMBER)
NAME AND ADDRESS OF STATE AGENCY	

VA FORM SEP1999 (R) **10-0144** **REPRODUCE LOCALLY**

§ 58.17 VA Form 10–0144A—Statement of Assurance of Compliance with Equal Opportunity Laws.

OMB Number: 2900-0160
Estimated Burden: 5 minutes

Department of Veterans Affairs

STATEMENT OF ASSURANCE OF COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 5 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

_____(hereinafter called the"Signatory")
(Name of Organization, Institution, or Individual)

HEREBY AGREES THAT:

It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and all Federal regulations adopted to carry out such laws. This assurance is directed to the end that no person in the United States shall, on the ground of race, color, national origin (Title VI), handicap (Section 504), sex (Title IX, in education programs and activities only), or age (Age Discrimination Act) be excluded from participation in , be denied the benefits of, or be subjected to discrimination under any program or activity of the Signatory receiving Federal financial assistance or other benefits under statutes administered by VA (Department of Veteran Affairs), the ED (Department of Education), or any other Federal agency. This assurance applies whether assistance is given directly to the recipient or indirectly through benefits paid to a student, trainee, or other beneficiary because of enrollment or participation in a program of the Signatory.

The Signatory HEREBY GIVES ASSURANCE that it will promptly take measures to effect this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Signatory or ED, this assurance-shall obligate the Signatory, or in the case of transfer of such property any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In all cases, this assurance shall obligate the Signatory for the period during which the Federal financial assistance is extended to any of its programs by VA, ED or any other Federal agency.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining Federal financial assistance, including facilities furnished or payments made under sections 104 and 244(1) of Title 38, U.S.C. Also, sections 1713, 1720, 1720A, 1741-1743, 2408, 5902(a)(2), 8131-8137, 8151-8156 (formerly 613, 620, 620A, 641-643, 1008, 3402(a)(2), 5031-5037, 5051-5056 respectively) and 38 U.S.C. chapters 30, 31, 32, 35, 36, 82, and 10 U.S.C. chapter 106. Under the terms of an agreement between VA and ED, this assurance also includes Federal financial assistance given by ED through programs administered by that agency. Federal financial assistance is understood to include benefits paid directly to the Signatory and/or benefits paid to a beneficiary contingent upon the beneficiary's enrollment in a program or using services offered by the Signatory.

The Signatory agrees that Federal financial assistance or other benefits will be extended in reliance on the representations and agreements made in this assurance; that VA or ED will withhold financial assistance, facilities, or other benefits to assure compliance with the equal opportunity laws; and that the United States shall have the right to seek judicial enforcement of this assurance.

THIS ASSURANCE is binding on the Signatory, its successors, transferees, and assignees for the period during which assistance is provided. The Signatory assures that all contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits to its students or trainees in connection with the Signatory's programs or services are not discriminating against those students or trainees in violation of the above statutes.

SIGNATURE OF AUTHORIZED OFFICIAL	DATE

NAME AND TITLE OF AUTHORIZED OFFICIAL

MAILING ADDRESS OF AUTHORIZED OFFICIAL

VA FORM APR 1999 (R) **10-0144A**

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