

STATE OF WISCONSIN
Department of Veterans Affairs

NOTICE OF TIME PERIOD FOR COMMENTS
RELATING TO THE ECONOMIC IMPACT ANALYSIS

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Department of Veterans Affairs relating to rate setting at Wisconsin veterans homes. The comments will be considered when the Department of Veterans Affairs prepares the Economic Impact Analysis pursuant to §227.137.

Written comments may be submitted to:

Mindy Allen, Administrative Rules Coordinator
Department of Veterans Affairs
2135 Rimrock Road, P.O. Box 7843
Madison, WI 53707-7843
DVAAdminRules@DVA.Wisconsin.gov

The deadline for submitting economic impact comments is October 28, 2019.

PROPOSED ORDER

An order of the Department of Veterans Affairs *to renumber and amend* VA 6.01 (16) and (17); *to amend* VA 6.01 (2) (a), (b), (3) (a) 2., (4), (8), 6.03 (1), 6.04 (8) and (14), 6.05 (1) (title), (5) and (9) *and to create* VA 6.001 (intro.) and (1) to (9), 6.01 (16) (a) 5., 6., and (b), and (17m), relating to rate setting at Wisconsin veterans homes.

Analysis prepared by the Department of Veterans Affairs.

ANALYSIS

Statutes interpreted: Sections 45.50 and 45.51, Stats.

Statutory authority: Section 45.03 (2), Stats.

Explanation of agency authority:

Section 45.03 (2), Stats., provides that the Secretary may promulgate rules necessary to carry out the purposes of this chapter and the powers and duties conferred upon it.

Related statute or rule: N/A

Plain language analysis:

Currently s. VA 6.01 (16) provides “Charges for care and maintenance shall be computed every January for the various categories of care provided by a home. The computations shall be based upon the estimated costs of care to be incurred by the home for the succeeding annual period. The department may update charges in July to reflect changes in costs during the year. Charges shall be made for actual care and maintenance provided to a member.”

The Department establishes policy and procedures for setting private pay rates. The current rate setting calculation is a formula-based process that uses the average census counts, the costs under s. 20.485(1) (gk), Stats., the bed days for each type of care provided, and the weighted costs of direct and indirect care.

The proposed rule revisions amend the Department’s current policy and procedure for calculating private pay rates by establishing the method and formula for calculating private pay rates for both nursing home care and assisted living care, including provisions for compiling costs separately for each facility, rather than as a single rate across all state-run veterans homes.

The proposed rule also includes modifications in order to comply with current statutes, rule drafting procedures, provide clarity, or amend outdated references.

Summary of, and comparison with, existing or proposed federal regulation:

38 CFR 51.40 establishes basic per diem rates in accordance with 38 USC 1741, which establishes the criteria for payment.

38 CFR 51.50 establishes per diem rates for eligible veterans for nursing home care.

Comparison with rules in adjacent states:

Illinois: Illinois state veterans homes are run by the Illinois Department of Veterans’ Affairs and licensed by the Illinois Department of Public Health. Residents pay a maximum monthly maintenance fee established by the state and based on individual income and ability-to-pay. The cost of care is met through a combination of the maintenance fee paid by each resident, per diem granted by US Department of Veterans Affairs, and appropriated general revenue funds. The monthly cost is based only on the monthly income of the veteran and spouse and does not include other assets. The maximum amount is subject to change on an annual basis, depending on Social Security cost of living adjustments. The methodology for calculating cost of care is not defined in administrative rule.

Iowa: Iowa has one state veterans home with oversight provided by the Commission of Veterans Affairs. Cost of care is the aggregate semiannual per diem rate calculation according to the particular level of care as calculated in January and July of each year for the preceding six months and effective March 1 and September 1. The daily per diem

charge is reduced by an amount equal to the appropriate Medicare Part B and Medicare Part D premiums paid by the enrolled member. The rate includes direct costs only.

Michigan: Michigan's state veterans homes are overseen by the Michigan Veterans Affairs Agency, within the Department of Military and Veterans Affairs. The Board of Managers annually determines the per diem cost of care based on operational costs. These costs may change annually. The cost to individual members is determined by a monthly assessment based on each member's ability to pay. The methodology for calculating cost of care is not defined in administrative rule.

Minnesota: Minnesota state veterans homes are overseen by the commissioner of the Minnesota Department of Veterans Affairs. Minnesota administrative rules provide for the specific method of calculating average daily per resident cost of care. Residents contribute to the cost of their care according to their means. The cost of care used to determine the maintenance charge of a resident is calculated annually and includes both direct and indirect costs. A change in the cost of care becomes effective on July 1 of the rate year following the reporting year used to calculate the cost of care. The cost of care must remain fixed for that rate year and is compiled separately for each facility based on services provided.

Summary of factual data and analytical methodologies:

Pursuant to s. 45.51 (7) (b), Stats., members of veterans homes are required to "pay the amount due the state for care and maintenance of the member". Section VA 6.01 (16) further requires the Department to charge for "actual care and maintenance provided to a member".

The current formula has been used at the King Veterans Home facility without significant deviation since 1999 and at the Union Grove Veterans Home since 2010. In its 2010 report, the Legislative Audit Bureau (LAB) recommended amendments to Chapter VA 6 to include a formula for calculating private pay rates for nursing home and assisted living care at the Wisconsin Veterans Homes, to include clear definitions for rate-setting terms such as "costs of care". Therefore, the proposed rules incorporate recommendations contained in the report and codify the long standing and consistent rate calculations used to determine private per diem rates.

Pursuant to s. 45.03 (2m), Stats., administrative rules prepared by the Department of Veterans Affairs must be provided to the Board of Veterans Affairs. Pursuant to s. 227.14 (2) (a) 6m., Stats., the Board may prepare a report containing written comments and its opinion regarding the proposed rules. The Board voted unanimously to approve the draft proposed rules and offered no additional comments.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

Fiscal Estimate and Economic Impact Analysis:

The department is currently soliciting information and advice from businesses, associations, local governmental units, and individuals in order to prepare the Economic Impact Analysis.

Effect on small business:

The proposed rules do not have an anticipated economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact:

Mindy Allen, Administrative Rules Coordinator
Department of Veterans Affairs
2135 Rimrock Road, P.O. Box 7843
Madison, WI 53707-7843
(608) 264-6085
DVAAdminRules@DVA.Wisconsin.gov

TEXT OF RULE

VA 6.001 (intro.) and (1) to (9) are created to read:

VA 6.001 Definitions. In this chapter the following terms shall have the designated meanings:

- (1) “Bed capacity” means the number of beds that may be filled based on the amount authorized by the USDVA and licensed by the Wisconsin department of health services.
- (2) “Case mix factor” means a value given by the department that may increase based on the level of care provided.
- (3) “Cost of care” means an amount established annually by the department and consists of the calculation of both direct and indirect costs of providing care as defined in subs. (4) and (6).
- (4) “Direct care costs” means a home’s expenses that are incurred and attributable to services that directly benefit the member and may include items under ss. VA 6.01 (11) and (12). Direct care costs are based on approved biennial funding.

- (5) “Home” has the meaning given in s. 45.01 (12m), Stats.
- (6) “Indirect care costs” means a home’s expenses incurred for common or joint purposes and are services that are provided on behalf of a member. Indirect care costs may include cost for services such as housekeeping, laundry, administration, food services, debt service, municipal services, and utilities.
- (7) “Level of care” means a classification that corresponds to the amount of services required to be provided to a member based on the member’s physical or mental condition and abilities.
- (8) “Patient day” means a day that a bed is assigned to a member and includes the day of admission but not the day of discharge. For purposes of this item, one day is the 24-hour period ending at midnight.
- (9) “USDVA” means the United States department of veterans affairs.

SECTION 2. VA 6.01 (2) (a), (b), (3) (a) 2., (4), and (8) are amended to read:

VA 6.01 (2) (a) Except as provided in par. (b), no person may be admitted to a home unless the person has submitted an application on forms furnished by the home and the application has been approved by the commandant. Each question shall be fully and accurately answered and the completed application shall be properly executed. An applicant shall authorize the department to conduct a criminal background check ~~of his or her criminal record~~. Upon admission of the applicant as a member, the completed application shall be a valid and binding contract by and between the member and the home.

(b) A person may be admitted into a home on a conditional basis pending the completion of the processing of his or her application process.

(3) (a) 2. A physician’s report of physical examination indicating the applicant’s need for nursing home level of care.

(4) SPOUSE. In addition to the documents required under sub. (3), an applicant who is a spouse of a veteran shall furnish a certified copy of ~~his or her~~ the certificate of marriage to the veteran or any other verifiable evidence of marriage that is acceptable to the department.

(8) READMISSION. A former member may be readmitted to a home only ~~if he or she submits~~ by submitting a new application with the documents required under sub. (3) (b) and the application is approved by the commandant on the basis of the commandant’s determination that the home is able to provide appropriate care for the applicant. A former member who was given an undesirable or dishonorable discharge may be readmitted only if the commandant is satisfied that the conduct leading to the

discharge will not be repeated. The commandant may also require that an applicant for readmission shall have paid all moneys which the applicant owed to the home.

SECTION 3. VA 6.01 (16) is renumbered VA 6.01 (16) (a) and 1. to 4., and as renumbered, VA 6.01 (a) and 1. are amended to read:

VA 6.01 (16) CHARGES FOR CARE AND MAINTENANCE. (a) Annual calculation.

1. Charges for care and maintenance shall be computed every January for the various ~~categories~~ levels of care provided by a home.

2. The computations shall be based upon the estimated costs of care to be incurred by the home for the succeeding annual period.

3. The department may update charges in July to reflect changes in costs during the year.

4. Charges shall be made for actual care and maintenance provided to a member.

SECTION 4. VA 6.01 (16) (a) 5., 6., and (b) are created to read:

VA 6.01 (16) (a) 5. For members who have sufficient income and resources, the department shall charge no more than the daily pay rate as determined under s. VA 6.01 (17m).

6. The calculation of the cost of care and maintenance is comprised of direct and indirect costs incurred by a home on behalf of its members.

(b) *Daily pay rate.* For purposes of determining the amount charged under par. (a), the daily pay rate is the amount members, who have sufficient income and resources, pay in order to fully reimburse the department for the cost of care and maintenance they received at a home.

SECTION 5. VA 6.01 (17) is renumbered VA 6.001 (9), and as renumbered is amended to read:

VA 6.001 (9) DEFINITION —“PUBLISHED”. ~~For the purposes of this chapter,~~ “~~published~~ Published” means printing of regulations, making them available to members, employees, and visitors, and posting them on a bulletin board in a public place on the grounds of a home.

SECTION 6. VA 6.01 (17m) is created to read:

VA 6.01 (17m) FORMULA FOR CALCULATING DAILY PAY RATE FOR A MEMBER. (a) Subject to par. (b), members who have sufficient income and resources shall pay a daily rate based on the formula in this subsection and the expenses of the home where the member receives care and maintenance. The department shall separately calculate for each home, as specified under s. 45.50, Stats., the daily cost of care and maintenance using the following methods:

1. For each level of care provided to a member, determine the number of patient days.
2. Add together all of patient days for each level of care to determine the total number of patient days.
3. For each level of care received, divide the number determined under subd. 1. by the amount determined under subd. 2. Each result equals the ratio of patient days for a level of care.
4. Identify the bed capacity.

Note: Refer to definition of “bed capacity” in s. VA 6.001 (1).
5. To determine an occupancy rate, divide the average number of members in a home for the last reported fiscal year by the amount identified under subd. 4.
6. For each level of care, multiply the amount identified under subd. 4. by the amount identified under subd. 5. by 365 by the amount identified under subd. 3. for the corresponding level of care. Each result equals the projected patient day for a level of care.
7. Add together all the projected patient days for each level of care. The result equals the total number of projected patient days.
8. For each level of care, multiply the amount determined under subd. 6. by the corresponding case mix factor. Each result equals the weighted patient day for a level of care.
9. Add together all the weighted patient days for each level of care. The result equals the total number of weighted patient days.
10. For each level of care, divide the amount determined under subd. 8. by the amount determined under subd. 9. Each result equals the weighted patient day ratio for a level of care.
11. For each level of care, multiply the amount determined under subd. 10. by the direct care costs. Each result is the allowable direct care cost for a level of care.

12. For each level of care, divide the amount determined under subd. 11. by the amount determined under subd. 8. Then multiply it by the corresponding case mix factor. Each result equals the daily direct care cost for a level of care.

13. Divide the indirect care costs as determined by the department for the home and divide it by subd. 7. Each result equals the daily indirect care cost for a level of care.

14. Add the amounts determined under subds. 12. and 13. The result equals the projected daily rate for a level of care.

(b) When applicable, the department shall reduce the daily rate of pay by the amount of the per diem reimbursement paid on behalf of a member by the USDVA.

SECTION 7. VA 6.03 (1), VA 6.04 (8) and (14), and VA 6.05 (1) (title), (5), and (9) are amended to read:

VA 6.03 (1) DRIVER'S LICENSE REQUIRED. No person may operate any motor vehicle on any roadway or driveway or in any parking lot of a home unless the person holds a valid and current operator's license or unless ~~he or she~~ the person is exempt from the requirement that an operator's license be held in order to operate a motor vehicle on the highways of this state. No person may operate a motor vehicle, other than an authorized maintenance motor vehicle, anywhere on the grounds of a home except on a roadway or driveway or in a parking lot. Members using power wheelchairs are exempt from the requirements of this subsection.

6.04 (8) BORROWING PROHIBITED. A member ~~shall~~ may not borrow from nor loan money to another member.

(14) GIFT OF PROPERTY BY A MEMBER. A gift of property by a member of a home shall be invalid unless physical possession of the property is transferred to the ~~donee~~ recipient at the time the gift is made and the property is removed from the premises of the home before the death of the member. A gift of property by a member during the member's lifetime with the understanding that the member may retain physical possession of the property until the member's death or a gift of property ~~which~~ that is to take effect upon the death of the member donor is invalid.

6.05 (1) (title) DISCIPLINARY PROCEDURE FOR ~~SERIOUS~~ SERIOUS OFFENSES.

(5) HONORABLE DISCHARGE. A member of a home may receive an honorable discharge from membership at the home upon application, provided that he or she has paid all money due the home and has accounted for all property issued that is not suitable for reissue, that no disciplinary action has been currently imposed or is pending against the member, and ~~that he or she~~ the member is able to exercise sound judgment in planning and ~~providing~~ provide for ~~his or her~~ their own physical welfare. When a member requires special living or travel facilities or is unable to exercise sound judgment in planning for ~~his or her~~ their own physical welfare, the commandant of the home may refer the request for

discharge to the county veterans service officer in the member's home county for assistance and may delay granting an honorable discharge until proper facilities for ~~his or her~~ the member's care and travel are assured.

(9) LEAVES OF ABSENCE, MEDICAL. Leaves of absence from a home will be granted to veteran members while undergoing treatment in a ~~veterans administration~~ USDVA hospital or in another authorized hospital and to non-veteran members while in any hospital or sanatorium away from the home. This leave ~~shall~~ may not be charged to the 60-day annual allowance.

SECTION 8. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF RULE TEXT)
