

Clearinghouse Rule 09-092

PROPOSED ORDER OF THE DEPARTMENT OF VETERANS AFFAIRS ADOPTING RULES

1. INTRODUCTORY CLAUSE

The Wisconsin Department of Veterans Affairs hereby proposes an order to amend VA 1.11 (1) and repeal VA 1.11 (8) relating to the duties and responsibilities of the secretary.

2. RULE SUMMARY

Statute interpreted: sec. 45.50 (1) (a), Stats.

Statutory authority: ss. 45.50 (1) (a), 45.03 (2), and 45.03 (4), Stats.

Explanation of agency authority: The department is charged with operating skilled nursing facilities and employing supervisory personnel for these facilities. Skilled nursing facilities require administrators who have met state and federal standards and are licensed to operate a skilled nursing facility. The department has created the division of homes and an administrator to supervise the operation of these facilities. The board has determined as a matter of policy that all commandants and the division administrator should be licensed to operate skilled nursing facilities. The board has also determined that the Secretary should not be required to directly supervise the commandants since the division of homes and the attendant administrator position was created for that purpose.

Related statute or rule: s. 50.04 (2) (a), Wis. Stats., and CH DHS 132.41, Wisconsin Administrative Code. These laws require every skilled nursing facility within the state to operate under the supervision of an administrator licensed under Ch 456, Wisconsin Statutes.

Plain language analysis: The amendment of VA 1.11 (1) (a) will limit employment, after January 1, 2011, in the positions of commandant or administrator, division of homes to individuals who are licensed as skilled nursing home administrators by the State of Wisconsin or who obtain such licensure within 90 days of initiating employment in the position. The department believes that this requirement will provide better management and more accountability for the skilled nursing facilities. The repeal of VA 1.11 (8) will realign the direction of the commandants from direct supervision by the Secretary to direct supervision by the Administrator, Division of Homes.

Summary of, and comparison with, existing or proposed federal regulations: 38 CFR 51.210 (2) (i) requires any skilled nursing facility receiving per diem payments from the United States Department of Veterans Affairs to be

supervised by an administrator who is licensed by that state. 42 CFR 431.703 requires any skilled nursing facility receiving medical assistance (Medicaid) payments from the United States Department of Health and Human Services to be supervised by an administrator who is licensed by that state. Both skilled nursing facilities currently have administrators licensed as nursing home administrators within the management structure. The proposed rules will ensure that the senior official at all skilled nursing facilities operated by the department, as well as the Administrator, Division of Homes, are licensed in accordance with these requirements.

Comparison with rules in adjacent states:

Illinois: 77 Ill. Admin. Code § 340.1370(a) (Illinois Veterans' Home Code)

(a) There shall be a full-time administrator licensed under the Nursing Home Administrators Licensing and Disciplinary Act for each licensed facility. The licensee will report any change of administrator to the Department, within five days.

Iowa: Iowa Code § 35D.13(2) (Veterans Home)

2. The commandant shall be a resident of the state of Iowa who served in the armed forces of the United States and was honorably discharged, and is a licensed nursing home administrator.

Michigan: MCL § 36.10 (Michigan's Veterans' Facility)

Sec. 10. The board of managers shall appoint a commandant for the home, who shall be an ex-officer, soldier, sailor, or marine, whose salary shall be such amount as shall be appropriated by the legislature, and who shall nominate, for the action of the board of managers, all necessary subordinate officers, who shall also be ex-officers, soldiers, sailors, or marines, who may be dismissed by the commandant for inefficiency or misconduct. In case of every removal, a detailed statement of the case shall be reported to the board of managers by the commandant. No member or former member of the board of managers shall be eligible to election or appointment as commandant of the facility until the expiration of at least 1 year from the date of the end of his term as member of the board of managers or the date of his resignation as such member.

Mich. Admin. Code R 325.20111(2) (Licensing of Nursing Homes)

(2) The governing body shall appoint a licensed nursing home administrator and shall delegate to the administrator the

responsibility for operating the home in accordance with policies established by the governing body. An administrator and all other persons in supervisory positions shall be not less than 18 years of age.

Minnesota: Minn. R. 9050.0030(A) (Veterans Homes)

The commissioner of veterans affairs shall ensure compliance by the facility and staff with applicable statutes, with applicable rules of the Minnesota Department of Health and the Minnesota Department of Human Services, and with applicable health, safety, sanitation, building, zoning, and operations codes, including the following:

A. Minnesota Department of Health licensure and operations requirements in chapters 4655 and 4660 and Minnesota Statutes, sections 144.50 to 144.56 and 144A.02 to 144A.10.

Minn. R. 4655.1200 (Boarding Care Homes)

Subpart 1. The licensee in each nursing home or boarding care home shall be responsible for its management, control, and operation.

Subp. 2. The licensee shall develop written bylaws and/or policies which shall be available to all members of the governing body and shall assume full legal responsibility for matters under its control, for the quality of care rendered and for compliance with applicable laws and rules of legally authorized agencies. The responsibilities of the licensee shall include:

A. Full disclosure of each person having an interest of ten percent or more of the ownership of the home to the commissioner of health with any changes promptly reported in writing. In case of corporate ownership, the name and address of each officer and director shall be made known. If the home is organized as a partnership, the name and address of each partner shall be furnished. In the case of a home operated by a lessee, the persons or business entities having an interest in the lessee organization shall be reported and an executed copy of the lease agreement furnished. If the home is operated by the holder of a franchise, disclosure as specified above shall be made as to the franchise holder who shall also furnish an executed copy of the franchise agreement.

B. Appointment of a licensed nursing home administrator or a person in charge who shall be responsible for the operation of the

home in accordance with law and established policies.

C. The authority to serve as administrator or person in charge shall be delegated in writing.

D. The administrator of a hospital with a convalescent and nursing care unit may serve both units. See the Nursing Home Administrator Licensing Law, Laws of Minnesota 1969, chapter 770.

E. Notification of the termination of service of the administrator or the person in charge as well as the appointment of a replacement shall be given within five days in writing to the commissioner of health by the governing body of the home. If a licensed nursing home administrator or person in charge of the boarding care home is not available to assume the position immediately, such notification to the commissioner of health shall include the name of the person temporarily in charge of the home. The governing body of a nursing home shall not employ an individual as the permanent administrator until it is determined that the administrator qualifies for licensure as a nursing home administrator in Minnesota. See the Nursing Home Administrator Licensing Law, Laws of Minnesota 1969, chapter 770.

F. Provision of a competent staff and maintenance of professional standards in the care of patients and residents.

G. Employment of qualified personnel. There shall be sufficient personnel to provide the basic services such as food service, housekeeping, laundry, and plant maintenance. Employees or volunteers under 18 years of age shall be under direct supervision.

H. Provision of facilities, equipment, and supplies for care consistent with the needs of the patients and residents.

I. Provision of evidence of adequate financing, proper administration of funds, and the maintenance of required statistics. Only a licensee is responsible for the management, control and operation of a nursing home.

Summary of factual data and analytical methodologies: The department commissioned a report on the operation of its skilled nursing facilities by an independent consulting group, Pathways Health Services, Inc. The report reviewed the supervision of both facilities, as well as the supervision provided by the Administrator, Division of Homes. The report identified issues ensuring

compliance with health care requirements, interaction with health care inspectors and advocacy for appropriate budget and staffing based on the current organizational structure. The report made recommendations that all commandants and the Administrator, Division of Homes be licensed. The Board has also received testimony from a member of its Long Term Care Committee who is a licensed nursing home administrator in Wisconsin. The testimony identified similar concerns and concurred with the solutions offered in the Pathways report. The Board has adopted the recommendation related to commandants and the Administrator, Division of Homes being licensed as nursing home administrators.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact statement: No analysis was performed regarding an economic impact statement.

Effect on small business: These rules do not appear to have any effect upon small businesses, nor any significant fiscal impact upon the private sector.

Agency contact person: James A. Stewart, Chief Legal Counsel, 30 West Mifflin Street, P.O. Box 7843, Madison, WI 53707-7843
Phone: (608) 266-3733 E-Mail: jimmy.stewart@dva.state.wi.us

3. TEXT OF RULES

SECTION 1. VA 1.11 (1) is amended to read:

VA 1.11 (1) Employ ~~a~~ commandants for the Wisconsin veterans homes, designate an employee of the department as deputy secretary, and appoint such persons as may be necessary to carry out the functions of the department. Any individual employed as a commandant or as the administrator for the division of homes, after January 1, 2011, shall be licensed under Chapter 456 of the Wisconsin Statutes or secure such licensure within 90 days of initiating employment as a commandant or administrator of the division of homes.

SECTION 2. VA 1.11 (8) is repealed:

VA 1.11 (8) ~~Direct the operation of the home for veterans at King through the commandant so as to provide that members receive complete personal maintenance and medical care.~~

The amendment and repeal of the rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s.227.22 (2) (intro.), Stats., and shall apply after that effective date.

4. EFFECTIVE DATES:

The amendment and repeal of the rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) (intro.), Stats., and shall apply after that effective date.

5. EMERGENCY RULE:

These are not emergency rules.

6. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will not have a significant impact on a substantial number of small businesses. The current supervision of the skilled nursing facilities requires a licensed nursing home administrator and that will not be changed by this proposed order. The addition of a requirement for the Administrator, Division of Homes to be a licensed nursing home administrator will not have any discernible impact on small businesses. The realignment of the supervision of the commandants will likewise have no discernible impact on small businesses.

7. FISCAL ESTIMATES:

The fiscal estimates are contained in the attached fiscal estimate statement.

Dated at Madison, Wisconsin, October __, 2009.

JOHN A. SCOCOS, Secretary
State of Wisconsin
Department of Veterans Affairs