

**STATE OF WISCONSIN
Department of Veterans Affairs**

(Clearinghouse Rule)

In the matter of rulemaking proceedings before the Department of Veterans Affairs.

**PROPOSED ORDER OF THE
DEPARTMENT OF VETERANS AFFAIRS ADOPTING RULES**

PROPOSED ORDER

An order of the Department of Veterans Affairs *to repeal* VA 6.01 (17); *to renumber and amend* VA 6.01 (16); *to amend* VA 6.01 (2) (a), (b), (3) (a) 2., (4), (7), (8), and (16), 6.02 (2) and (5), 6.03 (1), (6), and (9), 6.04 (8) and (14), 6.05 (5) and (9), and 6.06 (2); *and to create* VA 6.001, 6.01 (3) (c), (16) (a) and (b), and VA 6 Appendix; 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:

Current language under 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 used by the Department 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includes modifications in order to comply with current statutes, rule drafting procedures, provide clarity, or amend outdated references.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 are 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 the LAB 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 Fiscal Estimate and Economic Impact Analysis is attached.

Fiscal Estimate and Economic Impact Analysis:

The department solicited information and advice from businesses, associations, local governmental units, and individuals in order to prepare the Economic Impact Analysis. No comments were received.

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:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Mindy Allen, Administrative Rules Coordinator at the contact information listed above. Comments must be received at or before the public hearing to be held at 11:00 a.m. on December 13, 2019, to be included in the record of rulemaking proceedings.

TEXT OF RULE

SECTION 1. VA 6.001 is 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 department of health services.

(2) “Case mix weight” means a value established by the department of health that may increase based on the level of care provided.

(3) “Cost of care” means an amount established annually by the department that is calculated separately for each home based on services provided. “Cost of care” consists of the calculation of both direct and indirect care costs, 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 consisting of items under s. VA 6.01 (11) and (12), subject to approved biennial funding.

(5) “Home” has the meaning given for “veterans home” 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” include costs 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 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. In this subsection, “day” means the 24-hour period ending at midnight.

(9) “Private pay rate” means the amount members pay who have sufficient income and resources to fully reimburse the department for the cost of care and maintenance they received at a home.

(10) “USDVA” means the United States department of veterans affairs.

SECTION 2. VA 6.01 (2) (a) and (b), and (3) (a) 2. 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.

SECTION 3. VA 6.01 (3) (c) is created to read:

VA 6.01 (3) (c) Documentation required under par. (a) 2. may be requested to be resubmitted at least annually to determine the level of care appropriate for the member's needs.

SECTION 4. VA 6.01 (4), (7), (8), and (16) are amended to read:

VA 6.01 (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.

(7) ELIGIBILITY, DETERMINATION. If the applicant or the county veterans service officer assisting the applicant with the application requests a review of a determination of ineligibility, the matter shall be referred to the secretary department for review.

(8) READMISSION. A former member may be readmitted to a home only ~~if he or she submits by submitting~~ 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~~ pay moneys ~~which that~~ that the applicant owed to the home.

(16) Charges for care and maintenance shall be computed every January for the various ~~categories~~ levels 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 calculation of the cost of care and maintenance is comprised of direct and indirect costs incurred by a home on behalf of its members.

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

VA 6.01 (16) (a) Formula for calculating the private pay rate. The private pay rate shall be based on formulas using the following steps:

1. For each level of care provided to a member, determine the number of patient days.
2. Add together all 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: See s. VA 6.001 (1) for definition of “bed capacity”.

5. To determine an occupancy rate, divide the average number of members in a home for the last reported fiscal year by the bed capacity identified under subd. 4.

6. For each level of care, multiply the bed capacity identified under subd. 4. by the amount identified under subd. 5. Multiply that total by 365. Multiply that total by the amount identified under subd. 3. for the corresponding level of care. Each result equals the projected patient days for a level of care.

7. Add together all the projected patient days identified under subd. 6. for each level of care. The result equals the total number of projected patient days.

8. For each level of care, multiply the total number of projected patient days determined under subd. 6. by the corresponding case mix weight provided by the department of health. Each result equals the weighted patient days 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 weight. 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 the total number of projected patient days determined under subd. 7. Each result equals the daily indirect care cost for a level of care.

14. Add together the amounts calculated under subds. 12. and 13. The result equals the projected private pay rate for a level of care.

Note: See Appendix for illustration depicting the formula used to calculate the private pay rate.

(b) *Rate reduction.* 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 6. VA 6.01 (17) is repealed.

SECTION 7. VA 6.02 (2) and (5), 6.03 (1), (6), and (9), 6.04 (8) and (14), and 6.05 (5) and (9), and 6.06 (2) are amended to read:

VA 6.02 (2) Keep a record of each member of the home ~~which will include~~ that includes information establishing eligibility for admission, date of admission, personal and financial data, and period of membership.

(5) ~~Designate as deputies such employees as may be necessary to assist in enforcing upon the grounds of the home the laws of the state of Wisconsin and the rules and regulations governing the home, and for such purposes, the~~ The commandant and the deputies shall have all the powers of constables authority to evict and ban persons within or upon the grounds of a veteran home who behave in a disorderly manner or pose a safety risk.

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) WILDLIFE ~~MOLESTATION~~ DISTURBANCE PROHIBITED. The removal, destruction, disturbance, or ~~molestation~~ harassment of any wildlife within the boundaries of the grounds of a home is prohibited except as may be authorized by the commandant.

(9) CANVASSING, PEDDLING, AND SOLICITING. Canvassing, peddling, or soliciting is prohibited on the grounds or in the buildings of a home, except that the commandant may authorize home posts, ~~and chapters,~~ and auxiliaries of veterans organizations ~~and their auxiliaries~~ to conduct fundraising activities at designated times and places, and to solicit membership. A commandant of a home may authorize and establish conditions for solicitations at the home by other charitable organizations.

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 (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~~ the member 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 for ~~his or her~~ the member's 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~~ the member's 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.

6.06 (2) MEMBER TREATMENT. ~~In case of~~ If an alleged neglect or ill treatment of a member occurs by an employee other than the commandant, a complaint shall be made in writing to the commandant. If against the commandant, the complaint shall be made in writing to the secretary.

SECTION 8. Chapter VA 6 Appendix is created to read:

**Chapter VA 6
Appendix**

A-6.01 (16) (a) *Formula for calculating the private pay rate.* The information contained in this appendix is for illustration purposes only. The arrowed illustrations correspond to the numbering under s. VA 6.01 (16) (a) 1. to 14.

Wisconsin Veterans Home Private Pay Rate Calculation Example

[Note to LRB: See attached PDF for full illustration.]

SECTION 9. 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)

This Proposed Order of the Department of Veteran Affairs is approved for submission to the Governor and Legislature.

Dated _____

Agency

Mary M. Kolar, Secretary
Department of Veterans Affairs