



Department of Veterans Affairs

8320-01

38 CFR Part 51

RIN 2900-AO02

Technical Revisions to Update Reference to the Required Assessment Tool for State Nursing Homes Receiving Per Diem Payments from VA

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule updates the reference to the required resident assessment tool for State homes that receive per diem from VA for providing nursing home care to veterans. It requires State nursing homes receiving per diem from VA to use the most recent version of the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument/Minimum Data Set (MDS), which is version 3.0. This will ensure that the standard used to assess veterans is the same as the standard applicable to Medicare and Medicaid beneficiaries.

DATES: This final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Nancy Quest, Director, Home and Community Based Services, Geriatrics and Extended Care Services (10P4G), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-6064. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This document adopts as a final rule without change a proposed rule amending the Department of Veterans Affairs (VA) regulations. On November 10, 2011, VA published in the Federal Register (76 FR 70076) a proposal to amend VA regulations to update the reference to the required resident assessment tool for State homes providing nursing home care, CMS Resident Assessment Instrument/MDS. The MDS is a core set of screening, clinical, and functional status elements that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicare and Medicaid. The MDS is the standardized assessment instrument in long term care that is used to identify the health care needs of residents and generate a plan of care, regardless of source of payment for the individual resident. VA therefore requires State homes receiving per diem for the provision of long term care to veterans to use the MDS, and implements this requirement in 38 CFR 51.110(b)(1)(i).

On October 1, 2010, all CMS certified long term care facilities were required to update their assessment from MDS 2.0 to MDS 3.0. VA in turn proposed in a rulemaking that State homes receiving per diem to provide long term care to veterans use the most up to date version of MDS. Interested persons were invited to submit comments to the proposed rule on or before January 9, 2012, and we received no comments. Therefore, based on the rationale set forth in the proposed rule, VA is adopting the proposed rule as a final rule without change.

Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will 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. This amendment will not directly affect any small entities, as the State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated, and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities.

Therefore, under 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation, Alcohol and Drug Dependence.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on April 24, 2012, for publication.

List of Subjects in 38 CFR part 51

Administrative practice and procedure, Claims, Day care, Dental health Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: April 27, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs is amending 38 CFR part 51 as follows:

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

1. The authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743; and as stated in specific sections.

§ 51.110 [Amended]

2. Amend § 51.110(b)(1)(i) by removing the phrase “Version 2.0” and adding, in its place, “Version 3.0”.

[FR Doc. 2012-10590 Filed 05/02/2012 at 8:45 am; Publication Date: 05/03/2012]