

**Supporting Statement for Per Diem for Nursing Home Care of Veterans in State Homes (38 CFR Part 51) and Per Diem for Adult Day Care of Veterans in State Homes (38 CFR Part 52)
VA Forms 10-5588, 10-3567, 10-10SH, 10-0143, 10-0143a, 10-0144, 10-0144a and 10-0460
(OMB 2900-0160)**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify legal or administrative requirements that necessitate the collection of information.

Title 38, CFR Part 51, provides for the payment of per diem to State homes that provide nursing home care to eligible veterans. Title 38, CFR Part 52, provides for the payment of per diem to State homes that provide adult day health care to eligible veterans. The intended effect of these provisions was to ensure that veterans receive high quality care in State Homes. To ensure that high quality care is furnished veterans, VA requires those facilities providing nursing home care and adult day health care programs to veterans to supply various kinds of information. The information required 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 or participants; information relating to whether the facility meets standards concerning residents' rights and responsibilities prior to admission or enrollment, during admission or enrollment, and upon discharge; the records and reports which facilities management and health care professionals must maintain regarding residents or participants and employees; various types of documents pertaining to the management of the facility; food menu planning; pharmaceutical records; and life safety documentation. VA Form 10-10EZ (OMB approval 2900-0091) is used in conjunction with the VA Form 10-10SH.

2. Indicate how, by whom, and for what purposes the information is to be used; indicate actual use the agency has made of the information received from current collection.

This information is necessary to ensure that VA per diem payments are limited to facilities providing high quality care. Without access to such information, VA would not be able to determine whether high quality care is being provided to eligible veterans.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

To comply with the Government Paperwork Elimination Act, all forms in this group now appear on the One-VA Internet website in a fill and print mode which enables the user to electronically retrieve the latest version of a form, complete the form electronically, and save the filled form in *.pdf format. Once VA has developed an effective policy for electronic signature use and pending the availability of funds, we can begin the re-engineering process to allow electronic submission. The collection of information has been automated for internal fiscal and quality survey portions of data collection.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

There is no duplication associated with this collection of information.

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5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The impact on small businesses and other small entities is minimized by using “standard data” or data routinely maintained by health care facilities. The collection of information has been thoroughly analyzed to ensure that all requested data is essential.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently as well as any technical or legal obstacles to reducing burden.

If VA does not require this information, the Department would be unable to assess the quality standards that are being utilized and evaluated. Therefore the assessment of quality care indicators is critical to the VA to document whether high quality care is being provided to eligible veterans.

7. Explain any special circumstances that would cause an information collection to be conducted more often than quarterly or require respondents to prepare written responses to a collection of information in fewer than 30 days after receipt of it; submit more than an original and two copies of any document; retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years; in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study and require the use of a statistical data classification that has not been reviewed and approved by OMB.

There are no such special circumstances.

8. a. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the sponsor’s notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the sponsor in responses to these comments. Specifically address comments received on cost and hour burden.

The notice of Proposed Information Collection Activity was published in the Federal Register on November 28, 2008 (Vol. 73, Number 230, Page 72399 through 72421). **VA received eight comments in response to this notice:**

Nurse practitioners

Specifically addressing cost and hour burden, one individual commented that national certification would create an undue burden for nurse practitioners (“enroll in an exam course, pay for course work, travel, lodging and registration fees, and sit for the exam”) and indicated that some may fail the exam or fail to meet renewal requirements. *VA made no changes based on these comments.*

Recognition and Certification

Another commenter asserted that a facility should only be required to have ten residents for an initial test survey and that per diem could begin after the initial test survey with a more detailed survey to follow. Two commenters ultimately asserted that the proposed provisions would place a financial burden on veterans who might be responsible for costs until VA begins paying per diem. *VA made no changes based on these comments.* Based on our experience in conducting surveys and following the progress of new State homes in meeting VA standards, the criteria as proposed set forth the minimum requirements

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(21 residents or 50 percent of new bed capacity) for conducting a survey that could determine whether a facility meets VA standards.

Rate Based on Service Connection

Several commenters seemed to be confused about the connection between higher per diem for certain veterans with service-connected disabilities and the provision of drugs and medicines to veterans in State homes. As more fully explained below, under the Veterans Benefits, Health Care, and Information Technology Act of 2006, VA does not have authority to provide drugs and medicines to veterans who are receiving care for which the higher per diem is payable. With respect to the higher per diem rate for certain veterans in State homes, one commenter questioned whether a State home would receive different amounts based on the rating, i.e., 70 percent of the maximum per diem for a veteran with a rating of 70 percent, 80 percent of the maximum per diem for a veteran with a rating of 80 percent, and so on. *VA made no changes based on this comment.* Under the statutory provisions of 38 U.S.C. 1745 and § 51.41, the State home would receive the same per diem amount for these veterans.

With respect to the calculation of the higher per diem, commenters objected to the methodology in the proposed rule. One commenter asserted that the higher per diem rate should be the actual cost of care as determined by the State home. The commenter also asserted that the amount should be not less than the Medicare amount, the Medicaid amount, or the amount VA pays for veterans in private nursing homes. One commenter argued that, compared to the population used in the proposed methodology, these service-connected veterans would need more care because they are generally older and mostly male. The commenter also indicated that the population used for the calculations would be based in large part on Medicare factors and asserted that some nursing homes do not take Medicare payments. The commenter further asserted that VA should use data from State homes. *VA made no changes based on these comments.* One commenter asserted that VA should use the earlier time frame of two years to take action to modify the payment structure. *VA made no changes based on this comment.*

Another commenter questioned whether VA would recalculate amounts each month for the higher per diem rate. In response, we note that the preamble to the proposed rule made clear that the adjustments would be made annually (see 73 FR 72401-72402). One commenter argued that the conclusion that the physician portion should be based on one hour per month is too little. Another commenter asked how the formula would include costs for physician extenders. Another commenter questioned whether a facility would receive a higher payment “if it is determined that each patient receives (and needs) substantially more than one hour of combined physician contact each month.” Another commenter asserted that Texas does not use salaried physicians at their State homes and questioned whether Texas State homes would receive higher amounts to offset this practice. As an alternative, the commenter asserted that State homes should be allowed to continue to use Medicare Part B for the physician portion. *VA made no changes based on these comments.* Based on our experience, VA believes that one hour is the appropriate amount of time for the calculations for all of the primary care that would be provided by physicians or physician extenders as authorized under the regulations.

One commenter further asserted that State homes should not be required to pay for outside specialist costs. *VA made no changes based on this comment.*

One commenter asked for VA to provide sample calculations to show how the formula works for VA’s computation of the higher per diem. We made no changes based on this comment. However, we are sending the commenter sample per diem calculations

Retroactive Payments

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One commenter indicated that States should not be required to make refunds prior to receipt of VA payments because some States may not have sufficient funds to advance the payor. One commenter asserted that VA should establish a process for returning payments received under the Medicare and Medicaid programs. The commenter also asserted that VA should establish a process for reimbursing physicians who are not State employees and who obtained payments under Medicare Part B. Another commenter asserted that a State should make repayments to the estate of a deceased veteran prior to receiving retroactive payments from VA that cover payments previously made by the veteran. *VA made no changes based on these comments.* Regardless of whether the return of payment is made prior to VA's payment or immediately after VA's payment, the responsibility for the return of a payment rests with the State home that received the payment.

One commenter questioned whether VA will make retroactive payments from March 2007. As stated in the preamble to the proposed rule (73 FR 72401), VA will make retroactive payments for care provided on and after March 21, 2007, and for drugs and medicines provided on and after March 21, 2007. Proposed § 51.43(d) provided that per diem payments would be made retroactively for care that was provided on and after the date of the completion of VA's survey of the facility that provided the basis for determining that the facility met VA's standards. One commenter asserted that VA should pay per diem payments retroactively back to the date the State home opened for operation. *We made no changes based on this comment.*

One commenter essentially questioned when new VA Form 10-0460 (captioned "Request for Prescription Drugs from an Eligible Veteran in a State Home") would be used by State homes. *VA made no changes based on this comment.* The form should be used from the effective date of the Final Rule.

Resident Assessment

Two commenters asserted that facilities should be able to submit the data by electronic means other than email. VA agrees that the information should be submitted electronically in a form other than email. Accordingly, the final rule requires the submission to be made electronically to the IP address provided by VA.

Compensation

One commenter asserted that those veterans receiving VA compensation should not be required to use any of such funds for the cost of their State home care. *VA made no changes based on this comment.* There is no known basis for treating VA compensation differently from other income or other funds of a resident.

Resident Rights

One commenter asserted that the regulations should provide a waiver from the 90 day requirement in those cases when "funds are inadequate, there are multiple creditors and relatives and the matter is tied in probate or no relative or creditor is located or willing to open an estate." *We made no changes based on this comment.* The regulations only require that the time limit be met when the funds can be conveyed "to the individual or probate jurisdiction administering the resident's estate; or other appropriate individual or entity, if State law allows." VA sees no reason why funds should be retained for longer periods under these circumstances.

b. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure or reporting format, and on the data elements to be recorded, disclosed or reported. Explain any

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circumstances which preclude consultation every three years with representatives of those from whom information is to be obtained.

Outside consultation is conducted with the public through the 60- and 30-day Federal Register notices.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift is provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

VA Form 10-10SH collects individually identifiable information covered by the Privacy Act. Assurances of confidentiality for this form are contained in 38 U.S.C. 5701 and 7332. Respondents are informed that the information collected will become part of the Consolidated Health Record that complies with the Privacy Act of 1974. These forms are part of the system of records identified as 24VA136 "Patient Medical Record – VA" as set forth in the 2003 Compilation of Privacy Act Issuances via online GPO access at <http://www.gpoaccess.gov/privacyact/2003.html>. The other forms in this group contain information that is not protected by the Privacy Act. The forms are filed at VA Central Office for initial recognitions of the new State Homes and fiscal forms are maintained at the VA Medical Center (VAMC) of jurisdiction for the State Home Per Diem Program.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private; include specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

VA Form 10-10SH contains questions that may be considered sensitive. This information is required under regulation as a minimum to determine the level of care. Disclosure is voluntary; however, the information is required to determine the eligibility for the medical benefit for which applied. The law requires that Per Diem Payments to states be made only for services provided to veterans in need of such care. The information is collected and maintained by the VA Medical Center (VAMC) of jurisdiction in accordance with the policies of patient records management. All medical records of patients are protected under the Privacy Act of 1974, VA and HIPPA regulations, and medical center policies.

12. Estimate of the hour burden of the collection of information:

a. Using 2006 data, we estimate 15,550 total burden hours annually.

(1) VA Form 10-3567, State Home Inspection - Staffing Profile = **90 hours annually.**

Respondents	Frequency	Responses	Min. Each	Burden Hours
180	1	180	30	90 hours

(2) VA Form 10-5588, State Home Report and Statement of Federal Aid Claimed = **1,080 hours annually.**

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Respondents	Frequency	Responses	Min. Each	Burden Hours
180	Monthly	2,160	30	1,080

(3) VA Form 10-1OSH, State Home Program Application for Veteran Care - Medical Certificate = **10,566 hours annually.**

Program	Respondents	Frequency	Responses	Min. Each	Burden Hours
State Nursing Home	9,048	1	9,048	30	4,524
State Domiciliary	2,355	1	2,355	30	1,178
State Hospital	9,726	1	9,726	30	4,863
Adult Day Health Care (ADHC)	3	1	3	30	2
Totals:	21,132	1	21,132		10,566

(4) VA Form 10-0143, Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements For Grantees Other Than Individuals = **15 hours annually**

Respondents	Frequency	Responses	Min. Each	Burden Hours
180	1	180	5	15

(5) VA Form 10-0143a, Statement of Assurance of Compliance with Section 504 of The Rehabilitation Act of 1973 = **15 hours annually**

Respondents	Frequency	Responses s	Min. Each	Burden Hours
180	1	180	5	15

(6) VA Form 10-0144, Certification Regarding Lobbying = **15 hours annually**

Respondents	Frequency	Responses	Min. Each	Burden Hours
180	1	180	5	15

(7) VA Form 10-0144a, Statement of Assurance of Compliance with Equal Opportunity Laws = **15 hours annually.**

Respondents	Frequency	Responses	Min. Each	Burden Hours
180	1	180	5	15

(8) VA Form 10-0460, Request for Prescription Drugs from an Eligible Veteran in a State Home = **15 hours annually.**

Respondents	Frequency	Responses	Min. Each	Burden Hours
180	1	180	5	15

(9) Section 51.20, Application for Recognition (Letter to Under Secretary for Health) = **2 hours annually.**

Updated Program	Respondents	Frequency	Responses	Min. Each	Burden Hours

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State Nursing Home	10	1	10	6	1
State Domiciliary	5	1	5	6	0.5
State Hospital	0				
ADHC	5	1	5	6	0.5
Totals:	20		20		2

(10) Section 51.30, Recognition & Certification and Section 52.30, Recognition & Certification
= **120 hours annually.**

Type	Type of Facility	Respondents	Frequency	Responses	Hours Each	Burden Hours
Major Deficiency	State Nursing Homes	10	1	10	3	30
	State Domiciliary	5	1	5	3	15
	State Hospitals	0	1	0	3	0
	ADHC	0	1	0	3	0
Minor Deficiency	State Nursing Homes	50	1	50	1	50
	State Domiciliary	25	1	25	1	25
	State Hospitals	0	1	0	1	0
	ADHC	0	1	0	1	0
Totals		90		90		120

(11) Section 51.70, Residents Rights, Section 51.90, Resident Behavior & Family Practices, Section 52.70, Participant Rights & Section 52.71, Participant & Family Caregivers Responsibilities = **1,813 hours annually.**

Program	Respondents	Frequency	Responses	Min. Each	Burden Hours
State Nursing Home	17,736	1	17,736	5	1,478
State Domiciliary	3,845	1	3,845	5	320
State Hospital	168	1	168	5	14
ADHC	2	1	2	5	0
Totals	21,751		21,751		1,813

(12) Section 51.80, Admission, Transfer and Discharge Rights and Section 52.80, Enrollment, Transfer and Discharge Rights --171 respondents totaling **1 hour annually** (*Enrollment, admission and discharge records are customary in nursing homes, domiciliary, hospitals, and adult day health care facilities.*)

(13) Section 51.100, Quality of Life and Section 52.100, Quality of Life = **360 hours annually.**

Program	Respondents	Frequency	Responses	Min. Each	Burden
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					Hours
State Nursing Home	118	4	472	30	236
State Domiciliary	55	4	220	30	110
State Hospital	5	4	20	30	10
ADHC	2	4	8	30	4
Totals	180		720		360

(14) Section 51.110, Resident Assessment and Section 52.110, Participant Assessment (Clinical record keeping) --171 respondents totaling **1 hour annually** (*Clinical recordkeeping is a customary practice.*)

(15) Section 51.120, Quality of Care and Section 52.120, Quality of Care = **0 hours annually** (*This is not counted in the burden estimate, as we project only three respondents.*)

(16) Section 51.180, Pharmacy Services and Section 52.180, Administration of drugs --180 respondents totaling **1 hour annually** (*Recordkeeping for control drugs and report irregularities are a customary practice.*)

(17) Section 51.190, Infection Control and Section 52.190, Infection Control --180 respondents totaling **1 hour annually** (*Incident reports are a customary practice in nursing homes and adult day health care facilities.*)

(18) Section 51.210, Administration and Section 52.210, Administration = **1,440 hours annually** (*Documentation of items listed below are customary practices in State Nursing Home Programs. Recognition items are a “one time” submission; all others are surveyed and reported annually.*

- (a) *Section 51.210(b)(1) — Disclosure of State Agency and Individual Responsible for Oversight of Facility and Section 52.2 10 (b)(1) — Disclosure of State Agency and Individual Responsible for Oversight of Facility*
- (b) *State Law (recognition)*
- (c) *Site Plan (recognition)*
- (d) *Legal Title (recognition)*
- (e) *Organization Chart and Operational Plan (recognition)*
- (f) *Number of Staff*
- (g) *Number of Patients*
- (h) *Section 51,210(c)(7) — State Fire Marshall Report*
- (i) *Credentialing and Privileging*
- (j) *Nurse Aide Registry Verification*
- (k) *Nurse Aide/Program Assistant Inservice*
- (l) *CLIA # and Annual Report*
- (m) *Quality Assessment and Assurance*
- (n) *Disaster and Emergency Preparedness*

Program	Respondents	Frequency	Responses	Hours Each	Burden Hours
State Nursing Home	118	1	118	8	944
State Domiciliary	55	1	55	8	440

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State Hospital	5	1	5	8	40
Adult Day Health Care (ADHC)	2	1	2	8	16
Totals	180		180		1,440

b. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB 83-I.

See attachment to OMB Form 83-I.

c. Provide estimates of annual cost to respondents for the hour burdens for collections of information. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

Estimated cost to respondents: \$684,200 (15,550 burden hours x \$44 per hour). We do not require any additional recordkeeping.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

a. There is no capital, start-up, operation or maintenance costs.

b. Cost estimates are not expected to vary widely. The only cost is that for the time of the respondent.

c. There are no anticipated capital start-up cost components or requests to provide information.

14. Provide estimates of annual cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operation expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The estimated total cost to the Federal Government is \$1,054,682.

a. Review by VA medical center officials -\$705,984
[11,031 hours x \$64.00 (average GS-14 step 10 hourly salary)]

b. Clerical support - \$207,262
[777 hours x \$38.00 (average GS-11 step 10 hourly salary) = \$29,526]
[6,836 hours x \$26.00 (average GS-7 step 10 hourly salary) = \$177,736]

c. VA Headquarters oversight review - \$137,936
[1,864 hours x \$74.00 (clinical grades = to average GS-15 step 10 hourly salary) = \$137,936]

d. Printing costs - \$4,000

15. Explain the reason for any changes reported in Items 13 or 14 above.

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The adjustment of in burden hours is due to the increase of 11 Nursing Homes, six Domiciliaries and 2 Adult Day Health Care Centers utilizing this program.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There are no plans to publish the results of this information collection.

17. If seeking approval to omit the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

VA seeks to minimize the cost to itself of collecting, processing and using the information by not displaying the expiration date. We seek an exemption that waives the displaying of the expiration date on this VA Form. If we are required to display an expiration date, it would result in unnecessary waste of existing stock of the forms stocked at the State Homes. If we are required to display an expiration date, it would result in unnecessary waste of existing stock of the forms. Inclusion of the expiration date would place an unnecessary burden on the respondent (since they would find it necessary to obtain a newer version, while VA would have accepted the old one).

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods are used in this data collection.