

STATE VETERANS HOME AND VETERANS HEALTH ADMINISTRATION

PROVIDER AGREEMENT TEMPLATE (DRAFT)

A. GENERAL

A State Veterans Home (“SVH”) Provider Agreement (“Agreement”) is formed, in accordance with the terms and conditions of this agreement, when the VA agrees to pay per diem for a veteran who has been admitted as a resident in the State Veteran Homes (SVH) that meet eligibility for higher per diem payments, who is in need of nursing home care for a VA adjudicated service-connected disability, or has a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability and is in need of nursing home care, as defined in 38 CFR part 51. Upon admission of a veteran at the SVH, all terms and conditions of this agreement shall apply during such time as a VA patient remains in that SVH at the expense of VA. VA is obligated only to the extent authorized placements of patients are made under this agreement.

This agreement will be effective on February 2, 2013 (the implementation deadline for the Public Law 112-154 Section 105), if this agreement is not signed prior to the effective date. This agreement will cover retroactive payment to the SVH. Agreements will require an annual renewal at which time the rate schedule applicable to an Agreement may be adjusted.

This document is self-contained. Additional provisions, typically found in VA contract formats and clauses, do not apply to these Agreements.

B. AGREEMENT TERMS

1. The Director of the VA medical center of jurisdiction, or designee, will send to SVH written notification that identifies the provider agreement that VA proposes to use as the basis for its agreement to obtain nursing home services, identifies the changes and any additional terms that would apply to the provider agreement, and requests written acceptance from the provider of that agreement. VA will not reimburse the SVH until such acceptance of the provider agreement is received.
2. In order to receive payments under this agreement, the State Veterans Home (SVH) must be recognized and certified by VA in accordance with 38 CFR § 51.30.
3. The SVH shall ensure that care meets the health needs and promotes the maximum well-being of its residents. SVH care shall be furnished to ensure the medical, nursing, and psycho-social needs of its residents in accordance with 38 CFR Part 51, Subpart D. The SVH retains the right to refuse to admit any Veteran.

4. Full attention shall be given to motivating and educating residents to achieve and maintain independence in the activities of daily living, to the maximum extent possible. Every effort shall be made to keep residents ambulatory and to achieve an optimal level of self-care.

5. As a prerequisite to VA placing an order under this agreement, the SVH must submit to the VA medical center of jurisdiction for each Veteran a completed VA Form 10-10EZ, Application for Medical Benefits (or VA Form 10-10EZR, Health Benefits Renewal Form, if a completed Form 10-10EZ is already on file at VA), and a completed VA Form 10-10SH, State Home Program Application for Care--Medical Certification. VA Forms 10-10EZ and 10-10EZR are set forth in full at § 58.12 and VA Form 10-10SH is set forth in full at § 58.13. In accordance with 38 U.S.C. 1742, payments under an order under this agreement shall be made only from the date VA receives a request for determination of such veteran's eligibility; however, if such request is received by the VA within ten days after care of such veteran begins, payments will be made on account of such veteran from the date care began. This prerequisite applies to Veterans residing in the SVH prior to February 2, 2013.

6. The transfer of a Veteran to another level of care (e.g., domiciliary or adult day health care) is to be considered when a change in health or physical condition occurs and the new level of care would be more suitable to the Veteran's needs. The SVH must complete a new application VA Form 10-10SH when a change in the level of care is sought.

7. A Veteran receiving care under this agreement, who requires hospital care, will be referred to an appropriate VA facility, if reasonably feasible and if the Veteran is eligible for VA hospital care.

8. The rules regarding bedhold at 38 CFR § 51.43(c) will apply to orders under this agreement. Payments will be made for each day that the veteran is receiving care and has an overnight stay. Payments will also be made when there is no overnight stay if the veteran has resided in the facility for 30 consecutive days (including overnight stays) and the facility has an occupancy rate of 90 percent or greater. However, these payments will be made only for the first 10 consecutive days during which the veteran is admitted as a patient for any stay in a VA or other hospital (a hospital stay could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care.

9. VA shall have the right to conduct on-site reviews, including random unannounced reviews, of the SVH and all appurtenances by authorized VA representative(s) to ensure that acceptable VA standards are maintained and that the necessary care to maintain the well-being of the resident is rendered.

10. All medical records concerning the Veteran's care in the SVH will be readily accessible to VA. Medical records will be retained by the SVH for the period of time required by State law or five years from the date of discharge when there is no requirement in State law.

C. COVERED SERVICES

Services covered by the VA Prevailing Rate (contract rate) are set forth in subpart D of 38 CFR Part 51 to include all the SVH's drug for the veterans. For details regarding the covered services, refer to the Electronic Code of Federal Regulations website link:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=cf4a6f04370f42b29fb14d46755b7705&rgn=div5&view=text&node=38:2.0.1.1.22&idno=38#38:2.0.1.1.22.4.373.16>.

D. PROVIDER AGREEMENT RATES

The SVH shall be reimbursed by VA under the applicable **prevailing rate** for nursing home care of authorized veterans. The prevailing rate in the column titled "109-461 PER DIEM" of the attached document titled "FY2013 State Home Prevailing Rates" shall be paid to the SVH Contractor in this attachment listed by "Facility Name" for each veteran receiving care for each day of services provided by the SVH contractor during the basic period. Prevailing rate payments are intended by the VA to be all-inclusive payments to the SVH for services provided under this Agreement, and therefore include all the SVH's drug costs for the veterans. The Prevailing Rate is the amount determined by VA utilizing the formula set forth in 38 CFR 51.41(b)(1) (including the note) which provides:

The amount determined by the following formula. Calculate the daily rate for the most recently published CMS RUG (resource utilization groups' version) case-mix levels for the applicable metropolitan statistical area if the facility is in a metropolitan statistical area, and calculate the daily rate for the CMS Skilled Nursing Prospective Payment System case-mix levels for the applicable rural area if the facility is in a rural area. For each of the case-mix levels, the daily rate for each State home will be determined by multiplying the labor component by the nursing home wage index and then adding to such amount the non-labor component and an amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, and then with the modified rate multiplied by 12 and then divided by the number of days in the year.

Note to paragraph (b)(1): The amount calculated under this formula reflects the applicable or prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care). Further, the formula for

establishing these rates includes CMS information that is published in the Federal Register every summer and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

E. REIMBURSEMENT

All payments by the VA to the SVH will be made by electronic funds transfer. Payments to the SVH are made only after the SVH submits a completed VA Form 10-5588 to the representative designated in writing by the VA by the 5th workday following the end of the month in which services were rendered. The only VA persons authorized to approve or reject SVH invoices under this agreement are the representative designated in writing by the VA which is identified to the SVH in writing by the VA. VA Form 10-5588 is considered to be complete when all required information is provided and when the form is signed by the Administrator of the SVH. In cases where the SVH is operated under a contractual agreement for the State, the form must be signed by an authorized State representative. Failure to provide a completed VA Form 10-5588 by the 5th workday of each month during the task order issued under this agreement may result in delayed or denied payments.

Payment under this agreement to the SVH for nursing home care constitutes payment in full to the SVH by VA for such care furnished to that Veteran. The SVH shall not charge any individual, insurer, or entity (other than VA) for the items or services obtained by VA under this section.

F. TERMINATION OF AGREEMENT

1. SVH that wishes to terminate its agreement with VA must send written notice of its intent at least 15 days before the effective date of termination of the agreement. The notice shall include the intended date of termination.
2. VA may terminate an agreement with any provider if the Director of the VA medical center of jurisdiction, or designee, determines that the provider's service is no longer required or that the provider is not complying with a provision of the provider agreement, and must terminate an agreement with a SVH that no longer meets the requirements set forth by 38 CFR Part 51. VA will provide written notice of termination at least 15 days before the effective date of termination of the provider agreement. If the Director of the VA medical center of jurisdiction, or designee, determines the health of the veteran to be in immediate jeopardy, VA will provide notice of termination at least 2 days before the effective date of termination of the provider agreement. VA may physically remove a veteran from a dangerous situation at any time in order to protect the health of the veteran prior to terminating the applicable provider agreement.

G. APPEALS/DISPUTE RESOLUTIONS

SVH providers will notify the VA SVH Agreement Coordinator of any disputes regarding approved reimbursements or other issues governed by this Agreement within 10 business days of being noted by SVH staff. Any disputes unable to be resolved between the SVH provider and the VA SVH Coordinator will be referred to the VA Medical Center Director or designee within an additional 10 business days. If the Medical Center Director or designee resolution is not satisfactory to the SVH provider, it may appeal that decision within 5 days to the Program Manager, State Home Per Diem Program, VHA Chief Business Office (CBO FO), Suite 495, 3773 Cherry Creek North Drive, Denver, CO 80209 for a final resolution. VA will notify the SVH of the final decision within 3 business days of when the appeal was received.

H. COMPLIANCE WITH FEDERAL LAWS

Under agreements entered into under this section, providers are not required to comply with reporting and auditing requirements imposed under the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.); however, SVH must comply with all other applicable Federal laws concerning employment and hiring practices including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act.

(Authority: 38 U.S.C. 501, 1720; 42 U.S.C. 1395cc)

I. NOTICES

All notices required to be given pursuant to this Agreement shall be delivered by hand or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to SVH Provider:

(Name of Responsible Official)

(Name of SVH Provider)

(Address)

(State and Zip Code)

If to VA [signature block to be drafted by VA]:

(Name)
VAMC of Jurisdiction, Director

(Address)

(State and Zip Code)