

MILITARY AND VETERANS' AFFAIRS

(a)

OFFICE OF THE ADJUTANT GENERAL DIVISION OF VETERANS' HEALTHCARE SERVICES New Jersey Veterans' Facilities

Readoption with Amendments: N.J.A.C. 5A:5

Proposed: September 16, 2013, at 45 N.J.R. 2065(a).

Adopted: December 23, 2013, by Brigadier General Michael L. Cunniff, the Adjutant General, Commissioner, Department of Military and Veterans' Affairs.

Filed: December 23, 2013, as R.2014 d.022, **without change**.

Authority: P.L. 1988, c. 444; and N.J.S.A. 38A:3-2.2, 38A:3-2.b, 38A:3-6.4, 38A:3-6.5, 38A:3-6.6, 38A:3-6.8, 38A:3-6.9, and 38A:3-6.12.

Effective Dates: December 23, 2013, Readoption;
January 21, 2014, Amendments.

Expiration Date: December 23, 2020.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required. The rules readopted with amendments are subject to, but do not exceed, Federal standards and the requirements of the rules are the same as those imposed by 38 U.S.C. concerning veterans benefits.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 5A:5.

Full text of the adopted amendments follows:

CHAPTER 5

NEW JERSEY VETERANS' MEMORIAL HOMES

SUBCHAPTER 1. GENERAL PROVISIONS

5A:5-1.2 Definitions

The words and terms, as used in this chapter, shall have the following meanings. All other words shall be given their ordinary meaning unless the content of their use clearly indicates otherwise.

"Accountable assets" means all items that have a determined value and are owned solely by the applicant or spouse, or owned jointly with spouse, jointly with others, or jointly by the spouse and others, and must be spent down or liquidated and used toward payment of the resident's care and maintenance fee. IRAs and annuities are considered as accountable assets and will be treated as income.

"Community spouse" means the married spouse of a veterans' memorial home resident who does not receive long-term care in a medical institution or nursing facility.

"Durable power of attorney" means a legal document that enables an individual to designate another person(s) to act on his or her behalf, in the event the individual becomes disabled or incapacitated. A health proxy, also known as a durable power of attorney for healthcare, can also be appointed for medical decisions. The durable power of attorney terminates upon the death of the originator.

"Eligible others" as defined and listed in order of priority below will be admitted to a New Jersey veterans' memorial home, as long as the census of non-veterans does not exceed 25 percent of the total population.

Recodify existing 2.-4. as 1.-3. (No change in text.)

"Extraordinary expense deduction" means a financial deduction as a major excessive expense to maintain the basic household, medical, or transportation needs.

"Facility resident" means an individual residing in a New Jersey veterans' memorial home.

...

"Guardian" means a person who has been entrusted as the legal representative of one who has been adjudicated incapacitated by a court of law and requires a legal representative to act on their behalf for all matters.

"Guardianship" means the process by which an individual is appointed the legal representative of another person who has been adjudicated incapacitated by a court of law and requires a legal representative to act on their behalf for all matters.

"Living will" means a legal document that provides instructions and directions regarding healthcare in the event that the individual subsequently lacks such decision-making capability.

"Maximum allowable asset" means that all sources of accountable assets shall not exceed \$24,000 for a single applicant or \$110,000 for a married applicant.

"Non-accountable assets" means those items of determined value that are owned solely by the applicant or spouse. The following are considered non-accountable assets:

1. The primary residence and any appurtenance thereto, including proceeds from the sale of the residence. However, if the property is sold, any income earned from the investment of any or all of the proceeds will be counted as income.

2.-3. (No change.)

"Physician Orders for Life Sustaining Treatment (POLST)" is a New Jersey law designed to provide a mechanism to further define preferences for healthcare concerning life-sustaining treatment of other interventions for progressive illnesses and/or end of life decisions.

"Resident" means a legal inhabitant of the state where the primary domicile is located.

"Service connected disability" means a disability sustained by veterans who were disabled by an injury or illness that was incurred or aggravated during active military service. These disabilities are considered service-connected. Disability is determined by the United States Department of Veterans' Affairs in accordance with 38 CFR 51.41.

"Transfer" means the placement of a resident to a more suitable environment to meet individual needs.

"Veterans' memorial home" means any home, institution, hospital, or part thereof, the admission to which is under the jurisdiction of the Department of Military and Veterans' Affairs, being the facilities at Menlo Park, Paramus, Vineland, and such other veterans' facilities as may be developed.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

5A:5-2.1 Admission eligibility

(a) Eligibility for admission to the New Jersey veterans' memorial homes is considered on financial and qualified medical needs. Veterans shall be given preference and non-veterans shall be admitted to veterans memorial homes, as long as the census of non-veterans does not exceed 25 percent of the total population. The following individuals, in order of priority, are eligible for admission consideration:

1. A New Jersey veteran that meets the New Jersey residency requirement as described in paragraph 1 of the definition of "veteran" in N.J.A.C. 5A:5-1.2.

2. A spouse of a New Jersey veteran who is eligible as a "spouse" or "surviving spouse" as described in paragraphs 2 and 3 of the definition of "eligible others" in N.J.A.C. 5A:5-1.2 and is a resident of this State.

3. Gold Star parents.

4. A veteran who is not a New Jersey resident.

(b) All accountable assets shall be spent down and liquidated and used to pay resident's actual care and maintenance until:

1. A single applicant's maximum allowable assets do not exceed \$24,000 from all sources of accountable assets;

2. A married couple's maximum allowable assets do not exceed \$110,000 from all sources of accountable assets.

(c) Admission eligibility is contingent upon a veterans' memorial home's ability to meet the applicant's individual health care needs, which will be reviewed and determined by the admission committees of each veterans' memorial home and bed availability. The applicant shall also sign an Admission Agreement that he or she will accept placement in the veterans' memorial home designated by the Adjutant General, that he or she understands all sources of income to include Social Security shall be considered when determining the care and maintenance fee, and that he or she will abide by the rules, regulations, and discipline of the veterans' memorial home to which admitted. The obligation of such an Admission Agreement shall remain in effect, as long as the resident remains on the census of one of the New Jersey veterans' memorial homes.

(d) The following shall be denied admission into a New Jersey veterans' memorial home:

1. (No change)
2. Applicants who are active substance abusers, exhibit active psychiatric problems, or exhibit behaviors that may pose a danger to self or others;
3. Applicants who refuse to sign the required Admission Agreement under (c) above;
4. Applicants who do not require 24-hour skilled nursing care;
5. Applicants who have been denied admission to another New Jersey veterans' memorial home; and
6. (No change in text.)

(e) An approved applicant shall be subject to reevaluation in the following circumstances:

1. Prior to admission;
2. (No change.)
3. An omission or misrepresentation of significant medical or financial information.

(f) Significant changes in the information required under (e)2 or 3 above may result in denial of admission by the admissions committee as per N.J.A.C. 5A:5-4.1.

(g) (No change.)

SUBCHAPTER 3. THE ADMISSION PROCESS

5A:5-3.1 Application requirement

(a) Applicants shall be eligible for admission consideration upon completion of the documentation and information reviews as follows:

1. To establish basic eligibility of all applicants, the following documentation and information reviews are required:
 - i. A completed application for admission;
 - ii. Service history:
 - (1) (No change.)
 - iii. (No change in text.)
 - iv. Medical status:
 - (1) An application for Health Benefits (VA 10-10EZ);
 - (2) Medicare Part A, B, and D or other creditable prescription coverage;
 - (3) Other health insurances, including supplemental;
 - (4) The coverages under (a)iv(1) and (2) above must be in effect at the time of admission if eligible and must remain in effect, as long as the individual is a resident of one of the New Jersey veterans' memorial homes. Eligible residents who do not maintain Medicare Part A and B and other supplemental health insurance shall not be allowed any medical fee deductions against their care and maintenance fee and shall be responsible for all related fees, as long as they select not to maintain medical insurance;
 - (5) A Medical History Release Form as determined by the U.S. Veterans' Administration; and
 - (6) A Medical Certification VA 10-10SH;
 - v. Financial disclosure:
 - (1) Assets will be reviewed and considered in determining financial responsibility;
 - Recodify existing (3)-(6) as (2)-(5) (No change in text.)
 - (6) A review shall be conducted of all irrevocable trusts;
 - vi. (No change in text.)

vii. Other:

(1) Verification of the responsible party for funeral arrangements and responsibility.

(A) (No change)

(2) Submission of advance directives for health care, if desired by the applicant, such as:

(A) A proxy directive (durable power of attorney for healthcare);

(B) An instructive directive (for example, a living will);

(C) A combined directive (durable power of attorney for health and fiscal matters);

(D) A Physician Order for Life Sustaining Treatment (POLST); and

(E) Appointment of a representational payor, if desired by the applicant.

(b) Applicants shall be admitted to the New Jersey veterans' memorial home upon completion of the following:

1. Approval of the admission committee (N.J.A.C. 5A:5-4);

2. A signed Admission Agreement;

3. VA forms (as determined by the U.S. Veterans' Administration);

4. A Medical History Release Form (VA 10-10SH); and

5. The social services packet with facility release forms.

SUBCHAPTER 4. ADMISSION REVIEW AND IMPLEMENTATION

5A:5-4.1 Admission review policy

(a) It is the policy of the New Jersey veterans' memorial homes to have an admission committee at each home review all completed and tentatively approved applications for appropriateness of placement. A tentatively approved application is one which has produced all required documents and meets admission and financial eligibility requirements. The following areas will be considered in all applications for admission and may be grounds for rejection:

1.-3. (No change.)

4. Treatments/care required to meet the applicant's individual health care and psychological needs that are beyond the scope of the veterans' memorial home to provide;

5. Applicants who are active substance abusers and/or exhibit active psychiatric problems and/or exhibit behavioral actions that may pose a threat to self or others;

6. Applicants who refuse to sign the required Admission Agreement;

7. Applicants who do not require 24-hour skilled nursing care; and

8. Applicants who have been denied admission to another New Jersey veterans' memorial home.

(b) (No change.)

(c) If the committee rejects an applicant, the veterans' memorial home will provide written notice of denial and the reason for denial within 14 days to the applicant or representative. The notice of denial issued the applicant shall reference the manner in which, and to whom, the denial may be appealed by written request to The Adjutant General or designee within 30 days of the written notice of denial by the veterans' memorial home. The appeal letter shall be submitted by the applicant, family member, legal power of attorney, or legal guardian only. The decision on the appeal will be considered the final agency action. The adverse decision appeal process is as follows:

1. (No change.)

2. When the admission committee requirements have been met, the applicants(s) awaiting guardianship or a final determination of an appeal process shall remain on the waiting list in the sequence effective the date the application was originally received, and in accordance with (f) below.

(d) The decision appeal process is as follows:

1. In situations where the admissions committee requires additional information, follow-up evaluation, or participation in various counseling programs, consideration will be given for placement on the waiting list, following completion and receipt of documentation requested and requirements of the admission committee.

2. When the admission committee requirements have been met, the applicant(s) awaiting a final determination of an appeal process shall remain on the waiting list in the sequence effective the date the application was originally received, and in accordance with (f) below.

(e) Approved applicants will be placed on the approved waiting list.

(f) The waiting list process is as follows:

1.-2. (No change.)

3. There will be no consideration for bypassing approved applicants on the waiting list, except when bed availability is based on gender, veteran preference, and treatment needs (that is, specialty units, infectious diseases, etc.) or the applicant is a spouse of a residing resident.

4. If an approved applicant refuses admission at the time offered, the applicant will be placed at the bottom of the waiting list. This is called an approved deferred admission.

5. (No change.)

SUBCHAPTER 5. CARE MAINTENANCE FEE COMPUTATION

5A:5-5.1 General requirements for computing skilled nursing monthly resident fee

(a) (No change.)

(b) At the time of admission and annually thereafter, based on a determined date, the computation of the monthly resident fee is calculated with the resident or representative payor. The calculation is determined by review of Federal and State income tax returns and all financial statements, income, inclusive of IRAs and annuities as accountable assets, as well as any other financial transactions. This asset review will be required by May 15 with a return date no later than June 30 of each year. As of September 21, 1992, the resident fee will be based on 80 percent of the net income for all residents admitted thereafter. Those individuals residing in the veterans' memorial homes prior to September 21, 1992, will have the resident fee based on 60 percent of the net income.

(c) (No change in text.)

(d) The welfare fund is an account established at each veterans' memorial home pursuant to N.J.S.A. 38A:3-6.16. It is composed of funds specifically donated to the veterans' memorial home welfare fund, or monies, which have escheated to the welfare fund from the personal needs account of deceased residents, leaving no will or next of kin. This trust fund is to be utilized for the benefit and general welfare of the resident population of the institution as a whole. This fund shall provide for, and maintain, a quality of life that might otherwise not be possible for the residents and shall be administered by the Adjutant General in accordance with the provisions of N.J.S.A. 38A:3-6.16. Residents will be required to pay a monthly welfare fee of \$20.00 or 12 percent of the balance of their monthly income, whichever is less, excluding all allowable deductions and the care maintenance fee payment. These monies will be deposited in the veterans' memorial home's welfare fund.

(e) Payment for the resident care and maintenance fee is due the first of each month.

Recodify existing (g)-(j) as (f)-(i) (No change in text.)

(j) Care and maintenance fee accounts that become delinquent are referred to the Department of the Treasury for lien application proceedings as defined in the Department of the Treasury Policy and Procedure for Delinquent Accounts.

(k) Service connected disability status shall be considered as part of the annual maintenance fee computations.

5A:5-5.2 Formula for computing single resident's skilled nursing monthly resident fee based on an 80/20 percentage

(a) The monthly resident fee for a single 80/20 resident is based on the total gross income, minus allowable deductions. This figure is the net income. Eighty percent of the net income will be the resident fee charged. An additional \$20.00 or 12 percent of the balance of his or her monthly income, whichever is less, will be deposited in the welfare fund of the veterans' memorial home. The remainder of the net income will be deposited in the resident's personal needs account.

(b) The allowable deductions for a single resident are as follows:

1. (No change.)

2. Health and prescription insurance premiums;

3.-5. (No change.)

(c) The resident's fee will be based on the applicant's net income and assets, which include, but are not limited to, second and third homes, real estate, stock and bonds, etc. Full disclosure of worth is required as part of the admission process.

(d) If, at a later date, assets that were not reported upon admission are discovered, they will be added to the net income and worth of the resident, computed retroactively to the date of admission. This may necessitate a recalibration of the resident maintenance fee schedule.

(e) Any interest or payment received from a trust transfer or second or third home sale, etc., will be treated as income. Furthermore, in situations where a trust or transfer of assets has occurred within 36 months of submitting an admission application, the value of the trust and/or assets will be deemed an accountable asset for the balance of the 36-month period.

(f) Service connected disability status shall be considered as part of the annual maintenance fee computations.

5A:5-5.3 Formula for computing a married resident's skilled nursing monthly resident fee based on an 80/20 percentage

(a) The monthly resident fee for a married resident is based on the total personal income of the resident, minus allowable deductions. This figure is the net income. Eighty percent of the net income will be the resident fee charged. An additional \$20.00 or 12 percent of the balance of their monthly income, whichever is less, will be deposited in the welfare fund of the veterans' memorial home.

(b) The community spouse must divulge all sources of the monthly income in order to file for consideration of allowable deductions.

1. If a working spouse has an income greater than the total of the monthly allowable deductions, then the calculations for the married resident will be as for a single resident.

2. Failure to make a full and complete disclosure will constitute a breach of the veterans' memorial home's regulations and may be grounds for removal as provided in N.J.S.A. 38A:3-6.9.

(c) In the event that each individual of the marriage is a resident, the resident fee for each will be calculated as for single resident and no married deductions will be allowed.

(d) If, at a later date, assets that were not reported upon admission are discovered, they will be added to the net income and worth of the resident, computed retroactively to the date of admission. This may necessitate a recalibration of the resident maintenance fee schedule.

(e) Service connected disability status shall be considered as part of the annual maintenance fee computations.

(f) The allowable deductions for a married resident are as follows:

1. (No change.)

2. Health and prescription insurance premiums;

3.-4. (No change.)

5. Second mortgages on the primary residence will not be considered as deductions for computation of the resident maintenance fee, if obtained within 36 months of the submission of an application for admittance. Similarly, second and/or third homes will not be considered as deductions for the computation of the resident maintenance fee;

Recodify existing 5.-8. as 6.-9. (No change in text.)

10. Clothing deduction shall be \$75.00 per month per dependent;

11. Telephone/television/internet service deduction shall be \$125.00 per month;

12. (No change in text.)

13. Home maintenance deduction shall be \$100.00 per month;

14. (No change in text.)

15. Guardianship/advance directives: The actual cost of legal fees up to a maximum of \$2,400 may be deducted. This deduction will be divided into 24 monthly installments, which will only be permitted as long as the resident resides in the veterans' memorial home. This deduction will only be approved for a guardianship hearing/advance directive protocol, which was processed no later than one year prior to the date of application. Verification of cost and date of action shall be required; and

16. (No change in text.)

Recodify existing (f) and (g) as (g) and (h) (No change in text.)

5A:5-5.4 Financial responsibilities for veterans' memorial home resident

(a)-(b) (No change.)

(c) The resident or the person who has control of the resident's financial accounts, income, and assets will be responsible for all financial obligations for the services not provided by the veterans' memorial home. This includes, but is not limited to:

- 1.-7. (No change.)
 8. Deductible fees not covered by medical insurances;
 9. Payment for pharmaceuticals to reimburse Medicaid as required;
 10. Telephone;
 11. Television;
 12. Outside personal laundry services;
 13. Outside physician services;
 14. Any non-payment of debts incurred by the resident, including healthcare costs; and
 15. Personal purchases.
- (d)-(f) (No change.)

SUBCHAPTER 6. RESIDENT TRANSFER, DISCHARGE, OR DEATH

5A:5-6.1 Transfer, discharge, or death of a resident

(a) Any resident may be removed from a veterans' memorial home on being restored to an ability to promote his or her own support and welfare in the community, for immorality, for fraud or willful misrepresentation, or refusal to abide by the rules, regulations, and discipline of the veterans' memorial home, as well as:

- 1.-3. (No change.)
 4. Violation of Federal, State, or local laws, rules, or regulations.
- (b)-(c) (No change.)
- (d) Pre-paid care and maintenance fees shall be rebated to the resident/representative based upon the pro-rating of days and reconciliation of insurance claims after discharge or death.
- (e) A resident who has been discharged or who voluntarily discharges him- or herself and wishes to return to a veterans' memorial home must submit a complete application for admission packet to be considered for readmission. The process will be in accordance with N.J.A.C. 5A:5-3 and 4.
- (f) Upon the death of a resident, the veterans' memorial home will follow the procedures as given in the Division of Veterans' Healthcare Policy and Procedure manual, Business Office section, subsections 44-02-010, 44-02-011, and 44-02-013.

(a)

OFFICE OF THE ADJUTANT GENERAL DIVISION OF VETERANS' PROGRAMS Veterans' and Disabled Veterans' Preference and Designation of Veterans' Status for Pension Purposes

Readoption with Amendments: N.J.A.C. 5A:9

Proposed: October 7, 2013, at 45 N.J.R. 2163(a).

Adopted: December 23, 2013, by Brigadier General Michael L. Cunniff, the Adjutant General, Commissioner, Department of Military and Veterans' Affairs.

Filed: December 23, 2013, as R.2014 d.024, **without change**.

Authority: N.J.S.A. 11A:5-1.1, 18A:66-2.2, and 43:15A-6.1; and P.L. 2000, c. 127, P.L. 2000, c. 146, P.L. 2001, c. 127, P.L. 2003, c. 197, and P.L. 2007, c. 115.

Effective Dates: December 23, 2013, Readoption;
January 21, 2014, Amendments.

Expiration Date: December 23, 2020.

Summary of Public Comment and Agency Response:

Public comments were submitted by Bruce Linton and are summarized below.

COMMENT: Bruce Linton submitted a comment, stated that the notice of proposal Summary should be amended to state that veterans in the Public Employee Retirement System (PERS) may retire at age 60 with 20 or more years at 54.5 percent of their salary in accordance with P.L. 2004, c. 177.

RESPONSE: The Department concurs with the commenter's statement regarding the effects of P.L. 2004, c. 177, and the incorrect nature of the

statement in the notice of proposal Summary. However, this does not change any of the rules readopted with amendments to N.J.A.C. 5A:9, and as the statements of a notice of proposal are final upon publication, no change is necessary at this time. The Department of Military and Veterans' Affairs further notes that the Department does not set required years of service, minimum age, or pension benefits, which are set and determined by the Division of Pensions and Benefits in the Department of the Treasury; the Department only verifies whether the individual is a veteran.

Federal Standards Statement

A Federal standards analysis is not required. There are no Federal requirements or standards that affect the rules readopted with amendments.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 5A:9.

Full text of the adopted amendments follows:

SUBCHAPTER 1. VETERANS' AND DISABLED VETERANS' PREFERENCE AND DESIGNATION OF VETERANS' STATUS FOR PENSION PURPOSES

5A:9-1.1 Purpose and scope

(a) This subchapter sets forth the filing requirements by individual applicants to the Department of Military and Veterans' Affairs for veterans' and disabled veterans' preference and designation of veterans' status for pension purposes, to be used by the New Jersey Civil Service Commission and/or the Division of Pensions and Benefits.

(b) (No change.)

5A:9-1.2 Veterans' preference and veterans' status for pension purposes

(a) A person is entitled to veterans' preference or veterans' status for pension purposes, if he or she has been discharged or released from active United States military or naval service under conditions other than dishonorable, and has served in the active United States military or naval service during:

1. World War I, between April 6, 1917 and November 11, 1918, who shall have served at least 90 consecutive days;

2. World War II, on or after September 16, 1940, who shall have served at least 90 days beginning on or before December 31, 1946 in such active service, exclusive of any period of assignment for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of a civilian course and was pursued to completion; or as a cadet or midshipman at one of the service academies;

3.-5. (No change.)

6. Grenada peacekeeping mission, commencing on or after October 23, 1983, who has served in Grenada or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days terminating on or before November 21, 1983, in such active service;

7. Panama peacekeeping mission, commencing on or after December 20, 1989, who has served in Panama or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days terminating on or before January 31, 1990, in such active service;

8.-9. (No change.)

10. Operation "Enduring Freedom" commencing on or after September 11, 2001, who served for a period, continuous or in the aggregate, of at least 14 days in areas designated by the U.S. Department of Defense, and ending on or before the date of termination of that mission as proclaimed by the President of the United States or Congress, whichever date of termination is later, and was in receipt of the Global War on Terrorism Expeditionary Medal, Afghanistan Campaign Medal, or can provide supportive documentation reflecting service in the area of operation;

11. Operation "Iraqi Freedom/New Dawn" commencing on or after March 19, 2003, and terminating on December 15, 2012, who served for