

Clearinghouse Rule 15-048

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ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF VETERANS AFFAIRS ADOPTING PERMANENT RULES

The statement of scope for this rule, SS 039-14, was approved by the Governor on April 21, 2014, published in Register No. 701 on May 14, 2014, and approved by Secretary John A. Scocos on May 27, 2014. This proposed rule was reviewed by the Board of Veterans Affairs on May 1, 2015 and approved by Secretary Scocos on June 1, 2015.

ORDER

The Department of Veterans Affairs proposes an order to repeal VA 13.04(3),(4) and VA 13.06; to renumber VA 13.01(1), VA 13.04, (1),(2), and (4); to renumber and amend VA 13.04 (title) and VA 13.05; to amend VA 13 (title), VA 13.01 and 13.02 and to create VA 13.001, 13.01(1), (1m), (1s), (2m), and VA 13.055 relating to the veterans assistance program, aid to indigent veterans and veterans housing and recovery program.

ANALYSIS

- 1. Statute interpreted:** Section 45.43, Stats.
- 2. Statutory authority:** Sections 227.10 (1) and (2m), 227.11 (2) (a), and 45.03 (2).
- 3. Explanation of agency authority:**

Section 227.10 (1), Stats., requires each department to promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. Further, subsection (2m) requires rule promulgation before a department may implement or enforce any standard, requirement, or threshold.

Section 227.11 (2) (a), Stats., authorizes the department to promulgate rules interpreting the provisions of any statute enforced or administered by the department, if the department considers it necessary to effectuate the purpose of the statute.

Section 45.03 (2), Stats., authorizes the Secretary to promulgate rules necessary to carry out the purposes of Chapter 45 and the powers and duties conferred upon it.

- 4. Related statute or rule:**

Section 45.43 directs department to administer a program to provide assistance to veterans whose need for services is based upon homeless, incarceration, or other circumstances designated by the department by rule.

Existing sections of Chapter VA 13 do not clearly distinguish the AIV program from the program by which the department provides transitional housing and supportive service to homeless veterans, or those veterans at risk of becoming homeless, currently named Veterans Assistance program, which will be renamed Veterans Housing and Recovery Program by the proposed rule.

5. Plain language analysis:

The proposed rule change relates to the two programs within the Veterans Assistance Program.

Aid to Indigent Veterans (AIV): The Legislative Audit Bureau (Report 11-3) recommended the Department promulgate rules to: (1) establish clear eligibility requirements, including any type and amount of assets to be excluded from eligibility determinations; (2) establish a policy on divestment, including requiring applicants to provide sufficient documentation for determining whether the timing and nature of any asset transfers, including the establishment of trusts, is allowable; (3) clearly define any limits on the amounts and types of life insurance and burial assets that are exempt, and require applicants to provide sufficient documentation to assess them; and (4) require Union Grove staff to verify financial information provided at the time of application to the assisted living facilities, and annually thereafter.

Additionally, the rule will more clearly distinguish the AIV program from the program by which the Department provides transitional housing and supportive services to homeless veterans, or those veterans at risk of becoming homeless, currently named the Veterans Assistance Program (VAP) which will be renamed Veterans Housing and Recovery Program (VHRP) by the proposed rule.

6. Summary of and comparison with, existing or proposed federal regulations.

There is no existing or proposed federal regulation that addresses the AIV activities affected by the proposed rule. Federal regulations applicable to the VHRP are not implicated by the changes in the proposed rule.

7. Comparison with rules in adjacent states:

In reviewing the statutes, rules and websites of veterans departments of adjacent states reveals no similar housing program

8. Summary of factual data and analytical methodologies:

The Department analyzed the current policies of the two programs within the Veterans Assistance Program and used those policies as a foundation for the rule changes.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

This rule codifies existing departmental policies and has no effect on small businesses.

10. Fiscal Estimate:

The proposed rule changes will have no additional fiscal impact.

11. Effect on small business:

The proposed rule changes will have no impact on small businesses.

12. Comments and opinions prepared by the Board of Veterans Affairs:

13. Agency contact person:

Kathy Marschman, kathy.marschman@dva.wisconsin.gov, (608) 266-2256.

SECTION 1. VA 13 (title) is amended to read:

CHAPTER VA 13

VETERANS ASSISTANCE HOUSING PROGRAM

SECTION 2. VA 13.001 is created to read:

VA 13.001 Authority. This chapter administers programs authorized by s. 45.43, Stats.

SECTION 3. VA 13.01(1) is renumbered and amended to VA 13.01(1e); VA 13.01 and 13.02 are amended; and VA 13.01(1), (1m), (1s), and (2m) are created to read:

VA 13.01 Definitions. In this chapter the following terms shall have the designated meanings:

(1) “Aid to indigent veterans” means financial support to enable a veteran to continue to reside in an assisted living facility at an established Wisconsin veterans home.

(1e) “Applicant” means a person who requests assistance under the veterans housing program by filing a written application with the department.

(1m) “Assets” means all liquid and non-liquid property including real estate, recreational vehicles and the cash surrender value of life insurance policies, but excluding burial assets, a home in which a spouse or dependent relative is living, household furnishings, one automobile for the purposes of general transportation of the member and his or her community spouse or dependent, personal items including clothes, and assets necessary to prevent impoverishment of a spouse who lives in the community.

(1s) “Assisted living facility” means a community-based residential care facility as defined in s. 50.01 (1g), Stats., or a residential care apartment complex as defined in s. 50.01 (6d), Stats., at a Wisconsin veterans home.

(2) “Department” means the department of veterans affairs.

(2m) “Divestment” means giving away one’s resources, such as income, non-exempt assets, and property for less than fair market value in order to enroll in the program, including action taken to avoid receiving income or assets that one is entitled to receive.

(3) “Veteran” means a veteran as defined in s. [45.01 \(12\)](#), Stats.

(4) “~~Veterans-assistance housing and recovery program~~” means the program providing transitional and permanent housing and certain supportive services ~~authorized under s. [45.43](#), Stats.~~

VA 13.02 Eligibility. (1) VETERAN STATUS. The department shall verify an applicant’s veteran status during the assessment conducted under s. [VA 13.03](#).

(2) NEED FOR ASSISTANCE. Assistance shall be provided to a veteran under the veterans ~~assistance housing and recovery program~~ when the veteran’s need for assistance arises because of any of the following circumstances:

(a) Homelessness or conditions which indicate that the veteran is at risk of becoming homeless.

(b) Incarceration.

(c) Unemployment or underemployment which significantly limits a veteran's ability to be self-supporting.

(d) Affliction with acute or chronic physical or mental health problems which significantly limits a veteran's ability to be self-supporting.

(e) Insufficient monthly income and resources, as determined by the department, to pay for the cost of care provided at an assisted living facility established at a veterans home.

(3) PROVISION OF ASSISTANCE. A veteran who establishes a need for assistance under this section shall enter into a written agreement with the department identifying the assistance that the veteran shall receive and the veteran's responsibilities under the ~~veterans-assistance~~ housing and recovery program. The department may terminate assistance whenever the veteran fails to fulfill his or her responsibilities under the agreement.

VA 13.03 Assessment. Each applicant shall be assessed to determine his or her veteran status and need for assistance in the following areas:

(1) Medical.

(2) Legal.

(3) Alcohol and other drug abuse.

(4) Mental health.

(5) Vocational.

(6) Housing.

(7) Employment.

SECTION 4. VA 13.04(3), (4) are repealed, VA 13.04, (1), (2) are renumbered VA 13.04(1m), (1m)(a), (1m)(c), (m)(d), and 13.04 is amended to read:

VA 13.04 ~~Assistance~~ Veterans housing and recovery program. (1m) ASSISTANCE.

Upon completion of an assessment conducted under s. VA 13.03 and pursuant to a written agreement between the department and the eligible veteran the following assistance shall be provided subject to availability:

~~(1)~~(a) Transitional housing.

(b) Permanent housing.

~~(2)~~(c) Referrals to service providers.

SECTION 5. VA 13.05 is renumbered VA 13.04(2m) and amended to read:

VA 13.05(2m) PROGRAM FEES AND RENTAL CHARGES. The department or regional transitional or permanent housing site vendor may collect a monthly fee or rental charge from ~~at the veterans-assistance~~ housing and recovery program participant residing in a regional transitional or permanent housing site in an amount calculated under the following schedule:

~~(a) RESIDENTS OF REGIONAL TRANSITIONAL HOUSING SITES.~~ A resident of a regional transitional housing site who is employed or who is receiving supplemental security income, social security disability insurance payments or any other disability or pension benefits, other than compensated work therapy or industrial/incentive therapy payments paid at a rate below the prevailing minimum wage, may be assessed a monthly program rental charge of not more than 30% of monthly income, after a

deduction for medical expenses, child care expenses, court-ordered child support payments, or any other court-ordered payment. The assessment shall be uniformly applied to each resident of a specific site. The total amount of the monthly assessments at a particular site may not exceed the site's monthly unfunded operational costs. An individual assessment may begin upon the resident's receipt of a second pay or benefit check except when the resident receives a retroactive lump sum award of pension, compensation, or other entitlement payments. In that case, an assessment may be made against the lump sum award but shall be limited to the number of months the resident resided at the site prior to the month of receipt of the lump sum award.

~~(2)(b) RESIDENTS OF SINGLE ROOM OCCUPANCY HOUSING.~~ A resident of a single room occupancy housing unit who has full-time, part-time, or seasonal employment or who is receiving supplemental security income, social security disability insurance payments or any other disability or pension benefits, ~~shall be assessed~~ is subject to a discretionary monthly program fee of 30% of monthly gross income or not to exceed \$350.00/400.00, whichever is less. The assessment ~~fee~~ may begin upon the resident's receipt of a pay or benefit check be pro-rated to the remaining days of the month of entry and must be paid within five days of entry. All subsequent program assessment fees will be due and payable on the first of the month but not later than the fifth of the month. These fees may be paid fully at the beginning of the month or with two payments during the month, on the first day and the fifteenth day. The program manager will work with each veteran to collect appropriate fees.

~~(3) (c) RESIDENTS OF PERMANENT HOUSING UNITS.~~ A resident of a permanent housing unit who has full-time, part-time, or seasonal employment or who is receiving

supplemental security income, social security disability insurance payments or any other disability or pension benefits, shall be assessed a monthly program fee equal to that of the published US department of housing and urban development housing guidelines for low income or disadvantaged persons. The assessment fee may vary depending on the location and size of the unit.

SECTION 6. VA 13.055 is created to read:

VA 13.055 Aid to indigent veterans. (1) ASSISTANCE. Upon completion of an assessment conducted under s. VA 13.03 and pursuant to a written agreement between the department and the eligible veteran, the department may provide financial assistance to enable a veteran, who is currently a resident at a Wisconsin veterans home and who has insufficient monthly income and resources, as determined by the department, to pay for the difference between the income and resources and the cost of care provided at an assisted living facility established at a Wisconsin veterans home.

(2) ELIGIBILITY. A member may be eligible to receive assistance under this section if the veteran meets all the following criteria:

- (a) Meets the requirements of s.45.51 (2) (a) 1. or 2., Stats., s. VA 13.02 (1) and (2) (e).
- (b) Is assessed using the criteria in s. VA 13.03 excluding (5) and (7).
- (c) Has been a self-pay member in an assisted living facility at the Wisconsin veterans home for at least 24 months.

1. Notwithstanding this paragraph, in special circumstances this requirement may be temporarily waived for up to six consecutive months by the secretary of the department when a member would benefit more from being treated at the assisted living level of

care but he or she lacks private financial resources and low demand for assisted living threatens to increase the existing member private pay rates to an unreasonable level.

(d) Has applied for any and benefits for which the member is eligible.

(e) Has assets of \$2,000 or less.

(f) Agrees to submit an annual financial statement at the time of application and annually for financial verification, along with itemized statements received from a financial institution, investment company or broker and a complete copy of each federal and state income tax return filed for the two most recent tax years for divestment determinations and exempt assets and insurance.

(g) Agrees to turn over to the facility any monthly incomes and assets over the \$2,000 limit to be prorated as determined to be appropriate by the department.

(h) Agrees to an asset search to be completed by or on behalf of the veterans home prior to admission into the aid to indigent veterans program and every 12 months following admission into the program.

(i) Must continue to meet all other requirements for care in an assisted living facility environment.

(j) Has not transferred or divested assets within the past 60 months or five years from the date of application.

SECTION 7. VA 13.06 is repealed.

END OF RULE TEXT

Dated this ____ day of _____, 2014.

STATE OF WISCONSIN
DEPARTMENT OF VETERANS AFFAIRS

John A. Scocos, Secretary