

OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Services
(Amendment)

17 KAR 3:020. Charges for room and board, goods, and services at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325, 38 U.S.C. 1745(a)

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes. KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the methodology for establishing charges~~[maximum monthly resident charge]~~ for room and board, ~~[and]~~ goods and services at state veterans' nursing homes.

Section 1. Definitions.

- (1) "Ancillary services" means services for which a separate charge is customarily made. Ancillary services include, for example, physical therapy, occupational therapy, speech therapy, laboratory procedures, x-ray services, oxygen services, optometry services, podiatry services, dentist services, audiology services, and pharmacy goods and services.
- (2) "Non-routine goods or services" mean those that are directly identifiable with an individual resident and which are not customarily intended for use by all residents including such things as transportation, special activities, cable television services, pay-per-view channels, private or personal phone service, hospitalization, ambulance services, hearing aids, dentures, cosmetology or beautician services (other than basic haircuts), orthotic devices, and specialty care and equipment.
- (3) "Nursing facility" means a state veterans' home (SVH) operated by the Kentucky Department of Veterans Affairs.
- (4) "Private pay" means residents who pay for their nursing home care out of personal funds.
- (5) "Private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center or small house design requirements, VHA Handbook, Section 1142.01, and does not have a roommate.
- (6) "Resident" means a Kentucky veteran admitted to a state veterans' nursing facility.
- (7) "Room and board" means the room, dietary services, social services, nursing services, basic laundry services, the use of equipment and facilities, and routine medical and surgical supplies.
- (8) "Routine goods or services" mean those which are not identifiable to a particular individual ~~[resident]~~ but which are used by all residents.
- (9) "Semi-private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center requirements, VHA Handbook, ~~[Section]~~ 1142.01, and does have a roommate.
- (10) "Suite" means a private suite with a private bathroom including a shower that was built in ~~[accordance]~~ with the federal VA's community living center or small house design requirements, VHA Handbook, Section 1142.01, or Small House Model design guide.

Section 2. Charges at State Veterans Nursing Homes.

- (1) The private pay rate for room and board at a state veterans' nursing facility shall be established by each facility based on the total cost of care, community rates and available

revenue sources. Any change to a facility's charges for room and board, goods, and/or services will require advance notification in accordance with 42 C.F.R. Part 483, Subpart B- 483.10(g)(18)(ii). There will be a separate and distinct charge for a semi-private room, a private room, and a suite.~~[according to the following schedule:]~~

~~[(a)] [Semi-private room - \$4,000/month;]~~

~~[(b)] [Private room - \$4,500/month; and]~~

~~[(c)] [Suite - \$5,000/month.]~~

(2) The total monthly charge for a private pay resident shall be:

(a) The applicable private pay rate for room and board;

(b) Any charge for non-routine goods or services; and

(c) Any charge for ancillary services.

Section 3. Computation of Room and Board Charges.

(1) The monthly charge (personal liability as indicated on the MAP-552) for a Medicaid qualified resident shall be established by the Kentucky Department of Medicaid services in ~~[accordance]~~ with 907 KAR 1:006. All items and services considered by the Medicaid program to be non-covered as defined in 907 KAR 1:022, that were provided to Medicaid residents during any period of a covered stay, may be billed to the resident or another payer.

(2) If a veteran meets the requirements established in 38 U.S.C. 1745(a) for a service-connected disability, the veteran shall not be charged for any room and board, goods, or services.

~~(3) [The monthly charge for a private pay veteran shall be established in accordance with Section 2 of this administrative regulation.]~~

~~[(3)] [If a veteran meets the requirements established in 38 U.S.C. 1745(a) for a service-connected disability, the veteran shall not be charged for any room and board, goods, or services.]~~

~~[(4)]~~ The monthly charge for a Medicare recipient qualifying for skilled services shall be the applicable co-payments as established by the Centers for Medicare and Medicaid services in 42 C.F.R. Part 413.

~~(4) [(5)]~~ A late fee of six (6) percent per annum may be assessed on any unpaid balances.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) U.S. Department of Veterans Affairs, "VHA Handbook, Section 1142.01", August 13, 2008; and

(b) U.S. Department of Veterans Affairs, "Small House Model design guide", January 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Kentucky Veterans Centers, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

This is to certify that the Executive Director of the Office of Kentucky Veterans Centers and the Commissioner of the Kentucky Department of Veterans Affairs have reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

MARK BOWMAN, Executive Director

WHITNEY ALLEN, Commissioner

TAMARA REID-MCINTOSH, Esq., Executive Director & Counsel

APPROVED BY AGENCY: December 13, 2022

FILED WITH LRC: December 13, 2022 at 3:05 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, February 23, 2023, at 11:00 a.m. Eastern Time at KDVA Headquarters Office, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through Tuesday, February 28, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Tamara Reid-McIntosh, Esq., Executive Director & Counsel, Office of Veteran Legal Services, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782.5723; fax (502) 564.9240; email tamara.reidmcintosh@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamara Reid-McIntosh

(1) Provide a brief summary of:

(a) What this administrative regulation does:

The regulation establishes the methodology for the maximum monthly resident charge for room and board, goods, and services at state veterans' nursing homes.

(b) The necessity of this administrative regulation:

The regulation furthers the Commonwealth's duty to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The regulation conforms to KRS 40.325(2), which authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The regulation will allow the Department of Veterans' Affairs to charge veteran residents for room and board, goods, and services at state veterans' nursing homes consistent with those required by the U.S. Department of Veterans Affairs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The modification results in the removal of specific dollar amounts for resident charge for room and board, goods, and services at state veterans' nursing homes. In lieu of a specific dollar amount, the modification provides a sixty-day advance notice requirement for any rate or cost of goods increase required under 42 C.F.R. Part 43, Subpart B-483.10(g)(19)(ii).

(b) The necessity of the amendment to this administrative regulation:

The modification affords KDVA the ability to permit rate changes more efficiently and timely based on industry standards.

(c) How the amendment conforms to the content of the authorizing statutes:

Pursuant to KRS 40.325(2), KDVA is authorized to promulgate any administrative regulations necessary to operate the Commonwealth's veterans' homes in compliance with applicable state and federal statutes and guidelines.

(d) How the amendment will assist in the effective administration of the statutes:

The modification affords KDVA the ability to permit rate changes more efficiently and timely based on industry standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There are approximately 275,000 veterans in the Commonwealth. Of those, veterans affected by the proposed administrative change include: (a) Veterans (including their legal representatives) who presently reside in one of the Commonwealth's veterans' homes at present. (b) Veterans (including their legal representatives) who presently reside in one of the Commonwealth's veterans' homes in the future. (c) Any individual

or other organization (such as a veteran service organization (VSO)) inquiring about cost structure of the Commonwealth's veterans homes.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

There are no compliance requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no initial implementation costs.

(b) On a continuing basis:

There will be no continuing implementation costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

The administrative regulation amendment will not require an increase in fees or any additional funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation amendment neither establishes fees nor directly or indirectly increases fees.

(9) TIERING: Is tiering applied?

Pursuant to KRS 13A.210, tiering is used to efficiently and effectively solve the problem that this amendment will address. In this case, the amendment is meant to make it less administratively burdensome for KDVA to make modifications to charges to veteran residents for room and board, goods, and services at state veterans' nursing homes when the U.S. Department of Veterans Affairs makes the same or similar modifications to its charges.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

There is no fiscal impact to the amendment to this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

Not Applicable.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

Not Applicable.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):Not Applicable.

Expenditures (+/-):Not Applicable.

Other Explanation:

Not Applicable.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

Not Applicable.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):Not Applicable.

Expenditures (+/-):Not Applicable.

Other Explanation:

Not Applicable.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS13A.010(13)] The amendment to this regulation will have no major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

42 C.F.R. Part 483.

(2) State compliance standards.

KRS 40.320, 40.325, 38 U.S.C. 1745(a)

(3) Minimum or uniform standards contained in the federal mandate.

There is not a minimum or uniform standard contained in the federal mandate.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

The administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not Applicable.