

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

Dated: November 17, 2023.

S.M. Murray,

Commander, U.S. Coast Guard, Alternate Captain of the Port Buffalo.

[FR Doc. 2023–26149 Filed 11–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AR62

Payments Under State Home Care Agreements for Nursing Home Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with one change, a proposed rule amending its State home per diem regulation to provide a new formula for calculating the prevailing rate VA would pay a State home that enters into a State home care agreement to provide nursing home care to eligible veterans.

DATES: This rule is effective December 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Colette Alvarez, Chief of Staff Home Per Diem Program, Geriatrics and Extended Care (12GEC), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (FR) on December 21, 2022, VA proposed to amend its per diem regulations in part 51 of title 38, Code of Federal Regulations (CFR) to provide a new formula for calculating the prevailing rate VA will pay a State home that enters into a State home care agreement to provide nursing home care to eligible veterans. 87 FR 78038. VA provided a 60-day comment period, which ended on February 21, 2023. Two comments were received, one of which included multiple issues, and these comments are addressed below by topic. VA makes one change to the rule based on the comments received.

U.S. Public Health Service (USPHS) and Eligibility for Care in a State Home

One commenter questioned whether veterans of the USPHS are eligible for care in State homes even if the State does not recognize service in the USPHS for veteran status. The commenter further asserts that USPHS veterans are veterans by Federal law and eligible for all VA benefits, and if a State home is receiving funding from VA then a USPHS veteran should be eligible for care in that State home even if the State does not recognize a USPHS veteran for other State benefits.

While VA considers this comment outside of the scope of the rulemaking, we clarify that an individual is a veteran under 38 United States Code (U.S.C.) 101(2) if the individual “served in the active military, naval, air, or space service and . . . was discharged or released therefrom under conditions other than dishonorable.” “Active military, naval, air, or space service” includes “active duty” and certain periods of “active duty for training” and “inactive duty training” which are all defined by 38 U.S.C. 101(21)–(24). These terms prescribe the type of service an individual needs to have had to be eligible for VA health care benefits under 38 U.S.C. 1710 and 1705 and are inclusive of service in the USPHS. 38 Code of **Federal Register** (CFR) 17.31 generally incorporates the 38 U.S.C. 101 definitions of active service, active duty, active duty for training, and inactive duty training, as well as certain other service recognized as active service under 38 U.S.C. 106. In short, § 17.31 addresses the duty periods considered under active service for eligibility for VA medical benefits, and it is inclusive of service in the USPHS. Thus, an individual with full-time service in the USPHS may qualify as a “veteran” for purposes of health care benefits administered by VA.

However, the designation of veteran for purposes of VA health care benefits does not require a State home to accept a veteran into State home. The VA State home program pays per diem to State homes for three types of care provided to eligible veterans: nursing home care, domiciliary care, and adult day health care (ADHC). The statutory authority for the payment program is set forth at 38 U.S.C. 1741–43 and VA has published regulations governing this program at 38 CFR part 51. Sections 51.50 through 51.52 address which veterans are eligible for purposes of payment of per diem for nursing home care, domiciliary care, and ADHC, respectively. An important distinction is that while VA can pay per diem to State homes for care

provided to eligible veterans, State homes are not obligated to accept all eligible veterans. VA does not have management authority over State homes. State homes are owned and operated by State governments and each State establishes eligibility and admission criteria for its homes. State homes may have additional admission requirements such as age, wartime service, years of service, and residency requirements. Therefore, VA is unable to dictate which eligible veterans for purposes of payment of per diem may be admitted to a State home. VA makes no changes based on this comment.

State Home Responsibilities Under the Prevailing Rate

One commenter raised concerns that VA is proposing to continue to use the Centers for Medicare and Medicaid Services (CMS) Prospective Payment System (PPS) for creating the baseline for the prevailing rate without utilizing Medicare’s consolidated billing guidelines to confirm which services are covered under the rate. Specifically, the commenter referred to the Medicare Claims Processing Manual Chapter 6—Skilled Nursing Facility (SNF) Inpatient Part A Billing and SNF Consolidated Billing (Medicare Manual).¹ The commenter stated that all services considered within the scope and capability of nursing home care are paid under the PPS rate and that the Medicare Manual lists which services are included and excluded under the PPS rate. Further, the commenter suggested that VA should use the Medicare Manual to confirm which services are covered under the prevailing rate because State homes are finding more instances where there is an expectation for State homes to pay for services that have been specifically excluded under PPS. The commenter specifically mentioned psychologist and psychiatric services, and high-cost medications (e.g., high-intensity anti-cancer drugs). The commenter also stated that all drugs not listed on the most recent VA formulary should qualify for an exclusion from the prevailing rate calculation since these medications are not routinely administered in a SNF or are exceptionally expensive. Finally, the commenter requested a guide for State homes and VA staff to determine the

¹ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Medicare Claims Processing Manual Chapter 6—SNF Inpatient Part A Billing and SNF Consolidated Billing (Rev. 11109, 11–04–21), <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/clm104c06.pdf> (last visited April 11, 2023).

financial responsibility for the full coordination of care.

We interpret that this commenter is expressing concern that State homes are not being adequately compensated by VA under the prevailing rate for certain care (such as psychologist and psychiatric services, and high-cost medications as mentioned in the comment) by virtue of VA not using the Medicare Manual to confirm which services are covered and which services are excluded. Further we interpret that this commenter believes that if VA uses the Medicare Manual to confirm covered and excluded services, then State homes would be allowed to seek payment for excluded services in addition to the prevailing rate. However, VA has no clear indication that State homes are being inadequately compensated for care, even when drugs and medications, and psychologist and psychiatric services are furnished. We also believe that VA's current payment structure for State home care will remedy inadequate compensation were it to become an issue. Under § 51.41, payment by VA to State homes for care of a veteran is payment in full for care the State home provides that veteran. 38 U.S.C. 1745(a)(3). In accordance with 38 U.S.C. 1745(a)(2), VA has developed a payment methodology to adequately reimburse State homes for the care provided under agreements with VA, where VA has established two methods of payment in 38 CFR 51.41, one each for State home contracts and State home care agreements, respectively. State homes that enter into contracts will be compensated at the rate negotiated in the contract. On the other hand, State homes that enter into State home care agreements will be compensated using the prevailing rate, which is calculated to compensate State homes for the average cost of providing nursing home care to the veterans whose care is covered under 38 CFR 51.41, including, as indicated in § 51.41(c)(2), the cost of drugs and medicines. Although the costs of all drugs and medications, including those that are not on the VA formulary, as well as psychologist and psychiatric services are not payable separately from general payments under State home care agreements, if a State home cannot accept the prevailing rate that VA offers in a State home care agreement, that State home has the option to request a contract under § 51.41 and would then be able to negotiate with VA for a specific contract rate.

We otherwise do not find that using the Medicare Manual the commenter references would be appropriate or necessarily transferrable to the

determination of which services are covered and which services are excluded under the prevailing rate as that Medicare Manual is used for care in a SNF that is measured in only limited benefit periods, whereas VA's payments are not so limited. In the cited Medicare Manual, in each benefit period, Medicare Part A covers up to 20 full days of care, after that Medicare Part A covers up to an additional 80 days with the beneficiary paying coinsurance for each day, and after 100 days, the SNF coverage exhausts and the beneficiary pays for all care, except for certain Medicare Part B services.² The benefit period begins on the day a Medicare beneficiary is admitted to a hospital or SNF as an inpatient and ends after the beneficiary has not been a hospital inpatient or received skilled care in a SNF for 60 consecutive days.³ Once the benefit period ends, a new benefit period begins when the beneficiary is admitted to a hospital or SNF.⁴ Further, a new benefit period does not begin due to a change in diagnosis, condition, or calendar year.⁵ However, unlike Medicare part A coverage, under § 51.41, VA will pay a State home the prevailing rate for the duration that a State home provides care to a veteran, even if it exceeds Medicare's 100 day benefit period. Therefore, VA believes that because the Medicare Manual referenced by the commenter is premised on a limited benefit period, it is not applicable or relevant to the payment VA provides to State homes under the prevailing rate for an indefinite period of time.

For the reasons stated above VA makes no changes based on this comment.

Prevailing Rate for ADHC

One commenter stated that the ADHC prevailing rate includes transportation to and from the ADHC program and is a key element of the service to veterans and their caregivers. The commenter asserted that due to the Coronavirus Disease-2019 (COVID-19), the cost of ambulette transportation has tripled in labor, gas, vehicle maintenance, and insurance and that these costs have grown much higher than the typical inflationary increase in the SNF

Consumer Price Index (CPI), which the commenter asserted was used by VA to calculate the proposed rate change. To the extent the commenter is concerned that the CPI index for medical care that includes an item for nursing home and adult day care services⁶ is not sufficient to cover the cost of ambulette transportation, VA did not use any CPI index as a factor in the proposed change to the prevailing rate for nursing home care. As stated in the proposed rule, VA believes that the CMS SNF Market Basket rate would more accurately reflect actual costs than would an alternate method such as a component of the CPI. 87 FR 78040 (December 21, 2022). VA makes no changes based on this comment.

One commenter raised concerns regarding the proposed non-substantive change for the title of § 51.41(c) from "*Payments under State home agreements.*" to *Payments for nursing home care under State home care agreements.*" The commenter noted that the calculation of the prevailing rate for nursing home care is also the foundation for the prevailing rate paid for ADHC and that it is equally important to ensure the rate paid for ADHC is representative of the services being provided. VA agrees with the commenter that § 51.41(c) is the current foundation for the prevailing rate paid for ADHC. On March 27, 2018, the State Veterans Home Adult Day Health Care Improvement Act of 2017 (ADHC Improvement Act), Public Law 115-159, was signed into law. The ADHC Improvement Act added a new paragraph (d) to 38 U.S.C. 1745 authorizing VA to pay State homes for providing medical supervision adult day health care to eligible veterans. A proposed rule to implement the ADHC Improvement Act is currently being developed which will be made available to the public for comment. Any changes to the title of § 51.41(c), if necessary, will be addressed in that rulemaking; therefore, VA will not finalize the proposed revision to the title of § 51.41(c) and the title will remain as "*Payments under State home care agreements.*"

Based on the rationale set forth in this document, VA is adopting the proposed rule as final with one change as noted above.

² U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Medicare Learning Network: Skilled Nursing Facility Billing Reference, ICN MLN006846 (May 2022), <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/EnrollmentResources/provider-resources/snf-billing-reference.html> (last visited April 11, 2023).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ U.S. Department of Labor, U.S. Bureau of Labor Statistics, Consumer Price Index, Measuring Price Change in the CPI: Medical Care (Feb. 10, 2023), <https://www.bls.gov/cpi/factsheets/medical-care.htm> (last visited April 7, 2023).

Executive Orders 12866, 13563 and 14094

Executive Orders 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The rulemaking revises the formula VA uses to calculate the per diem it pays State homes for nursing home care of certain veterans. The effect of the rule is to change VA payments to State homes. Therefore, this rule only affects veterans and State homes.

All State homes are owned, operated, and managed by State governments, except for a small number operated by entities under contract with State governments. Neither these contractors nor State governments are small entities as defined in 5 U.S.C. 601. State homes subject to this final rulemaking are State homes that are currently under a State home care agreement, those that enter into a new agreement, and any facility that begins an agreement for the first time. The rule will impose no direct costs on the State homes. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis

requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act

Although this action relates to provisions constituting collections of information at 38 CFR 51.41, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information would be associated with this final rule. The information collection requirements for § 51.41(e) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0091 and 2900–0160.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 51

Administrative practice and procedure, Claims, Adult Day Health Care, Dental health, Domiciliary, Government contracts, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on November 16, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons described in the preamble, Department of Veterans Affairs amends 38 CFR part 51 as follows:

PART 51—PER DIEM FOR NURSING HOME, DOMICILIARY, OR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

■ 1. The general authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743, 1745, and as follows.

* * * * *

■ 2. In § 51.41 revise paragraph (c)(1) to read as follows:

§ 51.41 Contracts and State home care agreements for certain veterans with service-connected disabilities.

* * * * *

(c) * * *

(1) State homes must sign an agreement to receive payment from VA for providing care to certain eligible veterans under a State home care agreement. A State home care agreement for nursing home care under this section will provide for payments at the rate determined by the following formula.

(i) Determine whether the Resource Utilization Groups (RUG) or Skilled Nursing Facility Prospective Payment System (SNF–PPS) applies.

(A) For State homes in a metropolitan statistical area, use the published fiscal year Centers for Medicare and Medicaid Services (CMS) RUG case-mix levels for the applicable metropolitan statistical area.

(B) For State homes in a rural area, use the published fiscal year CMS SNF–PPS case-mix levels for the applicable rural area.

(ii) Compute the daily rate for each State home, using the following formula in the order described:

(A) Multiply the labor component by the State home wage index for each of the applicable case-mix levels.

(B) Add to that amount the non-labor component.

(C) Divide the sum of the results of these calculations by the number of applicable case-mix levels.

(D) Add to this quotient the 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, then multiplied by 12, then divided by the number of days in the year. The resulting sum is the per diem baseline rate for the State home.

(E) Multiply the per diem baseline rate from the previous year by the CMS Skilled Nursing Facilities (SNF) Market Basket increase in effect as of December 28, 2023. The sum establishes the reference total per diem baseline rate

from which subsequent fiscal year per diem rates will be calculated. For calculation of SNF per diem rates for subsequent fiscal years VA will apply the CMS SNF Market Basket increase to the total per diem each year.

Note 1 to paragraph (c)(1): The amount calculated under this formula reflects the prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a State home. The amount calculated under this formula applies to both new and existing facilities with State home care agreements. Further, the formula for establishing these rates includes CMS information that is published in the **Federal Register** every year and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

* * * * *

§ 51.70 [Amended]

■ 3. In § 51.70, in paragraph (n), remove “51.110(d)(2)(ii) of this part” and add in its place “51.110(e)(2)(ii)”.

§ 51.110 [Amended]

■ 4. In § 51.110, in paragraph (d), remove “Version 2.0” and add in its place “Version 3.0”.

§ 51.300 [Amended]

■ 5. In § 51.300, in paragraph (d)(3), remove “(a)(2)(i) through (vii)” and add in its place “(d)(2)(i) through (vii)”.

[FR Doc. 2023–25998 Filed 11–27–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0076; FRL–10663–02–R9]

Air Plan Revisions; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter (PM) from wood burning devices. We are approving a local measure that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective December 28, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0076. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Elijah Gordon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3158 or by email at gordon.elijah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On April 14, 2023 (88 FR 22978), the EPA proposed to approve the following measure into the California SIP.

TABLE 1—SUBMITTED MEASURE

Local agency	Resolution No.	Measure title	Adopted	Submitted
SJVUAPCD	21–11–7	Burn Cleaner Fireplace and Woodstove Change-out Incentive Measure (“Burn Cleaner Incentive Measure”).	11/18/2021	03/17/2022

We proposed to approve this measure because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the measure and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received three public comments. The first two comments fail to identify any issue that is germane to our action on the measure and are outside the scope of this rulemaking. One of these comments included offensive content and was therefore not posted to the public docket. The other comment discusses wildfires and vehicle emissions. Our response to the

third comment from Sheraz Gill, Deputy Air Pollution Control Officer (APCO) of SJVUAPCD, is below.

Comment: After providing a summary of the measure, the commenter expresses concerns that, although the measure meets all four integrity elements necessary for an incentive measure to be fully approvable into the SIP, the EPA has chosen to not give SIP emission reduction credit. The commenter states “. . . the District is concerned with EPA’s proposed approval not including emission reduction credit for this measure, as the program has achieved and will continue to achieve significant emissions reductions in the San Joaquin Valley.” The commenter recommends that the EPA include in our final approval of

this measure SIP credit for the specific emission reductions quantified.

Response: As explained in our proposal, SJVUAPCD regulates a PM_{2.5} nonattainment area classified as Serious for the 1997 (24-hour 65 µg/m³ and annual 15 µg/m³ limit), 2006 (24-hour 35 µg/m³ limit), and 2012 (annual 12 µg/m³ limit) PM_{2.5} National Ambient Air Quality Standards (NAAQS). The District adopted the 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} NAAQS (2018 PM_{2.5} Plan) in November 2018 to help bring the District into attainment for these NAAQS.¹ The 2018 PM_{2.5} Plan includes aggregate emissions reduction commitments by the SJVUAPCD to achieve an additional 1.30 tons per day (tpd), annual average, direct PM_{2.5}

¹ 2018 PM_{2.5} Plan, ES–8.