

Dated: August 19, 2011.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 51

RIN 2900-AN63

Per Diem Payments for the Care Provided to Eligible Veterans Evacuated From a State Home as a Result of an Emergency

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations concerning per diem payments to States to permit continuation of such payments in some situations for veterans who have been evacuated from a State home as a result of an emergency. Per diem is the daily rate paid by VA to a State for providing a specified level of care to eligible veterans in a facility that is officially recognized and certified by VA. This final rule authorizes VA to continue to pay per diem when veterans for whom VA is paying per diem are evacuated as a result of an emergency from a State home to a facility that is not recognized by VA as a State home. The rule requires, in order for per diem payments to continue while the veteran is relocated due to an emergency, that an appropriate VA official determine whether an emergency exists and whether the facility to which veterans may be evacuated (evacuation facility) complies with certain minimum standards. The rule establishes the minimum standards that facilities to which veterans are evacuated must meet in order for States to continue receiving per diem for relocated veterans. These standards also apply to evacuation facilities when veterans are evacuated from contract nursing homes.

DATES: *Effective Date:* This final rule is effective October 11, 2011. This final rule applies to all applications for reimbursement pending with VA or received by VA on or after the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Theresa A. Hayes, MPH, RN, Office of Patient Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420, (202) 461-6771 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 1741-1745, VA provides per diem payments to reimburse States for each eligible veteran receiving nursing home care, domiciliary care, and adult day health care in State home facilities that are recognized and certified by VA. Section 1742 specifically provides that "[n]o payment or grant may be made to any home * * * unless such home is determined by the Secretary to meet such standards as the Secretary shall prescribe, which standards with respect to nursing home care shall be no less stringent than those prescribed pursuant to section 1720(b) of this title." The statutes do not address circumstances in which veterans may need to be evacuated temporarily to another facility due to an emergency.

VA implemented its authority to provide per diem payments to States in, inter alia, 38 CFR parts 17 and 51. In a document published in the **Federal Register** on March 23, 2011 (76 FR 16354), VA proposed to amend those regulations to address VA's authority to continue per diem payments to a State for a veteran during an emergency evacuation of the veteran to a temporary or substitute State home facility where the State continues to provide care.

VA provided a 60-day comment period that ended May 23, 2011. VA received no comments. Based on the rationale set forth in the proposed rule and in this document, we are adopting the proposed rule as a final rule without change.

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 an 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 given year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule does not contain any collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Executive Order 12866

Executive order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it does not constitute a significant regulatory action under the Executive Order.

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. This final rule affects veterans receiving care in State facilities and will not have a significant economic impact on any small entities. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of section 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.009 Veterans Medical Care Benefits, 64.010 Veterans Nursing Home Care, and 64.011 Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document 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. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on September 1, 2011, for publication.

List of Subjects**38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 51

Administrative practice and procedure, Claims, Day care, Dental Health, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professionals, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: September 1, 2011.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR parts 17 and 51 as follows:

PART 17—MEDICAL

- 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

- 2. Add § 17.58 to read as follows:

§ 17.58 Evacuation of community nursing homes.

When veterans are evacuated from a community nursing home as the result of an emergency, they may be relocated to another facility that meets certain minimum standards, as set forth in 38 CFR 51.59(c)(1).

(Authority: 38 U.S.C. 501, 1720)

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

- 3. The authority citation for part 51 is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743; and as stated in specific sections.

- 4. Add § 51.59 to subpart C to read as follows:

§ 51.59 Authority to continue payment of per diem when veterans are relocated due to emergency.

(a) *Definition of emergency.* For the purposes of this section, emergency means an occasion or instance where all of the following are true:

(1) It would be unsafe for veterans receiving care at a State home facility to remain in that facility.

(2) The State is not, or believes that it will not be, able to provide care in the State home on a temporary or long-term basis for any or all of its veteran residents due to a situation involving the State home, and not due to a situation where a particular veteran's medical condition requires that the veteran be transferred to another facility, such as for a period of hospitalization.

(3) The State determines that the veterans must be evacuated to another facility or facilities.

(b) *General authority to pay per diem during relocation period.*

Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who resided in a State home, and for whom VA was paying per diem, if such veteran is evacuated during an emergency into a facility other than a VA facility if the State is responsible for providing or paying for the care. VA will not pay per diem payments under this section for more than 30 days of care provided in the evacuation facility, unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to return the veteran to a State home within the 30-day period, in which case such official will approve additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran is or has been placed in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(c) *Selection of evacuation facilities.* The following standards and procedures apply to the selection of an evacuation facility in order for VA to continue to pay per diem during an emergency; these standards and procedures also apply to evacuation facilities when veterans are evacuated from a nursing home care facility in which care is being provided pursuant to a contract under 38 U.S.C. 1720.

(1) Each veteran who is evacuated must be placed in a facility that, at a minimum, will meet the needs for food,

shelter, toileting, and essential medical care of that veteran.

(2) For veterans evacuated from nursing homes, the following types of facilities may meet the standards under paragraph (c)(1) of this section:

- (i) VA Community Living Centers;
- (ii) VA contract nursing homes;
- (iii) Centers for Medicare and Medicaid certified facilities; and
- (iv) Licensed nursing homes.

Note to paragraph (c)(2): If none of the above options are available, veterans may be evacuated temporarily to other facilities that meet the standards under paragraph (c)(1) of this section.

(3) For veterans evacuated from domiciliaries, the following types of facilities may meet the standards in paragraph (c)(1) of this section:

- (i) Emergency evacuation facilities identified by the city or state;
- (ii) Assisted living facilities; and
- (iii) Hotels.

(d) *Applicability to adult day health care facilities.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who was receiving adult day health care, and for whom VA was paying per diem, if the adult day health care facility becomes temporarily unavailable due to an emergency. Approval of a temporary facility for such veteran is subject to paragraph (e) of this section. If after 30 days the veteran cannot return to the original adult day health care facility, VA will discontinue per diem payments unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to provide care at the original facility or to relocate an eligible veteran to a new facility, in which case such official will approve additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran was provided adult day health care in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(e) *Approval of response.* Per diem payments will not be made under this section unless and until the director of the VAMC determines, or the director of the VISN in which the State home is located (if the VAMC director is not capable of doing so) determines, that an emergency exists and that the evacuation facility meets VA standards set forth in paragraph (c)(1) of this section.

(Authority 38 U.S.C. 501, 1720, 1742)

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA-R04-OAR-2010-0816-201106; FRL-9458-1]****Approval and Promulgation of Implementation Plans; Georgia: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule and Fine Particulate Matter Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is taking final action to approve portions of a revision to the State Implementation Plan (SIP), submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), to EPA on September 30, 2010, for parallel processing. Georgia submitted the final version of this SIP revision on January 13, 2011. The portions of the SIP revision approved by this action incorporate two updates to Georgia's air quality regulations under Georgia's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Georgia's PSD permitting requirements for its greenhouse gas (GHG) emissions. Second, the SIP revision incorporates provisions for implementing the PSD program for the fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). EPA is approving Georgia's January 13, 2011, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the Clean Air Act (CAA or Act) and EPA regulations, including those relating to PSD permitting for GHGs and the PM_{2.5} NAAQS. Additionally, EPA is responding to adverse comments received on EPA's November 29, 2010, proposed approval of Georgia's September 30, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective October 11, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0816. All documents in the docket

are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information 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 either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Georgia SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Bradley's telephone number is (404) 562-9352; *e-mail address:* bradley.twunjala@epa.gov. For information regarding the Tailoring Rule and the NSR PM_{2.5} Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562-9185; *e-mail address:* abrams.heather@epa.gov. For information regarding the PM_{2.5} NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562-9104; *e-mail address:* huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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- IV. Final Action
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I. What is the background for this action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Georgia SIP. Four of these

actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,¹ the "Johnson Memo Reconsideration,"² the "Light-Duty Vehicle Rule,"³ and the "Tailoring Rule."⁴ Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

With regard to the PM_{2.5} NAAQS, EPA finalized a rule on May 16, 2008, including changes to the NSR program (hereafter referred to as the "2008 NSR PM_{2.5} Rule"). See 73 FR 28321. The 2008 NSR PM_{2.5} Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and nonattainment areas. States were required to provide SIP submissions to address the requirements for the 2008 NSR PM_{2.5} Rule by May 16, 2011.

On September 30, 2010,⁵ in response to the Tailoring Rule, earlier GHG-related EPA rules and the 2008 NSR PM_{2.5} Rule, EPD submitted a draft revision to EPA for approval into the Georgia SIP to: (1) Establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Georgia's PSD permitting requirements for GHG emissions; and (2) incorporate provisions for implementing the PSD program for the PM_{2.5} NAAQS. Subsequently, on November 29, 2010, EPA published a proposed rulemaking to approve portions of Georgia's September 30, 2010, SIP revision under parallel processing. See 75 FR 73017. Specifically, EPA proposed to approve

¹ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

² "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

³ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁴ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

⁵ With respect to the PM_{2.5} NAAQS, Georgia's January 13, 2011, SIP revision only addresses PSD requirements. Regarding the nonattainment NSR provisions for the PM_{2.5} NAAQS, EPA is awaiting final SIP submittal from Georgia for the nonattainment NSR PM_{2.5} provisions.