

## §51.41

## 38 CFR Ch. I (7–1–10 Edition)

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) \$71.42 for each day the veteran is in the facility.

(b) During Fiscal Year 2009 and during each subsequent Fiscal Year, VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) The basic per diem rate for the Fiscal Year established by VA in accordance with 38 U.S.C. 1741(c).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)  
[74 FR 19432, Apr. 29, 2009]

### §51.41 Per diem for certain veterans based on service-connected disabilities.

(a) VA will pay a facility recognized as a State home for nursing home care at the per diem rate determined under paragraph (b) of this section for nursing home care provided to an eligible veteran in such facility, if the veteran:

(1) Is in need of nursing home care for a VA adjudicated service-connected disability, or

(2) Has a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability and is in need of nursing home care.

(b) For purposes of paragraph (a) of this section, the rate is the lesser of the amount calculated under the paragraph (b)(1) or (b)(2) of this section.

(1) The amount determined by the following formula. Calculate the daily rate for the CMS RUG III (resource utilization groups version III) 53 case-mix levels for the applicable metropolitan statistical area if the facility is in a metropolitan statistical area, and calculate the daily rate for the CMS Skilled Nursing Prospective Payment System 53 case-mix levels for the applicable rural area if the facility is in a rural area. For each of the 53 case-mix levels, the daily rate for each State home will be determined by multiplying the labor component by the nursing home wage index and then add-

ing to such amount the non-labor component and an 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, and then with the modified rate multiplied by 12 and then divided by the number of days in the year.

NOTE TO PARAGRAPH (b)(1): The amount calculated under this formula reflects the applicable or prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care). Further, the formula for establishing these rates includes CMS information that is published in the FEDERAL REGISTER every summer and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

(2) A rate not to exceed the daily cost of care for the month in the State home facility, as determined by the Chief Consultant, Office of Geriatrics and Extended Care, following a report to the Chief Consultant, Office of Geriatrics and Extended Care under the provisions of §51.43(b) of this part by the director of the State home.

(c) Payment under this section to a State home for nursing home care provided to a veteran constitutes payment in full to the State home by VA for such care furnished to that veteran. Also, as a condition of receiving payments under this section, the State home must agree not to accept drugs and medicines from VA on behalf of veterans provided under 38 U.S.C. 1712(d) and corresponding VA regulations (payment under this section includes payment for drugs and medicines).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

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