§ 1912.11 Terms of ad hoc committee members.

Each member of an ad hoc advisory committee shall serve for such period as the Assistant Secretary may prescribe in his notice of appointment. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint a new member to serve for the remaining portion of the period prescribed in the notice appointing the original member of the committee.

PART 1912a—[AMENDED]

5. The authority citation for 29 CFR Part 1912a is revised to read as follows:

Authority: Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

6. Section 1912a.3 is revised to read as follows:

§ 1912a.3 Terms of membership.

Commencing on July 1, 1973, the terms of membership shall be divided into two classes, each consisting of six members. Members of the first class shall be appointed for a term of one year. Members of the second class shall be appointed for a term of two years. Thereafter, members shall be appointed for regular terms of two years. At all times the Committee shall be composed of representatives of management, labor, and occupational safety and health professions, and of the public. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

[FR Doc. 02–122 Filed 1–4–02; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 52

RIN 2900–AJ74

Per Diem for Adult Day Health Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes regulations setting forth a mechanism for paying per diem to State homes providing adult day health care to eligible veterans. The intended effect of the rule is to ensure that veterans receive high quality care in State homes.

DATES: *Effective Date:* February 6, 2002.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of February 6, 2002.

FOR FURTHER INFORMATION CONTACT: L. Nan Stout, Chief, State Home Per Diem Program (114), Veterans Health Administration, 202–273–8538.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 28, 2000 (65 FR 39835), we proposed to establish a new part 52 setting forth a mechanism for the Department of Veterans Affairs (VA) to pay per diem to State homes providing adult day health care to eligible veterans. We provided a 60-day comment period which ended August 28, 2000. We received comments from six states and one association. The issues raised in the comments are discussed below. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule with changes explained below.

One commenter commended VA for including provisions in the rule to ensure that State homes meet the fire and safety provisions of the National Fire Protection Association's Life Safety Code entitled ''NFPA 101, Life Safety Code.'' The final rule incorporates, by reference, the 2000 edition instead of the 1997 edition since the Life Safety Code has been updated.

A commenter questioned VA's authority to establish the provisions in § 52.40 that provide for State home payments to be made on a per diem basis. The commenter asserted that instead of per diem payments the payments should be made based on individual contracts between VA and the State. The commenter further asserted that the proposed per diem amount is inadequate to cover State costs, including construction and other capital expenditures. No changes are made based on these comments. In 38 USC 1741(a)(2) VA is authorized to make payments to State homes for adult day health care only on a per diem basis at a rate determined by VA. We believe Congress intended VA to determine one national per diem as is required for per diem payments for domiciliary, nursing home, or hospital care. We also do not believe this statute can be interpreted to permit contracting for care in State homes because it requires VA to ''determine'' a per diem rate. This per diem rate is not intended to cover costs of construction and capital expenditures. To obtain VA assistance in paying for those costs, States may apply for a State home construction or acquisition grant established under 38 USC 8131–8136.

One commenter stated that staffing would be cost-prohibitive with the low per diem amount paid by VA. No changes are made based on this comment. The per diem amount is a grant to a State under 38 U.S.C. 1741 for adult day health care, but was not intended to cover the total cost of care.

The proposed regulations at § 52.40(a)(2) state that per diem will be paid only for a day that the veteran is under care of the facility at least six hours. Three commenters asserted that the six-hour requirement should be lessened. They argue that their costs are fixed and based on the projected numbers for each day. We believe that we should provide per diem only for periods for which a veteran would be provided the full range of therapeutic activities that the veteran needs. Upon further reflection we believe this still can be accomplished if the veteran is present for at least three hours. Consistent with this conclusion and administrative concerns, we have changed the rule to allow for one per diem payment for a period of six hours or more in one calendar day or any two periods of at least three hours each (but each less than six hours) in any two calendar days in a calendar month.

The proposed regulations at § 52.50 set forth eligibility requirements for veterans receiving adult day health care on whose behalf VA pays per diem. One commenter asserted that the criteria are too restrictive. No changes are made based on this comment. The eligibility criteria reflect statutory requirements that may not be changed by regulation.

The proposed rule at § 52.80 provides that participants in the adult day health care program must meet certain conditions, including two of seven indicators. One of the indicators is met simply by being ''75 years old or over.''

One commenter asserted that the indicator should include individuals 65 years of age or older. No changes are made based on this comment. Age is only one of the seven criteria. We believe that 75 is the appropriate threshold for concluding that meeting at least one of the other criteria would customarily create the types of needs requiring admission to an adult day health care facility. Those younger than 75 could still meet the admission criteria if they meet at least two of the other criteria.

The proposed regulations at § 52.110(c)(1) provided a comprehensive assessment as follows: ''The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) Health Care Administration Long-term Care Resident Assessment Instrument Version 2.0.'' These provisions reflect standards for inpatient care. We are changing the assessment tool to the ''Minimum Data Set for Home Care (MDS-HC) Instrument Version 2.0'' to provide a tool appropriate for outpatient type settings such as adult day health care.

The proposed regulations at § 52.110(c)(1)(ii) stated that one initial home visit must be conducted as part of the needs assessment for the veteran. Three commenters asserted that this should not be included as a requirement. Upon further consideration, we agree that these provisions should not be mandatory. Although we recommend home visits, information regarding the home environment can be obtained by other means, e.g., from family members. We have revised the regulations accordingly.

The proposed regulations at § 52.130 state that VA recommends that the nurse on duty at the adult day health care facility be a geriatric nurse practitioner or clinical nurse specialist. One commenter indicated that this would cause an undue hardship. We make no changes based on this comment. This is only a recommendation, not a requirement.

The proposed regulations at § 52.140(e)(1) provide that adult day health care patients must be provided at least two meals daily. Three commenters asserted that one meal a day should be sufficient. Most veterans stay at least six hours a day and come in time for breakfast. Accordingly, we believe that adult day health care facilities must provide at least two meals for these veterans. However, for a veteran stay of no more than four hours there would be no need to provide two meals. Accordingly, the final rule is modified to require two meals a day for a veteran stay of more than four hours and only one meal a day for a veteran stay of less than four hours.

One commenter noted a typographical error in proposed 52.150(b)(3) which refers to a paragraph ''(f)''. The reference, which is corrected by this document, should have been to paragraph ''(e)''.

The proposed regulations at § 52.200 set forth standards for the physical environment of State home adult day health care facilities. One commenter asserted that these provisions would be too demanding if applied to existing facilities. No changes are made based on this comment. Currently, there are no State homes receiving per diem under VA's State adult day health care program. We believe the proposed standards for physical environment represent the minimum standards needed to provide high quality care.

The proposed regulations at § 52.200(b)(3) state that the indoor space for an adult day health care facility must be at least 60 square feet per participant excluding office space for staff. One commenter asserted that the regulations should impose a 30-square feet requirement. No changes are made based on this comment. We believe that 60 square feet of program space per participant is necessary for participants to have access to the full range of program activities, services, and equipment that is needed to provide high quality care.

The proposed rule at § 52.210(e) states that if a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time, onsite basis. One commenter questioned whether the State employee would qualify as full-time, onsite if such individual on a full-time basis oversaw the adult day health care facility while also overseeing a colocated State home for nursing home and domiciliary services. We believe that the oversight function could be met under the factual situation presented by the comments. We have amended the rule accordingly.

The proposed regulations at § 52.210(g)(3) provide that ''[t]he staff-participant ratio must be sufficient in number and skills (at least one staff to four participants) to ensure compliance with the standards of this part.'' Three commenters asserted that this should be no more stringent than the ratio of one staff to 4–6 participants, which VA adult day health care facilities use. We agree that under the criteria in § 52.210(g)(3) the ratio of one staff to 4–6 participants would be adequate to meet the needs of the participants. Accordingly, we have changed the provisions in § 52.210(g)(3) to allow the ratio of one staff to 4–6 participants.

The proposed rule at § 52.210(s) states that a facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care. One commenter asserted that this requirement would be too demanding. No changes are made based on this comment. We believe that designated spaces are needed for each level of care. Otherwise, the special needs for each program might not be adequately addressed.

The proposed regulations at § 52.220(a) state that ''the adult day health care program management must provide, arrange, or contract for transportation'' for participants. Three commenters asserted that State homes should not be required to provide transportation from a veteran's home to the adult day health care facility. We believe that transportation should be included in the cost of operating the adult day health care facility. Transportation is the single most important service the State can provide for a successful adult day health care program. The only way to ensure availability of transportation is to include it as a responsibility of a State. However, we also believe that the veteran or the veteran's family should be able to decline transportation offered by the adult day health care program management and make their own arrangements for the transportation. These concepts are consistent with the original purpose in the proposed rule. Changes are made to the final rule to more clearly reflect these concepts.

The proposed regulations at § 52.220(c) provide that all vehicles transporting participants to and from adult day health care facilities must be equipped with a device for two-way communication and one additional staff person besides the driver. One commenter asserted that these provisions should be deleted, and another commenter asserted that it was not necessary to have an additional staff person besides the driver. We have retained the provisions requiring the vehicle to be equipped with a device for two-way communication. This is necessary to ensure that the adult day health care officials would be able to provide any necessary information or assistance in an emergency situation. However, we are deleting the proposed requirement of one additional staff person besides the driver. We believe the driver would be able to provide or

obtain assistance as necessary for patient safety.

The provision at § 52.40 sets forth the per diem amount for eligible veterans participating in a State home adult day health care. This is the amount authorized under 38 U.S.C. 1741 and Congressionally-approved in the budget. For fiscal year 2002 the amount is 34.64. Accordingly, the final rule includes the rate for fiscal year 2002. In addition to academic requirements, the proposed rule at § 52.2 provided that a clinical nurse specialist must have at least two years of successful clinical practice in the specialized area of nursing practice following academic preparation. Upon further review, we have determined that the academic requirements are sufficient to qualify an individual to conduct the duties of a clinical nurse specialist. Accordingly, we have deleted the practice requirement.

In § 52.10, we included transition provisions for recognized adult day health care facilities. However, we are deleting these provisions because there are no adult day health care facilities that would be eligible to utilize the transition provisions.

In § 52.100 we included requirements that a therapeutic recreation specialist must be licensed or registered, if applicable, by the State in which the individual practices. We are deleting the reference to ''registered'' since no State registers therapeutic recreation specialists.

In § 52.130, we proposed that the nurse staffing must be based on a staffing methodology that uses case mix. We have deleted this provision because the needs of patients are similar in adult day health care facilities and there is no need for case mix.

In § 52.200, we proposed that an adult day health care facility provide a quiet room that, among other things, would allow for rest. To accomplish this the room must have a bed. We have amended these provisions to specify that the room must have a bed. Also, editorial changes are made for purposes of clarity.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are set forth in the provisions of §§ 52.20, 52.30, 52.40, 52.70, 52.71, 52.80, 52.90, 52.100, 52.110, 52.120, 52.130, 52.150, 52.160, 52.180, 52.190 and 52.210 of this rule. Many of these collections of information require the submission to VA of information on forms published at 38 CFR part 58.

The information collections in this document concern various activities related to the operation of a State home providing adult day health care to eligible veterans.

The collection of information contained in the notice of proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Interested parties were invited to submit comments on the collection of information. However, no comments were received. OMB has approved this information under control number 2900–0160.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

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. All of the entities that are subject to this final rule are State government entities under the control of State governments. Of the 102 State homes, all are operated by State governments except for 20 that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Executive Order 12866

This document has been reviewed by OMB pursuant to Executive Order 12866.

Executive Order 13132

This document does not have federalism implications under Executive Order 13132.

List of Subjects in 38 CFR Part 52

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, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 17, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reason set forth in the preamble, 38 CFR Chapter I is amended by adding a new part 52 to read as follows.

PART 52—PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

Subpart A—General

Sec.

Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

Subpart C—Per Diem Payments

Subpart D—Standards

Authority: 38 U.S.C. 101, 501, 1741–1743, unless otherwise noted.

Subpart A—General

§ 52.1 Purpose.

This part sets forth the mechanism for paying per diem to State homes providing adult day health care to eligible veterans and includes quality assurance requirements that are intended to ensure that veterans receive high quality care in State homes.

§ 52.2 Definitions.

For purposes of this part—

Activities of daily living (ADLs) means the functions or tasks for self-care usually performed in the normal course of a day, i.e., mobility, bathing, dressing, grooming, toileting, transferring, and eating.

Clinical nurse specialist means a licensed professional nurse with a master's degree in nursing and a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing.

Facility means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of adult day health care or a building, or any part of a building, which VA has recognized as a State home for the provision of adult day health care.

Instrumental activities of daily living (IADLs) means functions or tasks of independent living, i.e., shopping, housework, meal preparation and cleanup, laundry, taking medication, money management, transportation, correspondence, and telephone use.

Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses Association.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

Physician assistant means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and to accomplish other clinical tasks under the appropriate supervision by the primary care physician.

Primary physician or *Primary care physician* means a designated generalist physician responsible for providing, directing and coordinating health care that is indicated for the residents.

State means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State home means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the State home also provides domiciliary and/or nursing home care.

VA means the U.S. Department of Veterans Affairs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

§ 52.10 Per diem based on recognition and certification.

VA will pay per diem to a State for providing adult day health care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility management meet the standards of subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.20 Application for recognition based on certification.

To apply for recognition and certification of a State home for adult day health care, a State must:

(a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;

(b) Allow VA to survey the facility as set forth in § 52.30(c); and

(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.30 Recognition and certification.

(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction, regarding whether the facility and program management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the program, the State official authorized to oversee operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and program management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or program management does not meet one or more of the standards in subpart D of this part, that the deficiencies do not jeopardize the health or safety of the residents, and that the program management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the program, the State official authorized to oversee the operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the certification, provisional certification, or noncertification.

(b) Once a program has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or program management does not meet the standards of subpart D of this part. Recognition of a program will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and program management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the program that have a bearing on compliance with any of the requirements of this part (including any

reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home adult day care health program management must submit to the director a completed VA Form 10–3567, ''Staffing Profile'', set forth at 38 CFR 58.10. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; and representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or program management does not meet the standards of this part, the director will notify the State home program manager in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N1–22), the Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit an appeal to the Under Secretary for Health in writing within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the State home facility or program management does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition at the State home facility that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

Subpart C—Per Diem Payments

§ 52.40 Monthly payment.

(a)(1) During Fiscal Year 2002, VA will pay monthly one-half of the total cost of each eligible veteran's adult day health care for each day the veteran is in a facility recognized as a State home for adult day health care, not to exceed $34.64 per diem.

(2) Per diem will be paid only for a day that the veteran is under the care of the facility at least six hours. For purposes of this paragraph a day means

(i) Six hours or more in one calendar day; or

(ii) Any two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10–5588, ''State Home Report and Statement of Federal Aid Claimed.'' This form is set forth in full at 38 CFR 58.11.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms: 10–10EZ, ''Application for Medical Benefits'', and 10–10SH, ''State Home Program Application for Care—Medical Certification'', at the time of enrollment and with any request for a change in the level of care (nursing home, domiciliary or hospital care). These forms are set forth in full at 38 CFR 58.12 and 58.13, respectively. If the program is eligible to receive per diem payments for adult day health care for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph (a)(5), except that VA will pay per diem from the day on which the veteran was enrolled in the program if VA receives the completed forms within 10 days after enrollment.

(b) For determining ''the one-half of the total cost'' under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments'' (OMB Circulars are available at the addresses in 5 CFR 1310.3).

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran meets the definition of a veteran in 38 U.S.C. 101, is not barred from receiving this VA care under 38 U.S.C. 5303–5303A, needs adult day health care, and is within one of the following categories:

(a) Veterans with service-connected disabilities;

(b) Veterans who are former prisoners of war;

(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(d) Veterans who receive disability compensation under 38 U.S.C. 1151;

(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for adult day health care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);

(h) Veterans of the Mexican Border period or of World War I;

(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e);

(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), if they seek VA (U.S. Department of Veterans Affairs) hospital, nursing home, or outpatient care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

Subpart D—Standards

§ 52.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and program management must meet for the State to receive per diem for adult day health care provided at that facility.

§ 52.61 General requirements for adult day health care program.

Adult day health care must be a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of geriatric patients.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.70 Participant rights.

The participant has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The program management must protect and promote the rights of each participant, including each of the following rights:

(a) *Exercise of rights.* (1) The participant has the right to exercise his or her rights as a participant of the program and as a citizen or resident of the United States.

(2) The participant has the right to be free of interference, coercion, discrimination, and reprisal from the program management in exercising his or her rights.

(3) The participant has the right to freedom from chemical or physical restraint.

(4) In the case of a participant determined incompetent under the laws of a State by a court of jurisdiction, the rights of the participant are exercised by the person appointed under State law to act on the participant's behalf.

(b) *Notice of rights and services.* (1) The program management must inform the participant both orally and in writing in a language that the participant understands of his or her rights and all rules and regulations governing participant conduct and responsibilities during enrollment in the program. Such notification must be made prior to or upon enrollment and periodically during the participant's enrollment.

(2) Participants or their legal representatives have the right—

(i) Upon an oral or written request, to access all records pertaining to them including current participant records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of their records for review, to purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and with two working days advance notice to the facility management.

(3) Participants have the right to be fully informed in language that they can understand of their total health status.

(4) Participants have the right to refuse treatment, to refuse to participate in patient activities, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (a)(7) of this section.

(5) The program management must inform each participant before, or at the time of enrollment, and periodically during the participant's stay, of services available in the facility and of charges for those services to be billed to the participant.

(6) The program management must furnish a written description of legal rights which includes a statement that the participant may file a complaint with the State (agency) concerning participant abuse and neglect.

(7) The program management must have written policies and procedures regarding advance directives (e.g., living wills). These requirements include provisions to inform and provide written information to all participants concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law.

(8) Notification of changes. (i) Program management must immediately inform the participant; consult with the primary physician; and notify the participant's legal representative or an interested family member when there is—

(A) An accident involving the participant which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the participant's physical, mental, or psychosocial status (e.g., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the participant from the program.

(ii) The program management must also promptly notify the participant and the participant's legal representative or interested family member when there is a change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The program management must record and periodically update the address and phone number of the participant's legal representative, or interested family member, and the primary physician.

(c) *Free choice.* (1) The participant has the right to—

(i) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the participant's well-being; and

(ii) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(2) If the participant is determined incompetent or otherwise determined to be incapacitated under the laws of the State, the participant's legal representative or interested family member(s) has the right to participate in planning care and treatment or changes in care and treatment.

(d) *Privacy and confidentiality.* Participants have the right to privacy and confidentiality of their personal and clinical records.

(1) Participants have a right to privacy in their medical treatment and personal care.

(2) Except as provided in paragraph (d)(3) of this section, participants may approve or refuse the release of personal

and clinical records to any individual outside the facility.

(3) The participant's right to refuse release of personal and clinical records does not apply when—

(i) The participant is transferred to another health care institution; or

(ii) The release is required by law.

(e) *Grievances.* A participant has the right to—

(1) Voice grievances without discrimination or reprisal. Participants may voice grievances with respect to treatment received and not received; and

(2) Prompt efforts by facility management to resolve grievances the participant may have, including those with respect to the behavior of other participants.

(f) *Examination of survey results.* A participant has the right to—

(1) Examine the results of the most recent VA survey with respect to the program. The program management must make the results available for examination in a place readily accessible to participants, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(g) *Work.* The participant has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work therapy in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for (work therapy) paid services is at or above prevailing rates; and

(iv) The participant agrees to the work therapy arrangement described in the plan of care.

(h) *Access and visitation rights.* (1) The program management must provide immediate access to any participant by the following:

(i) Any representative of the Under Secretary for Health;

(ii) Any representative of the State;

(iii) The State long-term care ombudsman;

(iv) Immediate family or other relatives of the participant subject to the participant's right to deny or withdraw consent at any time; and

(v) Others who are visiting subject to reasonable restrictions and the participant's right to deny or withdraw consent at any time.

(2) The program management must provide reasonable access to any participant by any entity or individual that provides health, social, legal, or other services to the participant, subject to the participant's right to deny or withdraw consent at any time.

(3) The program management must allow representatives of the State Ombudsman Program to examine a participant's clinical records with the permission of the participant or the participant's legal representative, subject to State law.

(i) *Telephone.* The participant has the right to reasonable access to use a telephone where calls can be made without being overheard.

(j) *Personal property.* The participant has the right to have at least one change of personal clothing.

(k) *Self-administration of drugs.* An individual participant may self-administer drugs if the interdisciplinary team has determined that this practice is safe for the individual and is a part of the care plan.

(Authority: 38 U.S.C. 101, 501, 1741–1743)
(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.71 Participant and family caregiver responsibilities.

The program management has a written statement of participant and family caregiver responsibilities that are posted in the facility and provided to the participant and caregiver at the time of the intake screening. The Statement of responsibilities must include the following:

(a) Treat personnel with respect and courtesy;

(b) Communicate with staff to develop a relationship of trust;

(c) Make appropriate choices and seek appropriate care;

(d) Ask questions and confirm understanding of instructions;

(e) Share opinions, concerns, and complaints with the program director;

(f) Communicate any changes in the participant's condition;

(g) Communicate to the program director about medications and remedies used by the participant;

(h) Let the program director know if the participant decides not to follow any instructions or treatment; and

(i) Communicate with the adult day health care staff if the participant is unable to attend the adult day health care program.

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

§ 52.80 Enrollment, transfer and discharge rights.

(a) Participants in the adult day health care program must meet the provisions of this part that apply to participants and—

(1) Must meet at least two of the following indicators:

(i) Dependence in two or more activities of daily living (ADLs).

(ii) Dependence in three or more instrumental activities of daily living (IADLs).

(iii) Advanced age, i.e., 75 years old or over.

(iv) High use of medical services, i.e., three or more hospitalizations in past 12 months; or 12 or more hospitalizations, outpatient clinic visits; or emergency evaluation unit visits, in the past 12 months.

(v) Diagnosis of clinical depression.

(vi) Recent discharge from nursing home or hospital.

(vii) Significant cognitive impairment, particularly when characterized by multiple behavior problems;

(2) Must have a supportive living arrangement sufficient to meet their health care needs when not participating in the adult day health care program; and

(3) Must be able to benefit from the adult day health care program.

(b) *Transfer and discharge.* (1) *Definition.* Transfer and discharge includes movement of a participant to a program outside of the adult day health care program whether or not that program or facility is in the same physical plant.

(2) *Transfer and discharge requirements.* All participants' preparedness for discharge from adult day health care must be a part of a comprehensive care plan. The possible reasons for discharge must be discussed with the participant and family members at the time of intake screening. Program management must permit each participant to remain in the program, and not transfer or discharge the participant from the program unless—

(i) The transfer or discharge is necessary for the participant's welfare and the participant's needs cannot be met in the adult day health care setting;

(ii) The transfer or discharge is appropriate because the participant's health has improved sufficiently so the participant no longer needs the services provided in the adult day health care setting;

(iii) The safety of individuals in the program is endangered;

(iv) The health of individuals in the program would otherwise be endangered;

(v) The participant has failed, after reasonable and appropriate notice, to

pay for participation in the adult day health care program; or

(vi) The adult day health care program ceases to operate.

(3) *Documentation.* When the facility transfers or discharges a participant under any of the circumstances specified in paragraphs (b)(2)(i) through (vi) of this section, the primary physician must document the reason for such action in the participant's clinical record.

(4) *Notice before transfer.* Before a facility transfers or discharges a participant, the program management must—

(i) Notify the participant and a family member or legal representative of the participant of the transfer or discharge and the reasons for the move in writing and in a language and manner they can understand;

(ii) Record the reasons in the participant's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) *Timing of the notice.* (i) The notice of transfer or discharge required under paragraph (b)(4) of this section must be made by program management at least 30 days before the participant is transferred or discharged, except when specified in paragraph (b)(5)(ii) of this section.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the program would be endangered;

(B) The health of individuals in the program would be otherwise endangered;

(C) The participant's health improves sufficiently so the participant no longer needs the services provided by the adult day health care program;

(D) The resident's needs cannot be met in the adult day health care program.

(6) *Contents of the notice.* The written notice specified in paragraph (b)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the participant is transferred or discharged, if any;

(iv) A statement that the participant has the right to appeal the action to the State official responsible for the oversight of State Veterans Home programs; and

(v) The name, address and telephone number of the State long-term care ombudsman.

(7) *Orientation for transfer or discharge.* The program management must provide sufficient preparation and orientation to participants to ensure safe and orderly transfer or discharge from the program.

(c) *Equal access to quality care.* The program management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) *Enrollment policy.* The program management must not require a third party guarantee of payment to the program as a condition of enrollment or expedited enrollment, or continued enrollment in the program. However, program management may require a participant or an individual who has legal access to a participant's income or resources to pay for program care from the participant's income or resources, when available.

(e) *Hours of operation.* Each adult day health care program must provide at least 8 hours of operation five days a week. The hours of operation must be flexible and responsive to caregiver needs.

(f) *Caregiver support.* The adult day health care program must develop a Caregiver Program which offers mutual support, information and education.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.90 Participant behavior and program practices.

(a) *Restraints.* (1) The participant has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention and documented in the participant's clinical record.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body.

(2) The program management uses a system to achieve a restraint-free environment.

(3) The program management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.

(b) *Abuse.* (1) The participant has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(i) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(ii) Physical abuse includes hitting, slapping, pinching, kicking or controlling behavior through corporal punishment.

(iii) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(iv) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Neglect may include withholding or inadequately providing food and hydration, clothing, medical care, and good hygiene. It also includes placing the individual in unsafe or unsupervised conditions.

(v) Involuntary seclusion is a participant's separation from other participants against his or her will or the will of his or her legal representative.

(2) [Reserved]

(c) *Staff treatment of participants.* The program management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of participants and misappropriation of participant property.

(1) The program management must—

(i) Not employ individuals who—

(A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and

(ii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a program assistant or other program staff to the State oversight agency director and licensing authorities.

(2) The program management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of participant property are reported immediately to the State oversight agency director and to other officials in accordance with State law through established procedures.

(3) The program management must have evidence that all alleged violations are thoroughly investigated, and must prevent potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the State oversight agency director or the designated representative and to other officials in accordance with State law within five working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.100 Quality of life.

Program management must provide an environment and provide or coordinate care that supports the quality of life of each participant by maximizing the individual's potential strengths and skills.

(a) *Dignity.* The program management must promote care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The participant has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the program; and

(3) Make choices about aspects of his or her life in the program that are significant to the participant.

(c) *Participant and family concerns.* The program management must document any concerns submitted to the management of the program by participants or family members.

(1) A participant's family has the right to meet with families of other participants in the program.

(2) Staff or visitors may attend participant or family meetings at the group's invitation.

(3) The program management must respond to written requests that result from group meetings.

(4) The program management must listen to the views of any participant or family group and act upon the concerns of participants and families regarding policy and operational decisions affecting participant care in the program.

(d) *Participation in other activities.* A participant has the right to participate in social, religious, and community activities that do not interfere with the rights of other participants in the program.

(e) *Therapeutic participant activities.* (1) The program management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well being of each participant.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who—

(i) Is licensed, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or an activities professional by a recognized certifying body.

(3) A critical role of the adult day health care program is to build relationships and create a culture that supports, involves, and validates the participant. Therapeutic activity refers to that supportive culture and is a significant aspect of the individualized plan of care. A participant's activity includes everything the individual experiences during the day, not just arranged events. As part of effective therapeutic activity the adult day health care program must:

(i) Provide direction and support for participants, including breaking down activities into small, discrete steps or behaviors, if needed by a participant;

(ii) Have alternative programming available for any participant unable or unwilling to take part in group activity;

(iii) Design activities that promote personal growth and enhance the self-image and/or improve or maintain the functioning level of participants to the extent possible;

(iv) Provide opportunities for a variety of involvement (social, intellectual, cultural, economic, emotional, physical, and spiritual) at different levels, including community activities and events;

(v) Emphasize participants' strengths and abilities rather than impairments and contribute to participant feelings of competence and accomplishment; and

(vi) Provide opportunities to voluntarily perform services for community groups and organizations.

(f) *Social services.* (1) The facility management must provide medically-related social services to participants and their families.

(2) An adult day health care program must employ or contract for a qualified social worker to provide social services.

(3) Qualifications of social worker. A qualified social worker is an individual with—

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred);

(ii) A social work license from the State in which the State home is located, if license is offered by the State; and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The facility management must have sufficient social worker and support staff to meet participant and family social services needs. The adult day health care social services must:

(i) Provide counseling to participants and families/caregivers;

(ii) Facilitate the participant's adaptation to the adult day health care program and active involvement in the plan of care, if appropriate;

(iii) Arrange for services not provided by the adult day health care program and work with these resources to coordinate services;

(iv) Serve as participant advocate by asserting and safeguarding the human and civil rights of the participants;

(v) Assess signs of mental illness and/or dementia and make appropriate referrals;

(vi) Provide information and referral for persons not appropriate for adult day health care program;

(vii) Provide family conferences and serve as liaison between participant, family/caregiver and program staff;

(viii) Provide individual or group counseling and support to caregivers and participants;

(ix) Conduct support groups or facilitate participant or family/caregiver participation in support groups;

(x) Assist program staff in adapting to changes in participants' behavior; and

(xi) Provide or arrange for individual, group, or family psychotherapy for participants' with significant psychosocial needs.

(5) Space for social services must be adequate to ensure privacy for interviews.

(g) *Environment.* The program management must provide—

(1) A safe, clean, comfortable, and homelike environment, and support the participants' ability to function as independently as possible and to engage in program activities;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Private storage space for each participant sufficient for a change of clothes;

(4) Interior signs to facilitate participants' ability to move about the facility independently and safely;

(5) A clean bed available for acute illness, when indicated;

(6) A shower for resident's need, when indicated;

(7) Adequate and comfortable lighting levels in all areas;

(8) Comfortable and safe temperature levels; and

(9) Comfortable sound levels.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.110 Participant assessment.

The program management must conduct initially, semi-annually and as required by a change in the participant's condition a comprehensive, accurate, standardized, reproducible assessment of each participant's functional capacity.

(a) *Intake screening.* An intake screening must be completed to determine the appropriateness of the adult day health care program for each participant.

(b) *Enrollment orders.* The program management must have physician orders for the participant's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the participant's condition, not to exceed 72 hours after enrollment, except when an examination was performed within five days before enrollment and the findings were provided and placed in the clinical record on enrollment.

(c) *Comprehensive assessments.* (1) The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) the Minimum Data Set for Home Care (MSD–HC) Instrument Version 2.0, August 2, 2000.

(2) Frequency. Participant assessments must be completed—

(i) No later than 14 calendar days after the date of enrollment; and

(ii) Promptly after a significant change in the participant's physical, mental, or social condition.

(3) Review of assessments. Program management must review each participant no less than once every six months and as appropriate and revise the participant's assessment to assure the continued accuracy of the assessment.

(4) Use. The results of the assessment are used to develop, review, and revise the participant's individualized comprehensive plan of care, under paragraph (e) of this section.

(d) *Accuracy of assessments.* (1) *Coordination.* (i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(e) *Comprehensive care plans.* (1) The program management must develop an individualized comprehensive care plan for each participant that includes measurable objectives and timetables to meet a participant's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following—

(i) The services that are to be provided by the program and by other sources to attain or maintain the participant's highest physical, mental, and psychosocial well-being as required under § 52.120;

(ii) Any services that would otherwise be required under § 52.120 but are not provided due to the participant's exercise of rights under § 52.70, including the right to refuse treatment under § 52.70(b)(4);

(iii) Type and scope of interventions to be provided in order to reach desired, realistic outcomes;

(iv) Roles of participant and family/caregiver; and

(v) Discharge or transition plan, including specific criteria for discharge or transfer.

(2) A comprehensive care plan must be—

(i) Developed within 21 calendar days from the date of the adult day care enrollment and after completion of the comprehensive assessment;

(ii) Assigned to one team member for the accountability of coordinating the completion of the interdisciplinary plan;

(iii) Prepared by an interdisciplinary team that includes the primary physician, a registered nurse with responsibility for the participant, social worker, recreational therapist and other appropriate staff in disciplines as determined by the participant's needs, the participation of the participant, and the participant's family or the participant's legal representative; and

(iv) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each participant's written plan of care.

(f) *Discharge summary.* Prior to discharging a participant, the program management must prepare a discharge summary that includes—

(1) A recapitulation of the participant's care;

(2) A summary of the participant's status at the time of the discharge to include items in paragraph (c)(2) of this section; and

(3) A discharge/transition plan related to changes in service needs and changes in functional status that prompted another level of care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.120 Quality of care.

Each participant must receive, and the program management must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Reporting of sentinel events.* (1) Definition. A *sentinel event* is an adverse event that results in the loss of life or limb or permanent loss of function.

(2) Examples of sentinel events are as follows:

(i) Any participant death, paralysis, coma or other major permanent loss of function associated with a medication error; or

(ii) Any suicide or attempted suicide of a participant, including suicides following elopement (unauthorized departure) from the program; or

(iii) Any elopement of a participant from the program resulting in a death or a major permanent loss of function; or

(iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or

(v) Assault, homicide or other crime resulting in a participant's death or major permanent loss of function; or

(vi) A participant's fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall; or

(vii) A serious injury requiring hospitalization.

(3) The program management must report sentinel events to the director of the VA medical center of jurisdiction within 24 hours of identification. The director of the VA medical center of jurisdiction must report sentinel events

to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), within 24 hours of identification and/or notification by the State home.

(4) The program management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event in an adult day health care program is to prevent future injuries to residents, visitors, and personnel.

(b) *Activities of daily living.* Based on the comprehensive assessment of a resident, the program management must ensure that—

(1) A participant's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the participant's ability to—

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet; and

(iv) Eat.

(2) A participant is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section.

(3) A participant who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) *Vision and hearing.* To ensure that participants receive proper treatment and assistive devices to maintain vision and hearing abilities, the program management must, if necessary, assist the participant and family—

(1) In making appointments; and

(2) Arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) *Pressure ulcers.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without pressure ulcers does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A participant having pressure ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new ulcers from developing.

(e) *Urinary and fecal incontinence.* Based on the participant's comprehensive assessment, the program management must ensure that—

(1) A participant who enters the program without an indwelling catheter is not catheterized unless the participant's clinical condition demonstrates that catheterization was necessary;

(2) A participant who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible; and

(3) A participant who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) *Range of motion.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without a limited range of motion does not experience reduction in range of motion unless the participant's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A participant with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) *Mental and psychosocial functioning.* Based on the comprehensive assessment of a participant, the program management must ensure that a participant who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) *Accidents.* The program management must ensure that—

(1) The participant environment remains as free of accident hazards as is possible; and

(2) Each participant receives adequate supervision and assistance devices to prevent accidents.

(i) *Nutrition.* Based on a participant's comprehensive assessment, the program management must ensure, by working with the family, that a participant—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the participant's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(j) *Hydration.* The program management must provide each participant with sufficient fluid intake during the day to maintain proper hydration and health.

(k) *Unnecessary drugs.* (1) *General.* Each participant's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or

(ii) For excessive duration; or

(iii) Without adequate monitoring; or

(iv) Without adequate indications for its use; or

(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(vi) Any combinations of the reasons in paragraphs (k)(1)(i) through (v) of this section.

(2) *Antipsychotic drugs.* Based on a comprehensive assessment of a participant, the program management must ensure that—

(i) Participants who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed by the primary physician and documented in the clinical record; and

(ii) Participants who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(l) *Medication errors.* The program management must ensure that—

(1) Medication errors are identified and reviewed on a timely basis; and

(2) Strategies for preventing medication errors and adverse reactions are implemented.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.130 Nursing services.

The program management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by participant assessment and individualized comprehensive plans of care, of all participants in the program.

(a) There must be at least one registered nurse on duty each day of operation of the adult day health care program. This nurse must be currently licensed by the State and must have, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of

the nursing and program assistants. VA recommends that this nurse be a geriatric nurse practitioner or a clinical nurse specialist.

(b) The number and level of nursing staff is determined by the authorized capacity of participants and the nursing care needs of the participants.

(c) Nurse staffing must be adequate for meeting the standards of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.140 Dietary services.

The program management must provide each participant with a nourishing, palatable, well-balanced meal that proportionally meets the daily nutritional and special dietary needs of each participant.

(a) *Food and nutritional services.* The program management provides and/or contracts with a food service entity and provides and/or contracts sufficient support personnel competent to carry out the functions of the food service.

(1) The program management must employ a qualified dietitian either part-time or on a contract consultant basis to provide nutritional guidance.

(2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.

(3) The dietitian must—

(i) Conduct participant nutritional assessments and recommend nutritional intervention as appropriate.

(ii) Consult and provide nutrition education to participants, family/caregivers, and program staff as needed.

(iii) Consult and provide education and training to the food service staff.

(iv) Monitor and evaluate participants receiving enteral tube feedings and parenteral line solutions, and recommend changes as appropriate.

(b) *Menus and nutritional adequacy.* (1) The participant's total dietary intake is of concern but is not the adult day health care program's responsibility.

(2) The program is responsible for the meals served in the facility.

(c) *Food.* Each participant receives and the program provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to participants who refuse food served.

(d) *Therapeutic diets.* (1) Therapeutic diets must be prescribed by the primary care physician.

(2) Special, modified, or therapeutic diets must be provided as necessary for participants with medical conditions or functional impairments.

(3) An adult day health care program must not admit nor continue to serve a participant whose dietary requirements cannot be accommodated by the program.

(e) *Frequency of meals.* (1) At regular times comparable to normal mealtimes in the community, each participant may receive and program management must provide at least two meals daily for those veterans staying more than four hours and at least one meal for those staying less than four hours.

(2) The program management must offer snacks and fluids as appropriate to meet the participants' nutritional and fluid needs.

(f) *Assistive devices.* The program management must provide special eating equipment and utensils for participants who need them.

(g) *Sanitary conditions.* The program must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.150 Physician services.

As a condition of enrollment in adult day health care program, a participant must obtain a written physician order for enrollment. Each participant must remain under the care of a physician.

(a) *Physician supervision.* The program management must ensure that—

(1) The medical care of each participant is supervised by a primary care physician;

(2) Each participant's medical record must contain the name of the participant's primary physician; and

(3) Another physician is available to supervise the medical care of participants when their primary physician is unavailable.

(b) *Frequency of physician reviews.* (1) The participant must be seen by the primary physician at least annually and as indicated by a change of condition.

(2) The program management must have a policy to help ensure that adequate medical services are provided to the participant.

(3) At the option of the primary physician, required reviews in the program after the initial review may alternate between personal physician reviews and reviews by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(c) *Availability of acute care.* The program management must provide or arrange for the provision of acute care when it is indicated.

(d) *Availability of physicians for emergency care.* In case of an emergency, the program management must provide or arrange for the provision of physician services when the program has participants under its care.

(e) *Physician delegation of tasks.* (1) A primary physician may delegate tasks to:

(i) A certified physician assistant or a certified nurse practitioner, or

(ii) A clinical nurse specialist who—

(A) Is acting within the scope of practice as defined by State law; and

(B) Is under the supervision of the physician.

(2) The primary physician may not delegate a task when the provisions of this part specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.160 Specialized rehabilitative services.

(a) *Provision of services.* If specialized rehabilitative services such as, but not limited to, physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the participant's comprehensive plan of care, program management must—

(1) Provide the required services; or

(2) Obtain the required services and equipment from an outside resource, in accordance with § 52.210(h), from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.170 Dental services.

(a) Program management must, if necessary, assist the participant and family/caregiver—

(1) In making appointments; and

(2) By arranging for transportation to and from the dental services.

(b) Program management must promptly assist and refer participants with lost or damaged dentures to a dentist.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.180 Administration of drugs.

The program management must assist with the management of medication and have a system for disseminating drug information to participants and program staff.

(a) *Procedures.* (1) The program management must provide reminders or prompts to participants to initiate and follow though with self-administration of medications.

(2) The program management must establish a system of records to document the administration of drugs by participants and/or staff.

(3) The program management must ensure that drugs and biologicals used by participants are labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration dates when applicable.

(4) The program management must store all drugs, biologicals, and controlled schedule II drugs listed in 21 CFR 1308.12 in locked compartments under proper temperature controls, permit only authorized personnel to have access, and otherwise comply with all applicable State and Federal laws.

(b) *Service consultation.* The program management must employ or contract for the services of a pharmacist licensed in the State in which the program is located who provides consultation, as needed, on all the provision of drugs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.190 Infection control.

The program management must establish and maintain an infection control program designed to prevent the development and transmission of disease and infection.

(a) *Infection control program.* The program management must—

(1) Investigate, control, and prevent infections in the program participants and staff; and

(2) Maintain a record of incidents and corrective actions related to infections.

(b) *Preventing spread of infection.* (1) The program management must prevent participants or staff with a communicable disease or infected skin lesions from attending the adult day health care program if direct contact will transmit the disease.

(2) The program management must require staff to wash their hands after each direct participant contact for which hand washing is indicated by accepted professional practice.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.200 Physical environment.

The physical environment must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code, 2000 edition. Incorporation by reference this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The document incorporated by reference is available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

(b) *Space and equipment.* (1) Program management must—

(i) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide participants with needed services as required by these standards and as identified in each participant's plan of care; and

(ii) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(2) Each adult day health care program, when it is co-located in a nursing home, domiciliary, or other care facility, must have its own separate designated space during operational hours.

(3) The indoor space for an adult day health care program must be at least 100 square feet per participant including office space for staff and must be 60 square feet per participant excluding office space for staff.

(4) Each program will need to design and partition its space to meet its own needs, but a minimal number of functional areas must be available. These include:

(i) A dividable multipurpose room or area for group activities, including dining, with adequate table-setting space.

(ii) Rehabilitation rooms or an area for individual and group treatments for occupational therapy, physical therapy, and other treatment modalities.

(iii) A kitchen area for refrigerated food storage, the preparation of meals and/or training participants in activities of daily living.

(iv) An examination and/or medication room.

(v) A quiet room (with at least one bed), which functions to isolate participants who become ill or disruptive, or who require rest, privacy, or observation, must include a bed. It should be separate from activity areas, near a restroom, and supervised.

(vi) Bathing facilities adequate to facilitate bathing of participants with functional impairments.

(vii) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all programs areas, i.e., preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier-free.

(viii) Adequate storage space. There should be space to store arts and crafts materials, personal clothing and belongings, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.

(ix) An individual room for counseling and interviewing participants and family members.

(x) A reception area.

(xi) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and garden area. It should be easily supervised by staff.

(c) *Furnishings* must be available for all participants. This must include functional furniture appropriate to the participants' needs. Furnishings must be attractive, comfortable, and homelike, while being sturdy and safe.

(d) *Participant call system.* The coordinator's station must be equipped to receive participant calls through a communication system from—

(1) Clinic rooms; and

(2) Toilet and bathing facilities.

(e) *Other environmental conditions.* The program management must provide

a safe, functional, sanitary, and comfortable environment for the participants, staff and the public. The program management must—

(1) Establish procedures to ensure that water is available to essential areas if there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

(3) Equip corridors, when available, with firmly-secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 52.210 Administration.

An adult day health care program must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each participant.

(a) *Governing body.* (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the program; and

(2) The governing body or State official with oversight for the program appoints the adult day health care program administrator who is:

(i) A qualified heath care professional experienced in clinical program management and, if required by the State, certified as a Certified Administrator in Adult Day Health Care; and

(ii) Responsible for the operation and management of the program including:

(A) Documentation of current credentials for each licensed independent practitioner employed by the program;

(B) Review of the practitioner's record of experience;

(C) Assessment of whether practitioners with clinical privileges act within the scope of privileges granted; and

(iii) Awareness of local trends in community adult day health care and other services, and participation in area adult day health care organizations.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;

(2) The State adult day health care program administrator; or

(3) The State employee responsible for oversight of the State home adult day health care program if a contractor operates the State program.

(c) *Required information.* The program management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current:

(1) The copy of the legal and administrative action establishing the State-operated facility (e.g., State laws);

(2) Site plan of facility and surroundings;

(3) Legal title, lease, or other document establishing the right to occupy the facility;

(4) Organizational charts and the operational plan of the adult day health care program;

(5) The number of the staff by category indicating full-time, part-time and minority designation, annually;

(6) The number of adult day health care participants who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities, annually;

(7) Annual State Fire Marshall's report;

(8) Annual certification from the responsible State home showing compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (VA Form 10–0143A set forth at 38 CFR 58.14);

(9) Annual certification for Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707) (VA Form 10–0143 set forth at 38 CFR 58.15);

(10) Annual certification regarding lobbying in compliance with 31 U.S.C. 1352 (VA Form 10–0144 set forth at 38 CFR 58.16);

(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) as effectuated in 38 CFR part 18 (VA Form 10–0144A located at 38 CFR 58.17);

(d) *Percentage of veterans.* At least 75 percent of the program participants must be eligible veterans except that the veteran percentage need only be more than 50 percent if the facility was acquired, constructed, or renovated solely with State funds. All non-veteran participants must be veteran-related family members or gold star parents of veterans.

(e) *Management contract facility.* If a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility. The State employee may also monitor other levels of care at a colocated facility, but must monitor the adult day health care facility and any colocated facility on a full-time onsite basis.

(f) *Licensure.* The facility and program management must comply with applicable State and local licensure laws.

(g) *Staff qualifications.* (1) The program management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements. Professional disciplines involved in participant care must include registered nurses, program assistants, physicians, social workers, rehabilitation therapists, dietitians, and therapeutic activity therapists and pharmacists. Other disciplines may be considered depending upon the participant and/or program needs.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(3) The staff-participant ratio must be sufficient in number and skills (at least one staff to 4 to 6 participants) to ensure compliance with the standards of this part. There must be at least two responsible persons (paid staff members) at the adult day health care center at all times when there are two or more participants in attendance.

(4) Persons counted in the staff to participant ratio must spend at least 70 percent of their time in direct service with participants.

(5) All professional team members will serve in the role of case manager for designated participants.

(6) All personnel, paid and volunteer, will be provided appropriate training to maintain the knowledge and skills required for the participant needs.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the program management must have that service furnished to participants by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the program management assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a program; and

(ii) The timeliness of the services.

(i) *Medical director.* (1) The program management must provide a primary care physician to serve as medical director and a consultant to the interdisciplinary program team.

(2) The medical director is responsible for:

(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;

(ii) Directing and coordinating medical care in the program;

(iii) Ensuring continuous physician coverage to handle medical emergencies;

(iv) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the adult day health care program administrator; and

(v) Monitoring employees' health status and advising the program administrator on employee health policies.

(3) The medical director may also provide hands-on assessment and/or treatment if authorized by the participant's primary care provider. In programs where a medical director is available to act as a member of the team and authorizes care, information concerning the care provided must be shared with the primary care physician who continues to provide the ongoing medical care.

(4) The program management must have written procedures for handling medical emergencies. The procedures must include, at least:

(i) Procedures for notification of the family;

(ii) Procedures for transportation arrangements;

(iii) Provision for an escort, if necessary; and

(iv) Procedures for maintaining a portable basic emergency information file for each participant that includes:

(A) Hospital preference;

(B) Physician of record and telephone number;

(C) Emergency contact (family);

(D) Insurance information;

(E) Medications/allergies;

(F) Current diagnosis and history; and

(G) Photograph for participant identification.

(j) *Required training of program assistants.* (1) Program assistants must have a high school diploma, or the equivalent, and must have at least one year of experience in working with adults in a health care setting. Program assistants also must complete the National Adult Day Services Association training course or complete equivalent training.

(2) The program management must not use any individual working in the program as a program assistant whether permanent or not unless:

(i) That individual is competent to provide appropriate services; and

(ii) That individual has completed training or is certified by the National Adult Day Services Association as a certified Program Assistant in Adult Day Services.

(3) Verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must verify that the individual has successfully completed a training and competency evaluation program. Facilities must follow up to ensure that such an individual actually becomes certified, if available in the State.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes may include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(6) Regular in-service education. The program management must complete a performance review of every nurse aide or program assistant at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides or program assistants, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in program assistants' performance reviews and address the special needs of participants as determined by the program staff; and

(iii) For program assistants or nurse aides providing services to individuals with cognitive impairments, address the care of the cognitively impaired.

(k) *Proficiency of program assistants.* The program management must ensure that program assistants or nurse aides are able to demonstrate competency in skills and techniques necessary to care for participants' needs, as identified through participant assessments, and described in the plan of care.

(l) *Laboratory and radiology results.* The program management must—

(1) Obtain laboratory or radiology results from the participant's primary physician to support the needs of its participants.

(2) Assist the participant and/or family/caregiver in making transportation arrangements to and from the source of laboratory or radiology services, if the participant needs assistance.

(3) File in the participant's clinical record laboratory or radiology reports that are dated and contain the name and address of the testing laboratory or radiology service.

(m) *Participant records.* (1) The facility management must maintain clinical records on each participant in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge if there is no requirement in State law.

(3) The program management must safeguard clinical record information against loss, destruction, or unauthorized use.

(4) The program management must keep confidential all information contained in the participant's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) A third-party payment contract;

(iv) The participant; or

(v) The participant's legal representative.

(5) The clinical record must contain—

(i) Sufficient information to identify the participant;

(ii) A record of the participant's assessments;

(iii) The plan of care and services provided;

(iv) The results of any pre-enrollment screening conducted by the State; and

(v) Progress notes.

(n) *Quality assessment and assurance.* (1) Program management must maintain a quality improvement program and a quality improvement committee consisting of—

(i) A registered nurse;

(ii) A medical director designated by the program; and

(iii) At least three other members of the program's staff.

(2) The quality improvement committee—

(i) Must implement a quality improvement plan for the evaluation of its operation and services and review and revise annually; and

(ii) Must meet at least quarterly to identify quality of care issues; and

(iii) Must develop and implement appropriate plans of action to correct identified quality deficiencies; and

(iv) Must ensure that identified quality deficiencies are corrected within an established time period.

(3) The VA Under Secretary for Health may not require disclosure of the records of such committee unless such disclosure is related to the compliance with the requirements of this section.

(o) *Disaster and emergency preparedness.* (1) The program management must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, bomb threats, and missing participants.

(2) The program management must train all employees in emergency procedures when they begin to work in the program, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(p) *Transfer procedure.* (1) The program management must have in effect a written transfer procedure that reasonably assures that—

(i) Participants will be transferred from the adult day health care program to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by a physician; and

(ii) Medical and other information needed for care and treatment of participants will be exchanged between the institutions.

(2) The transfer must be with a hospital sufficiently close to the adult day health care program to make transfer feasible.

(q) *Compliance with Federal, State, and local laws and professional standards.* The program management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and the Cash Management Improvement Acts of 1990 and 1992 (31 U.S.C. 3335, 3718, 3720A, 6501, 6503).

(r) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this subpart, the program must meet the applicable provisions of other Federal laws and regulations, including but not limited to, those pertaining to nondiscrimination on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993 (29 U.S.C. 794); Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707); restrictions regarding lobbying (31 U.S.C. 1352); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(s) *Intermingling.* A facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care.

(t) *VA management of State veterans homes.* Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing adult day health care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

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

§ 52.220 Transportation.

Transportation of participants to and from the adult day health care facility must be a component of the overall program.

(a)(1) Except as provided in paragraph (a)(2) of this section, the adult day health care program management must provide or contract for transportation to enable participants, including persons with disabilities, to attend the program and to participate in facility-sponsored outings.

(2) The veteran or the family of a veteran may decline transportation offered by the adult day health care program management and make their own arrangements for the transportation.

(b) The adult day health care program management must have a transportation policy that includes routine and emergency procedures, with a copy of the relevant procedures located in all program vehicles.

(c) All vehicles transporting participants to and from adult day health care must be equipped with a device for two-way communication.

(d) All facility-provided and contracted transportation systems must meet local, State and federal regulations.

(e) The time to transport participant to or from the facility must not be more than 60 minutes except under unusual conditions, e.g., bad weather.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

[FR Doc. 02–150 Filed 1–4–02; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified