and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.033 Federal Work Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; and 84.268 William D. Ford Federal Direct Loan Program.)

Program Authority: 20 U.S.C. 1071, 1082, 1087a, 1087aa, Part F–1.

Dated: September 24, 2012.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–23831 Filed 9–26–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AO36

Removal of 30-Day Residency Requirement for Per Diem Payments

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule.

SUMMARY: The Department of Veterans Affairs (VA) is taking direct final action to amend its regulations concerning per diem payments to State homes for the provision of nursing home care to veterans. Specifically, this rule removes the requirement that a veteran must have resided in a State home for 30 consecutive days before VA will pay per diem for that veteran when there is no overnight stay. The intended effect of this direct final rule is to permit per diem payments to State homes for veterans who do not stay overnight, regardless of how long the veterans have resided at the State homes, so that the State homes will hold the veterans' beds until the veterans return.

DATES: *Effective:* This rule is effective on November 26, 2012, without further notice, unless VA receives a significant adverse comment by October 29, 2012. If significant adverse comment is received, VA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO36, Removal of 30-Day Residency Requirement for Per Diem Payments.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Harold Bailey, Program Management Officer (Director of Administration), VA Health Administration Center, Purchased Care (10NB3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (303) 331–7551. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule amends part 51 of title 38, Code of Federal Regulations, to remove the requirement that a veteran receiving nursing home care in a State home must have resided in the State home for at least 30 consecutive days before VA will pay per diem when that veteran does not stay in the State home overnight. VA pays per diem to State homes for veterans who stay elsewhere overnight to create a ''bed hold,'' so that the State home reserves the veteran's bed until the veteran returns from a temporary absence. Typically, these temporary absences arise from a veteran's acute need for a higher level of care, such as a period of hospitalization. Temporary absences also arise for reasons other than hospital care, such as when a veteran travels to visit family members.

This rule also clarifies in 38 CFR 51.43(c) that VA calculates occupancy rate ''by dividing the total number of patients in the nursing home or domiciliary by the total recognized nursing home or domiciliary beds in that facility.'' This is consistent with current practice, and will help ensure that State homes understand our methodology.

The 30-day residency requirement for bed hold per diem payments was established in 2009 in 38 CFR 51.43(c), which stated: ''Per diem will be paid under §§ 51.40 and 51.41 for each day that the veteran is receiving care and has an overnight stay. Per diem also will be paid when there is no overnight stay if the veteran has resided in the facility for 30 consecutive days (including overnight stays) and the facility has an occupancy rate of 90 percent or greater. However, these payments will be made only for the first 10 consecutive days during which the veteran is admitted as a patient for any stay in a VA or other hospital (a hospital stay could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care.'' *See* 74 FR 19433.

In the proposed rule that preceded the addition of § 51.43, we stated that the basis for the 30-day residency requirement was that ''State homes should receive per diem payments to hold beds only for permanent residents and only if the State home would likely fill the bed without such payments. Allowing payments for bed holds only after a veteran has been in a nursing home for at least 30 consecutive days (including overnight stays) appears to be sufficient to establish permanent residency.'' 73 FR 72402. In addition, the 2009 final rule confirmed VA's intent to make the 30-day rule a factor that directly affected eligibility for bed hold payments, stating: ''We believe that 30 days is a minimal amount of time for demonstrating that a veteran intends to be a resident at the State home and that the veteran was not temporarily placed in the State home.'' 74 FR 19429.

VA adopted the 30-day residency requirement as the measure for determining whether a veteran would likely return to a State home after not having stayed there overnight, and in turn whether the State home should receive continued per diem payments in the veteran's absence to hold the veteran's bed. Through application of this requirement, however, VA has come to recognize that duration of residency in a State home is not an accurate predictor of whether a veteran is likely to return to a State home after a temporary absence. For instance, with absences resulting from the veteran's need for hospital care, the veteran's health status while hospitalized is actually what determines whether and

when he or she will return to a nursing home level of care at the State home. With absences resulting from non-hospital care reasons, the veteran in almost all instances communicates an intent to return to the State home within a specific period of time, or communicates that he or she will not be returning. With both types of absences, we no longer find that a veteran's period of residency at a State home is determinative as to whether the veteran will likely return to the State home. Therefore, we believe the 30-day residency requirement is unnecessary in ensuring standards of bed hold per diem payments, and are removing this requirement from 38 CFR 51.43(c).

Based on our experience in applying § 51.43(c) since 2009, we believe our determination of whether to pay bed hold per diem for veterans who are absent overnight from State homes should be based on whether the veteran's bed would otherwise be taken by another resident. The best predictor of whether a veteran's bed is likely to be taken by another resident during the veteran's absence is the State home's occupancy rate, not the length of time the veteran has resided in the State home. If a State home has sufficient beds to offer new residents so that it need not fill the veteran's bed during the veteran's absence, then per diem payments to hold the veteran's bed are not needed. If the State home does not have a sufficient number of available beds, then per diem payments should be paid for a veteran during any absence, subject to the limitations set forth in the rest of § 51.43(c) to ensure the bed is reserved for the veteran until he or she returns to the State home.

Thus, the current 90 percent occupancy requirement for State homes in § 51.43(c) will serve as the sole criterion to determine whether bed hold per diem is paid to State homes, and those payments will remain subject to the limitations currently in § 51.43(c) (''Per diem also will be paid when there is no overnight stay if * * * the facility has an occupancy rate of 90 percent or greater. However, these payments will be made only for the first 10 consecutive days during which the veteran is admitted as a patient for any stay in a VA or other hospital (a hospital stay could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care.''). Maintaining the occupancy measure and payment limitations for bed hold per diem payments, while removing the residency requirement, will help ensure that VA is able to provide stable nursing home care via State homes as we intend.

Additionally, removing the 30-day residency requirement brings VA more in line with generally accepted standards of practice for nursing home care. VA's other community nursing home care programs (such as the contract nursing home care program) do not have a similar residency requirement, and VA seeks to have a consistent bed hold policy for nursing home care provided to veterans in non-VA facilities. Moreover, it is administratively burdensome to track periods of residency in State homes across the country, as the total estimated average daily census for State homes is over 18,000 veterans in the nursing home level of care. This continuous tracking diverts significant VA resources, as this information must be monitored for 139 State nursing homes 5 days a week at 97 VA Medical Centers (VAMC) of jurisdiction, for 52 weeks a year for approximately an hour a day. Assuming a GS–06, step 5 grade level employee at each VAMC tracks residency for those state nursing homes in its jurisdiction, the estimated cost to VA in continuing this practice is $418,000 annually. In comparison, VA estimates that 1,095 more per diem payments would be made per year if there were no residency requirement, for an estimated increased annual cost of $265,000. Based on these calculations, tracking residency, due to the current 30-day residency requirement, costs VA nearly 60 percent more than the amount of the projected increase in per diem payments that VA would make if the 30-day residency requirement were removed. In addition, tracking residency does not ensure veteran beds are held as we intend and does not contribute to our efforts in providing dependable nursing home care to veterans through State homes. Under the current rule, State homes also shoulder the administrative burden of tracking and reporting the residency dates of veterans, and will likely receive a similar benefit from the removal of the 30-day requirement.

Though in the past we believed a 30-day residency requirement helped ensure per diem was paid judiciously, VA now understands that the costs of this requirement outweigh possible savings. There have been numerous ongoing requests from the State home community and the National Association of State Veterans Homes (NASVH) for VA to remove the 30-day residency requirement for bed hold per diem payments. Because this rule benefits veterans and liberalizes a prerequisite for per diem payments, we do not believe that any members of the public are adversely affected by this rule.

Administrative Procedure Act

VA believes this direct final rule is non-controversial, anticipates that this rule will not result in any significant adverse comment, and therefore is issuing it as a direct final rule. Previous actions of this nature, which remove restrictions on VA medical benefits to improve health outcomes, have not been controversial and have not resulted in any significant adverse comment or objection. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate, substantially identical proposed rule document that will serve as a proposal for the provisions in this direct final rule if any significant adverse comment is filed. (See RIN 2900–AO37).

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant comment unless the comment states why the rule would be ineffective without the additional change.

Under direct final rule procedures, if no significant adverse comment is received within the comment period, the rule will become effective on the date specified above. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that no significant adverse comment was received and confirming the date on which the final rule will become effective. VA will also publish a notice in the **Federal Register** withdrawing the proposed rule.

However, if any significant adverse comment is received, VA will publish in the **Federal Register** a notice acknowledging receipt of a significant adverse comment and withdrawing the direct final rule. In the event the direct

final rule is withdrawn because of receipt of any significant adverse comment, VA can proceed with the rulemaking by addressing the comments received and publishing a final rule. Any comments received in response to the direct final rule will be treated as comments regarding the proposed rule. Likewise, any significant adverse comment received in response to the proposed rule will be considered as a comment regarding the direct final rule. VA will consider such comments in developing a subsequent final rule.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance is read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number 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 amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.005, Grants to States for Construction of State Home Facilities; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on September 10, 2012, for publication.

List of Subjects in 38 CFR Part 51

Administrative practice and procedure, Claims, Grant programs–health, Grant programs–veterans, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: September 24, 2012.

Robert C. McFetridge,

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

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

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

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

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

■ 2. Amend § 51.43(c) by removing ''the veteran has resided in the facility for 30 consecutive days (including overnight stays) and'', and by adding a sentence at the end of the paragraph to read as follows:

§ 51.43 Per diem and drugs and medicines—principles.

* * * * *

(c) * * * Occupancy rate is calculated by dividing the total number of patients in the nursing home or domiciliary by the total recognized nursing home or domiciliary beds in that facility.

* * * * *

[FR Doc. 2012–23775 Filed 9–26–12; 8:45 am]

BILLING CODE 8320–01–P