**From:** Bushinski, Stephen
**To:** "Robert Slutsky"
**Cc:** lwizelman@epix.net
**Subject:** RE: Financial Eligibility for PA Dept. of Military Affairs Nursing Homes
**Date:** Tuesday, March 07, 2017 8:15:18 AM

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We are still using the current version of the regulations, not the proposed, yet-to-be adopted version.

In regard to the acronym, "VA", you could do my department a great service by informing your membership that the acronym "VA" should be used only to refer to the United States Department of Veterans Affairs (the big "VA"). It's better to refer to the Commonwealth's veterans administration by using the acronym "DMVA", which stands for Department of Military and Veterans Affairs.

There are a great many practitioners who are not aware that, in Pennsylvania, two veterans administrations are operating, not just one. This misunderstanding can cause confusion.

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Email: sbushinski@pa.gov

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**From:** Robert Slutsky [mailto:robertslutsky@verizon.net]
**Sent:** Monday, March 06, 2017 7:42 PM
**To:** Bushinski, Stephen
**Cc:** lwizelman@epix.net
**Subject:** RE: Financial Eligibility for PA Dept. of Military Affairs Nursing Homes

Thank you, Mr. Bushinski. This is very helpful.

One clarification. In our conversation and your response you said you follow the VA rules for financial resources. This is the current implemented regulations as opposed to the proposed regulations that have yet to be finalized by the VA, right?

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**From:** Bushinski, Stephen [mailto:sbushinski@pa.gov]
**Sent:** Friday, March 03, 2017 2:35 PM
**To:** 'Robert Slutsky'
**Cc:** lwizelman@epix.net
**Subject:** RE: Financial Eligibility for PA Dept. of Military Affairs Nursing Homes

Mr. Slutsky:

Thank you for the opportunity to speak with you and Ms. Wizelman on February 8, 2017. I am writing now to respond to the various issues you raised in your email of February 9, 2017.

Eligibility for Admission. In regard to eligibility for admission to a state veterans' home operated by the Department of Military and Veterans Affairs (DMVA), eligibility criteria are set forth in Chapter 7 of 43 Pa. Code. As we discussed, DMVA is revising Chapter 7 extensively. Several of DMVA's proposed amendments to Chapter 7 track DHS title 55 regulations closely.
Please be advised that, at this time, DMVA does not consider the income restrictions set forth in 43 Pa. Code 7.3(4) when considering an application for admission. Private practitioners should disregard this regulation when advising their clients about admission to a DMVA state veterans' home.

Payment for the cost of care. The cost of care (referred to as the "Commonwealth Per Diem Rate") at each of the six state veterans' homes is set by the General Assembly, not the homes. Private practitioners may consult the Pennsylvania Bulletin for the cost of care at each of the homes. I have attached the most recent notice of the per diem rates for the six state veterans' homes to this email. There are two rates at the state veterans' homes – Nursing Care and Domiciliary Care. The cost of Nursing care is significantly higher than the cost of Domiciliary Care.
The cost of care, referred to as the Commonwealth Per Diem rate, at the homes is significant. However, that cost of care is substantially reduced by payments made by the United States Department of Veterans Affairs (the "VA") on behalf of those residents who had served in the United States or Pennsylvania armed forces.
Paying for the cost of care at a DMVA state veterans' home is done as follows:

1. Most residents pay for the cost of care by paying a Monthly Maintenance Fee (MMF) of approximately 80% of their income to the state veterans' home at which they reside. In your email, you referred to this as the "Alternative Program." Actually, this method is the traditional and primary method by which residents pay for the cost of care. I estimate that 66% - 75% of our residents pay in this manner.

Residents who own less than $ 80,000.00 in assets pay a MMF that is calculated on their income alone. Residents who have assets in excess of $ 80,000.00 are required to pay full per diem, less any money received from the VA. In this, the state veterans' homes follow the same guidelines as used by the VA when determining eligibility for a veterans' Improved Pension. The DMVA state veterans'

homes, when calculating the value of a resident's assets, include the assets of the resident's spouse, just as the VA does in determining eligibility for the Improved Pension.

2. Some residents are eligible for the Enhanced Veterans' Reimbursement (EVR) program. Eligibility criteria include both medical and financial factors. The EVR Program is a program jointly administered by DMVA and the Department of Human Services (DHS). An applicant for the EVR program must submit his application in the same manner as an applicant applying for Medical Assistance. DHS, not DMVA, determines the eligibility of an applicant for participation in the EVR program.

Accounting Manual. DMVA has an accounting manual that is used to assist fiscal personnel in determining the MMF. DMVA is in the process of extensively revising the Accounting Manual. Hopefully, DMVA should complete the revisions in 2017.

Asset Transfers. Unlike what private practitioners are used to in Medical Assistance situations, DMVA has no "look-back" period when considering asset transfers prior to admission. For those residents who pay under the traditional program, asset transfers made prior to admission are irrelevant and not considered. For those persons who participate in the EVR program, the standard DHS look-back periods apply.

Facility Reimbursement Officer. Each state veterans' home has a Facility Reimbursement Officer (FRO) whose role is, among other things, to determine the MMF that each resident is required to pay. The FRO is assisted by Facility Reimbursement Technicians (FRTs). Either the FRO or an FRT will interview applicants for admission and will explain to the applicants how the MMF is calculated. For those individuals eligible for the EVR program, the FRO or the FRT will assist the resident in applying for the program.

DMVA's FROs and FRTs are highly trained and are good at their jobs. They make great efforts to explain to the applicants, or the applicants' families, exactly how the MMFs are calculated. They also take pains to explain to the families that, in most cases, there will be claim made against the deceased resident's estate. Despite these efforts, the attorneys at the Office of Chief Counsel experience situations in which family members of the deceased residents express surprise when presented with a claim against their resident's estate. This happens for a number of reasons. Many times applicants are in full possession of their mental faculties and handle their admissions by themselves. They often do not tell their family members any details of the admissions process. When the resident dies, the family, not being told by the resident of the details of the admissions process, is surprised by the homes claim.

Another reason for this situation is that some residents live quite some time at a state veterans' home after admission. Details of the admission are lost through the process of time. Family members who assisted the resident in the admissions process may have died, and other members, not knowledgeable about the admissions agreements, are surprised when a claim is presented on the resident's death.

Despite DMVA's best efforts, some family members are, upon receipt of a claim letter from DMVA, become extremely upset. In all cases, DMVA's FROs, FRTs, and attorneys attempt to put family members at ease by assuring them that they (the family members) are not personally responsible for payment of the homes' claims, and that the homes' claims are against only those assets the resident had owned, in his name only, at the time of his death (with certain exceptions for assets transferred to a revocable trust).

DMVA waiver of claim. DMVA generally completely waives its claim against the estates of those residents who die survived by a spouse. In this, DMVA differs from DHS, which generally only suspends it claim. The rationale behind this policy is that DMVA does not want to burden the surviving spouse with a claim against the deceased resident. In our experience, surviving spouses of the World War II generation, if presented with a claim, will make efforts to pay that claim even at the expense of their own comfort or well-being. This is something that DMVA avoids by simply waiving its claim.

DMVA does not waive its claim in every case in which there is a surviving spouse. If the surviving spouse was estranged from the deceased resident, DMVA will not waive its claim. Also, if the surviving spouse is possessed of extensive financial assets, or is herself a resident of a state veterans' home in which her care and well-being are assured, DMVA will not waive its claim. DMVA also will not waive its claim if the surviving spouse is maintaining a legal action against DMVA or its homes.

Other cases of waiver. While we didn't discuss this during out telephone conversation, there are other situations in which DMVA will waive, or perhaps defer, its claim. If, for instance, a resident dies owning real estate in which the resident's relative (parent, child, sibling) resides, and that relative suffers from some sort of affliction which renders him incapable of self-support, DMVA may, in its absolute discretion, waive or defer its claim. Private practitioners wishing to request waiver or deferral should write a letter in response to the claim letter received from DMVA in which the private practitioner requests waiver or deferral, and the basis for the request. DMVA does not receive a lot of these requests, but it has in the past, and it has granted most of them.

Burial reserves. DMVA encourages each resident to establish an irrevocable pre-paid burial account. As you stated in your email, the amounts set aside should be reasonable. The DHS county numbers would be a good guide, but those numbers are only a guide and not binding on DMVA. DMVA has a liberal attitude in regard to money set aside for burial expenses. Burial expenses are a Class 3 claim under 20 Pa. C.S.A.§ 3392(3), and DMVA usually has a Class 3 claim against the resident's estate. DMVA will generally waive its Class 3 claim to the extent necessary for the funeral expenses to be paid in full. DMVA does not want the resident's family burdened with payment of the resident's funeral expenses.

20 Pa. C.S.A. § 3101. As you stated in your email, DMVA follows 20 Pa.C.S.A.§ 3101 and will release up to $ 10,000.00 from a resident's Member's Fund Account to the funeral home providing services to the deceased resident. If the family has already paid for the funeral, DMVA will contact the funeral home, send whatever money is available up to the full cost of the funeral (or $ 10,000.00), and get the funeral home to reimburse the family. Again, DMVA's policy is to do everything possible to relieve the family of the burden of paying for the resident's funeral.

I hope that this email answers your concerns.

Stephen Bushinski

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**From:** Robert Slutsky [mailto:robertslutsky@verizon.net]
**Sent:** Thursday, February 09, 2017 10:59 AM
**To:** Bushinski, Stephen
**Cc:** lwizelman@epix.net
**Subject:** Financial Eligibility for PA Dept. of Military Affairs Nursing Homes

Dear Mr. Bushinski:

Thank you again for taking your time to speak with Leslie and I. It was really helpful and will help the elder law bar and the veterans we all serve.

Below (in bold) is a synopsis of the information Leslie and I gleaned from the conversation. We would appreciate if you would confirm, correct or otherwise comment on its accuracy so we can advise our clients with a higher level of confidence.

**Eligibility is guided by 43 Pa. Code Chapter 7 (intend to update regulations and go though regulatory process in 2017 which probably will track DHS Title 55 regulations. Drafts have not cleared internally. Leslie offered PAELA member services to review and comment on drafts).**

**PA State Home applicants Can apply under two programs:**

1. **Enhanced Veteran Reimbursement Program (EVR). Began in 2009. Rules are the same as Medical Assistance. Can use those regs as a guide. Normal spend down at the private pay rates listed in the Pa Bulletin. 1/3 to ¼ of state home veterans are in this program.**

2. **Alternative Program:**

**Follow Federal Veterans Administration Rules for Aid and Attendance. Vet must be below $80,000.00 for household assets. The vet pays "full boat" until down to $80,000. There are deductions from income so there are funds for the spouse in the community. There is an Accounting Manual (being revised) that describes how the allocations to the spouse are arrived at. You will try to get a copy for us. Under this program, they do not consider asset transfers prior to admission.**

**The applicant can request which approach (1 or 2 above) from the Facility Reimbursement Officer.**
**The rates are published in the PA Bulletin usually in January each year, unless there is no change from prior year.**

**DMVA disregards 43 Pa Code 7.3 (4). There are no income restrictions so disregard this regulation.**

**43 Pa Code 7.8 (b)- used to determine Maintenance fee under No 2 approach unless assets exceed 80,000.**

**The rules followed are the current approved VA regulations, not the proposed regulations that have not yet been passed. Therefore no lookback and no review of asset transfers prior to entry into the DVMA nursing home.**

**In each facility there is a Facility Reimbursement Officer (FRO) who employs Facility Reimbursement Technicians with whom we and our clients will liaison. The process and payment are explained in detail and there is lots of paperwork provided by the facility to explain what they pay and what is owed after they die.**

**Each year a state home resident is reassessed by FRO and new monthly maintenance fee will be calculated based on any changes.**

**Estate Recovery: If the Maintenance fee is not equal to the per diem rate, there will be an estate recovery claim which is pursued by the Counsel's office. State Home will notify Office of Chief Counsel which will send out a**

**claim letter to the next of kin with the exact amount of the claim, broken down to Class 3 and 5.1 components. Next of kin is asked to return acknowledgment of claim form. Then the office will decide how to proceed. They only proceed against probate assets, except they can go after revocable trust or ITF or POD accounts. Relying upon 20 Pa C.S. 6304 and 7755 to do so. And In re Estate of Stevenson, 436 Pa Sup 576, 648 A 2d 559. One major difference from DHS estate recovery re real estate. While DHS will only suspend claim, DMVA will waive claim entirely. (We are confused as to under what circumstances this would occur? Need further clarification.)**

**Burial reserves are encouraged in any reasonable amount (see DHS county numbers). When vet is admitted they try to have vet establish a prepaid burial account.**

**After death, will follow 20 Pa.C.S. 3101 to allow up to $10,000 to be applied to funeral expenses.**

You mentioned that you are retiring in April. We wish you well. Can you provide us with a contact in your office who may be available to answer questions after April.

Again, thank you very much for your willingness to assist us is guiding our mutual clients.

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