

PAELA SUMMER CONFERENCE JULY 19, 2017

A QUICK PRIMER ON PA DMVA HOMES

Pennsylvania Department of Military and Veterans Affairs, a Pennsylvania Agency.

This is not to be confused with the Veterans Administration, a federal agency. These are nursing homes are only for veterans with a service connected disability.

GENERAL ELIGIBILITY REQUIREMENTS

1. An applicant shall be an eligible veteran, spouse or surviving spouse of an eligible veteran. An "eligible veteran" is defined as an individual who has served in the Armed Forces of the United States or the Pennsylvania Military Forces and was discharged under honorable conditions.

2. An applicant shall be a bona fide resident of the Commonwealth of Pennsylvania or the eligible veteran or spouse of an eligible veteran for who the Commonwealth of Pennsylvania is his/her home of record upon entry into the Armed Forces of the United States or the Pennsylvania Military Forces. Current residents have priority, however, in admission.

3. Admissions will be on a first-come, first-served basis. The admissions committee at the home shall determine the level of care, but its decisions may be appealed.

4. The following are not eligible for admission:

An applicant whose condition requires mental health care or custody.

An applicant whose behavior creates a reasonable threat to the health, safety or welfare of himself/herself or to others. This exclusion applies to an applicant who is taking medication to control behavior where in the absence of the medication, the applicant's behavior would reasonably be expected to create a potential threat to the health, safety or welfare of himself/herself or others.

An applicant whose condition requires treatment or level of treatment not available at the home, except under circumstances where alternative sources of treatment are reasonably available in the immediate vicinity of the home.

An applicant with a history of alcoholism or drug abuse whose history indicates that the applicant may not be responsive to treatment or may not accept or participate in available treatment programs.

An applicant with a contagious disease.

An applicant who was convicted of a felony, unless the applicant has demonstrated good character and behavior and has no convictions of crimes or offenses for at least five years subsequent to incarceration.

LOCATIONS

Delaware Valley Veterans' Home
2701 Southampton Road
Philadelphia, PA 19154
Phone: 215-856-2700

Gino J. Merli Veterans' Center
401 Penn Avenue
Scranton, PA 18503
Phone: 570-961-4300

Bureau of Veterans Homes
Bldg. 0-47, Fort Indiantown Gap
Annville, PA 17003-5002
Phone: 717-861-8906

Hollidaysburg Veterans' Home
500 Municipal Drive
Hollidaysburg, PA 16648
Phone: 814-696-5201

Pennsylvania Soldiers' and Sailors' Home
560 East Third Street
Erie, PA 16507
Phone: 814-871-4531

Southeastern Veterans' Center
One Veterans Drive
Spring City, PA 19475
Phone: 610-948-2400

Southwestern Veterans' Center
7060 Highland Drive
Pittsburgh, PA 15206
Phone: 412-665-6706

Provide personal care, skilled nursing care, domiciliary care, and dementia care.

FINANCIAL ELIGIBILITY

A resident of a state veterans home shall be required to make monthly payments against maintenance fee liability in accordance with the resident's ability to pay.

1. The regulations governing the admission and payments to the SVHs are found in 43 Pa. Code, Chapter 7. However, the DMVA is in the process of rewriting the regulations and does not generally follow them for admission purposes.

2. The following is pulled verbatim from an email provided as guidance by PADMVA legal counsel in April of 2017. A copy of this email is provided.

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 its 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 our 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.

*Note recent verbal communications from financial manager at Spring City home that regardless of which avenue applicant chooses, facility will apply for Medical Assistance. In the event of a transfer penalty, facility will supplement resident's fee so that payment is not affected. This is consistent with their published materials if you read between the lines.

Estate Recovery is similar to DHS in that it only applies to probate estate BUT can go after ITF accounts in accordance with Stevenson case.

3. **Contact:**

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