

acquisition or initial construction of a dwelling or a transaction under an open-end credit plan would enjoy protections not available to them under HOEPA. This would be a benefit to this group of borrowers and result in potential costs being incurred by their respective lenders. The potential cost could include preventing a lender or purchaser or assignee of the loan from collecting the loan balance when there has been a violation of the rules.

The rules proposed for re-adoption at N.J.A.C. 3:30-8.1 permit affirmative claims and defenses against creditors, assignees, or holders in any capacity where the home loan was made, arranged, or assigned by a person selling either a manufactured home or home improvements to the dwelling of a borrower or was made by or through a creditor to whom the borrower was referred by such seller. This is a broader approach than that taken in HOEPA, which does not provide for such liability. Therefore, these rules proposed for re-adoption also contain standards that exceed those established by HOEPA. Although they exceed Federal standards, the rules implement the Legislature's clear intent, as set forth at N.J.S.A. 46:10B-27.a, to provide this higher level of protection to consumers who receive such loans. Borrowers who qualify under the rules would enjoy the protections of N.J.A.C. 3:30-8.1 set forth earlier in this paragraph. This would be a benefit to this group of borrowers and a potential cost to their respective lenders. The potential cost could be preventing the lender or purchaser or assignee of the loan from collecting the loan balance when there has been a violation of the rules.

Lastly, certain definitions contained in 12 U.S.C. § 1841, 15 U.S.C. §§ 1601, 1602(aa), and 1605, 42 U.S.C. § 5401, HOEPA Pub. L. 103-325, 12 CFR 226 and 16 CFR 433 are incorporated by reference in the rules proposed for re-adoption, making the requirements of the rules with regard to the scope of these definitions the same as those imposed by Federal standards.

#### **Jobs Impact**

The Department does not anticipate that any jobs will be gained or lost as a result of the rules proposed for re-adoption.

The Department invites commenters to submit any data or studies concerning the jobs impact of the rules proposed for re-adoption together with their written comments on other aspects of this proposal.

#### **Agriculture Industry Impact**

The Department does not expect any agriculture industry impact from the rules proposed for re-adoption.

#### **Regulatory Flexibility Analysis**

Some New Jersey creditors and others who purchase loans or take assignments of loans are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re-adoption impose compliance requirements on these entities. Part of the compliance requires prompt posting of loan payments received by creditors from borrowers. Additional compliance requirements, which also impose recordkeeping responsibilities, affect creditors and purchasers or assignees of loans who seek to avoid liability related to their involvement with high cost loans. This compliance and recordkeeping would involve having policies and systems in place to prevent the purchase or acceptance of assignments of high cost loans. Such systems would include computer programs to screen loans, random sampling, exercising due diligence in operations and recordkeeping to document the steps taken.

Some creditors and others who purchase or take assignments of loans may use outside vendors or professionals to undertake or assist in the compliance and recordkeeping requirements imposed by the rules. Costs are discussed in the Economic Impact above. The intent of the rules proposed for re-adoption and of the Act is to protect borrowers of certain home loans, home improvement loans and manufactured home loans from predatory lending practices. Given this purpose, and the strong public policy of the State of New Jersey to protect its citizens from the negative impact of predatory lending, no differentiation is made in the rules proposed for re-adoption based upon the size of the creditor or of a business that purchases or takes an assignment of a loan.

#### **Housing Affordability Impact Analysis**

The rules proposed for re-adoption will have no impact on the affordability of housing in New Jersey because the rules proposed for re-adoption concern prevention of predatory mortgage lending.

#### **Smart Growth Development Impact Analysis**

The rules proposed for re-adoption will have no impact on smart growth and there is an extreme unlikelihood that the rules proposed for re-adoption would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for re-adoption concern prevention of predatory mortgage lending.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:30.

## **MILITARY AND VETERANS' AFFAIRS**

### **(a)**

#### **OFFICE OF THE ADJUTANT GENERAL DIVISION OF VETERANS' HEALTHCARE SERVICES New Jersey Veterans' Facilities**

#### **Proposed Re-adoption with Amendments: N.J.A.C. 5A:5**

Authorized By: Brigadier General Michael L. Cunniff, the Adjutant General, Commissioner, Department of Military and Veterans' Affairs.

Authority: P.L. 1988, c. 444; and N.J.S.A. 38A:3-2.2, 38A:3-2.b, 38A:3-6.4, 38A:3-6.5, 38A:3-6.6, 38A:3-6.8, 38A:3-6.9, and 38A:3-6.12.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-129.

Submit written comments by November 15, 2013 to:

Steven Ferrari  
Division of Veterans' Healthcare Services  
New Jersey Department of Military and Veterans Affairs  
P.O. Box 340  
Trenton, New Jersey 08640-0340

The agency proposal follows:

#### **Summary**

N.J.A.C. 5A:5, New Jersey Veteran' Facility, is scheduled to expire on September 11, 2015, pursuant to N.J.S.A. 52:14B-5.1.c. This date is extended 180 days to March 9, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department of Military and Veterans' Affairs has reviewed these rules, and with the amendments discussed below, found them reasonable, necessary, and proper.

The purpose of this chapter is to define the authority to establish requirements for eligibility for admission, to delineate the types of services that are provided by the veterans' memorial homes, address changes in insurance practices, adjust computation of the care maintenance fee for New Jersey veteran facilities, and correct oversights in the 2008 revision. The proposed amendments will reduce publicly supported funding for the veteran home residents who can afford to pay for their care or afford to pay for a portion of their care. The amendments proposed are the fifth to this chapter, originally effective September 21, 1992.

The rules proposed for re-adoption contain six subchapters, covering the following information. The first and second subchapters include definitions and the general provisions and eligibility criteria of the rules, which include the definitions of the rules, along with the admission eligibility. The third, fourth, and fifth subchapters contain information pertaining to pre-admission screening of applicants, the admission review and implementation, reporting of assets, care maintenance fee computations, and fiscal responsibilities. The sixth subchapter contains information on transfer, discharge, and readmission of a resident.

The substantive provisions of the amendments proposed by the Department of Military and Veterans' Affairs, Division of Veterans' Healthcare Services follow. Throughout the chapter, "veterans' facility" or "veterans' memorial facility" is changed to "veterans' memorial homes."

N.J.A.C. 5A:5-1.2 contains the definition of "maximum allowable asset," which is amended to change the allowable assets for a single resident from \$20,000 to \$24,000 and for married applicants from \$80,000 to \$110,000. This allowable rate was raised slightly in the 2008 amendments; however, this increase takes into account inflation since 2008 and is also in keeping with increases in allowances now authorized by Medicare/Medicaid. This amendment allows the married spouse of a resident to retain additional funds to cover living expenses and would not be counted as part of the resident's assets.

N.J.A.C. 5A:5-1.2 is also amended to add the definitions for "facility resident," "living will," "Physician Orders for Life Sustaining Treatment (POLST)," and "service connected disability." The following definitions are proposed for deletion: "indigent," "medically needy applicants," "National Guard/Reserve Component," "needy veterans," and "Respite Care Program."

N.J.A.C. 5A:5-1.2 is further changed to amend the following definitions. The definition of "community spouse" is replaced to mean the spouse of a veteran memorial home resident who does not receive long-term care in a medical institution or nursing facility, rather than merely a spouse of a veteran memorial home resident. The definition of "durable power of attorney" is replaced with a definition that includes a "health proxy," to be more generic in nature, and to indicate that a durable power of attorney terminates upon the death of the originator. The definition of "eligible others" is amended to increase 20 percent of the total population to 25 percent (as discussed in more detail pertaining to N.J.A.C. 5A:5-2.1 below), remove paragraph 1, and to delete that exceptions will be reviewed on a case-by-case basis. The definition of "extraordinary expense deductions" is revised to change "one time major excessive expense" to "major excessive expense." The definitions of "guardian" and "guardianship" are proposed for amendment to change "adjudicated incompetent" to "adjudicated incapacitated." The definition of "non-accountable assets" is revised to only include assets that are owned solely by the applicant or his or her spouse and to explicitly include the proceeds from the sale of a residence. The definition of "resident" is replaced with a definition that defines a resident of a state, rather than a resident at a veterans' memorial facility. Finally, the definition of "transfer" is revised to include transfers to any more suitable environment, regardless of whether it is within the Department of Military and Veterans' Affairs.

N.J.A.C. 5A:5-2.1(a) is amended to increase the percentage of non-veteran residents in a State veterans' memorial home from 15 percent to 25 percent. The amendment to this subsection further clarifies the fiscal status requirements of a veteran for admission priority consideration, reducing the categories from nine to four by simplifying them into New Jersey resident veteran, the spouse of a New Jersey resident veteran, a Gold Star parent, and non-New Jersey resident veteran. This considerably streamlines the document and the admission procedure. The amendment to recodified subsection (b) increases the maximum allowable assets for a single resident from \$20,000 to \$24,000 and for a married couple from \$80,000 to 110,000 in keeping with current Medicare/Medicaid guidelines. The amendment to recodified subsection (c) introduces the Admission Agreement (rather than a statement of compliance) into the documentation required for admittance to the veteran memorial homes. Finally, the amendment to recodified subsection (d) clarifies and expands the terms for denial of admission to include those that do not require 24-hour skilled nursing care and those who have been denied admission to another State veterans' memorial home. Recodified subsection (e) is proposed for amendment to make reevaluation mandatory under the enumerated conditions and revise recodified paragraph (e)1 to require reevaluation prior to admission, regardless of when the application was submitted and to include in recodified paragraph (e)3 omission "or misrepresentation" of the listed information. New subsection (f) states that a significant change in the information required under paragraphs (e)2 or 3 may result in denial.

New N.J.A.C. 5A:5-3.1(a)1i is added to require a completed application for admission. Recodified sub-subparagraph (a)1iii(1)(A) is amended to add Medicare Part D and creditable coverage as part of the required documentation for admittance. Medicare D was not available for consideration in the 2008 revision. The amendment deletes recodified subparagraph (a)1ii(2) as it is redundant, since an SF 180 is not required since the applicant already has a DD Form 214. Sub-subparagraph (a)1iv(5) has been amended to address the release of medical history from the Veterans' Administration. Sub-subparagraph (a)1iv(6) has been added to require the applicant to submit VA Form 10-10SH, Medical Certification. Sub-subparagraph (a)1vii(2)(D) has been added to allow the applicant to submit a Physician Order for Life Sustaining Treatment (POLST) as an acceptable document for an advance directive for health care. Paragraph (a)2 is proposed for deletion as it is redundant with other information as now required. Finally, subsection (b) has been added defining the five requirements for admissions to a veterans' memorial home.

N.J.A.C. 5A:5-4.1 is amended to clarify and expand the standards for rejection of an applicant. Paragraph (a)4 has been amended to clarify that an applicant may be rejected if the treatment/care is beyond the scope of the veterans' memorial home. Paragraphs (a)5 and 6 have been merged into new paragraph (a)5. New paragraphs (a)6, 7, and 8 are added as additional grounds to be considered for rejection. Subsection (c) is amended to include who may file an appeal. Paragraph (c)2 is proposed for deletion as it is redundant. New subsection (d) is added to explain the decision appeal process. The amendment reorganizes the contents of subsections (b) through (d) for clarity and recodifies subsections (e) and (f), which clarify the waiting list process.

N.J.A.C. 5A:5-5.1(c) is deleted as it is redundant with subsection (b). The final clause of recodified subsection (d) is deleted as it is irrelevant. Recodified subsection (e) is amended to change "resident fee" to "resident care and maintenance fee." Finally, subsection (k) is added to ensure that residents with a service connected disability be considered as part of the annual maintenance fee computations.

N.J.A.C. 5A:5-5.2(b)1 is amended to include prescription premiums, as well as health insurance as a requirement for admission. New subsection (c) states that second and third homes, additional real estate, and assets will be considered in the computation of the resident's maintenance fee. New subsection (d) is added to address recalibration of a resident's maintenance fee if additional assets or income are discovered at a later date after admission. New subsection (f) is added to indicate that a service connected disability status shall be considered the computation of resident fees.

N.J.A.C. 5A:5-5.3 clarifies resident fee computations. The final clause of subsection (a) is proposed for deletion as it is irrelevant. Existing subsection (b) is deleted in order to properly address married couples. Existing subsections (c) and (d) are proposed for deletion, but are substantively similar to new subsections (b) and (c). New subsection (d) is added to address recalibration of a resident's maintenance fee if additional assets or income are discovered at a later date, after admission. New subsection (e) is added referring to service connected disability status in the computation of resident fees. New subsection (f) is added and clarifies the status of second mortgages and additional real estate and assets in the computation of the resident's maintenance fee. Recodified paragraphs (f)10, 11, and 13 are amended to increase the deductions allowed to account for inflation since the 2008 revision.

At N.J.A.C. 5A:5-5.4(c), an amendment is proposed to allow the person in control of the resident's account, income, and assets to also be responsible for financial obligations. Paragraphs (c)10 through 15 are added to address other financial obligations and services that may be included.

N.J.A.C. 5A:5-6.1 is amended to add information pertaining to the "death" of a resident, which was not addressed in previous amendments. Existing paragraph (a)4 pertaining to the expiration of a resident is deleted as a cause for removal from a veterans' memorial home and new paragraph (a)4, "violation of Federal, State or local statutes" is added as a reason for discharge. New subsection (d) is added, related to reimbursement upon discharge or death, as well as a new paragraph (e), which delineates the process for readmission of residents who have been

discharged or who have signed themselves out. Finally new paragraph (f) addresses procedures upon the death of a resident.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

There are no negative social impacts anticipated with the rules proposed for readoption with amendments. The Department of Military and Veterans' Affairs continues to provide medical and long-term nursing care to meet the health needs of the New Jersey veterans and eligible others. Services provided to both current and future residents, regardless of their ability to pay, are as follows: medical evaluation and treatment programs administered by facility physicians, long-term care nursing services; long-term care residential living arrangements; nutritionally balanced meals and prescribed diets, as necessary to meet the individual health care needs; rehabilitation programs; recreational and socialization programs; volunteer programs; referral, information, and education services for benefits and programs; advocacy services; general welfare and financial services; and psychosocial therapies.

The proposed amendments streamline the application process by reducing the number of categories for prioritizing admission applications. They clearly establish the parameters for what is considered net income and assets; while providing guidance on reporting of those assets as they apply to the computation of the resident daily care rate. They also narrow, somewhat, programs offered by the veterans' homes (for example, deletion of respite care) because of concerns for the legal issues involved in offering these services to veterans.

The rules proposed for readoption with amendments apply to the three State-operated veterans long-term care (LTC) facilities known as Menlo Park, Paramus, and Vineland veterans' memorial homes (VMHs), and others as they may occur.

#### Economic Impact

The rules proposed for readoption with amendments will have no adverse impact on the veterans' home residents' percentage of cost for their care, nor will it place additional fiscal burdens on the State of New Jersey. These amendments provide for increases for allowable deductions for residents to make them more compatible with increases due to inflation. However, it more clearly defines who is fiscally responsible for the cost of care for residents and clearly delineates what assets are considered in computing the care and maintenance fees for a resident.

This chapter also addresses the definition of what constitutes an applicant's net assets that need to be considered when computing an applicant's care and maintenance fee. Furthermore, it defines reporting requirements for those assets and penalties if those assets are not reported. Overall, the amendments proposed for this chapter allow the veteran and the veteran's family to retain additional assets to promote a viable quality of life for them, while not significantly affecting the operating expenses of the veterans' homes. In the specific case of increasing the allowable assets for married couples, the rate proposed now matches the Federal threshold for Medicaid.

In accordance with Executive Order No. 4 (2010) the rules proposed for readoption with amendments do not contain unfunded mandates.

#### Federal Standards Statement

A Federal standards analysis is not required. The rules proposed for readoption with amendments are subject to, but do not exceed, Federal standards and the requirements of the rules are the same as those imposed by 38 U.S.C. concerning veterans benefits.

#### Jobs Impact

The Department does not anticipate that the rules proposed for readoption with amendments will have any impact on the creation of or loss of jobs within the State. Both current staffing and positions at the veterans' memorial homes will remain unchanged.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact upon the agricultural industry in the State.

#### Regulatory Flexibility Statement

The rules proposed for readoption with amendments apply to the three State-operated veterans' long-term care facilities known as Paramus, Menlo Park, and Vineland veterans' memorial homes, and others as built. These facilities are owned by the State of New Jersey and under the jurisdiction of the Adjutant General for the Department of Military and Veterans' Affairs through its Division of Veterans' Healthcare Services and its facility Advisory Councils appointed by the Governor. Therefore, as no requirements are imposed upon small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required.

#### Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to requirements for admission to the veterans' memorial homes provided by the Department of Military and Veterans' Affairs.

#### Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to requirements for admission to the veterans' memorial homes provided by the Department of Military and Veterans' Affairs.

**Full text** for the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5A:5.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### CHAPTER 5

#### NEW JERSEY VETERANS' [FACILITIES] MEMORIAL HOMES

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 5A:5-1.2 Definitions

The words and terms, as used in this chapter, shall have the following meanings. All other words shall be given their ordinary meaning unless the content of their use clearly indicates otherwise.

"Accountable assets" means [any] **all** items that [has] **have** a determined value and [is] **are** owned solely by the applicant or spouse, or owned jointly with spouse, jointly with others, or jointly by the spouse and others, and must be spent down or liquidated and used toward payment of the resident's care and maintenance **fee**. IRAs and annuities are considered as accountable assets and will be treated as income.

"Community spouse" means the married spouse of [the individual who is residing in a New Jersey veterans' memorial] **a veterans' memorial home resident who does not receive long-term care in a medical institution or nursing facility.**

["Durable power of attorney" means a designation and appointment of another in writing conveying specific powers to that attorney in fact and showing the intent of the principle that the authority conferred shall be exercisable notwithstanding the disability or incapacity of the principal at law or later uncertainty as to whether the principle is dead or alive.]

**"Durable power of attorney" means a legal document that enables an individual to designate another person(s) to act on his or her behalf, in the event the individual becomes disabled or incapacitated. A health proxy, also known as a durable power of attorney for healthcare, can also be appointed for medical decisions. The durable power of attorney terminates upon the death of the originator.**

"Eligible others" as defined and listed in order of priority below will be admitted to a New Jersey veterans' memorial [facility] **home**, as long as the census of [nonveterans] **non-veterans** does not exceed [20] **25** percent of the total population. [Exceptions will be reviewed and

approved by the Director, Veterans Healthcare services on a case-by-case basis:]

[1. National Guard/Reserve Component retiree.]

Recodify existing 2.-4. as 1.-3. (No change in text.)

"Extraordinary expense deduction" means a financial deduction as a [one time] major excessive expense to maintain the basic household, medical, or transportation needs.

"Facility resident" means an individual residing in a New Jersey veterans' memorial home.

"Guardian" means a person who has been entrusted as the legal representative of one who has been adjudicated [incompetent] **incapacitated** by a court of law and requires a legal representative to act on their behalf for all matters.

"Guardianship" means the process by which an individual is appointed the legal representative of another person who has been adjudicated [incompetent] **incapacitated** by a court of law and requires a legal representative to act on their behalf for all matters.

["Indigent" means an impoverished, destitute or needy veteran.]

"Living will" means a legal document that provides instructions and directions regarding healthcare in the event that the individual subsequently lacks such decision-making capability.

"Maximum allowable asset" means that all sources of accountable assets [as defined above] shall not exceed [\$20,000] **\$24,000** for a single applicant or [\$80,000] **\$110,000** for a married applicant.

["Medically needy applicants" means those individuals who cannot be maintained in the community because of the need for additional support and care to meet their physical, medical and psychological needs.]

["National Guard/Reserve Component" means those members of the armed forces of the United States of America who have served credibly for 20 years or more, have been honorably discharged, and eligible for retirement pay. For purposes of admission criteria to a veterans memorial home, National Guard/Reserve Component retirees are considered veterans.

"Needy veteran" means an individual whose accountable assets and income do not exceed the maximum allowable assets as defined above.]

["Nonaccountable] **Non-accountable** assets" means those items of determined value that are owned solely by the applicant or spouse, or owned jointly with spouse, jointly with others or jointly by the spouse and others and will not be spent down or liquidated and used toward payment of resident's care and maintenance]. The following are considered non-accountable assets:

1. The primary residence and any appurtenance thereto, **including proceeds from the sale of the residence**. However, if the property is sold, [and a portion or all of the proceeds from the sale are not reinvested in a primary residence,] any income earned from the investment of any or all of the proceeds will be counted as income.

2.-3. (No change.)

"Physician Orders for Life Sustaining Treatment (POLST)" is a New Jersey law designed to provide a mechanism to further define preferences for healthcare concerning life-sustaining treatment of other interventions for progressive illnesses and/or end of life decisions.

["Resident" or "veterans' facility resident" means an individual residing in a New Jersey veteran's memorial facility.]

"Resident" means a legal inhabitant of the state where the primary domicile is located.

["Respite Care Program" means a short-term admission for veterans and eligible others to provide the caregiver a period of rest from providing healthcare services to the veteran in need. This program is established in accordance with the eligibility requirements, policies, and procedures for healthcare and respite care services.]

"Service connected disability" means a disability sustained by veterans who were disabled by an injury or illness that was incurred

or aggravated during active military service. These disabilities are considered service-connected. Disability is determined by the United States Department of Veterans' Affairs in accordance with 38 CFR 51.41.

"Transfer" means the placement of a resident to a more suitable environment [within the Department of Military and Veterans Affairs] to meet individual needs.

"Veterans' [facility] memorial home" means any home, institution, hospital, or part thereof, the admission to which is under the jurisdiction of the Department of Military and Veterans' Affairs, being the facilities at Menlo Park, Paramus, Vineland, and such other veterans' facilities as may be developed.

## SUBCHAPTER 2. ELIGIBILITY CRITERIA

### 5A:5-2.1 Admission eligibility

(a) Eligibility for admission to the New Jersey veterans' memorial [facilities] **homes** is considered on financial and qualified medical needs. Veterans shall be given preference and non-veterans shall be admitted to [a] veterans [facility] **memorial homes**, as long as the census of non-veterans does not exceed [15] **25** percent of the total population. The following individuals, in order of priority, are eligible for admission consideration:

[1. A New Jersey needy veteran, being one who does not exceed the maximum accountable assets from all sources, but meets the New Jersey residency requirement as described in paragraph 1 of the definition of "veteran" in N.J.A.C. 5A:5-2.1.

2. A New Jersey resident who exceeds the maximum allowable assets, who shall still be eligible for admission, but shall be required to pay the actual cost of care and maintenance.

3. A needy spouse of a New Jersey veteran who resides in a New Jersey veterans' memorial facility.

4. A spouse of a New Jersey veteran who resides in a New Jersey veterans' memorial facility, who exceeds the maximum allowable assets.

5. A needy spouse of a New Jersey veteran who does not reside in a New Jersey veterans' memorial facility.

6. A spouse of a New Jersey veteran who does not reside in a New Jersey veterans' memorial facility, who exceeds the maximum allowable assets.

7. Needy eligible others, as set forth in (a)7i through iii below whose accountable assets do not exceed the maximum allowable amount in this order:

- i. Surviving spouse;
- ii. Gold Star parent; and
- iii. Gold Star widow, widower.

8. Eligible others, as set forth in (a)8i through iii below, whose assets exceed the maximum allowable amount, who are otherwise eligible for admission, but shall be required to pay the actual cost of care and maintenance in this order:

- i. Surviving spouse;
- ii. Gold Star parent; and
- iii. Gold Star widow, widower.

9. A needy veteran, being one who does not exceed the maximum accountable assets from all sources, but does not meet the New Jersey residency requirement as described in paragraph 1 of the definition of "veteran" in N.J.A.C. 5A:5-2.1.

(b) The non-needy applicants in (a) above shall be defined by their financial assets.]

1. A New Jersey veteran that meets the New Jersey residency requirement as described in paragraph 1 of the definition of "veteran" in N.J.A.C. 5A:5-1.2.

2. A spouse of a New Jersey veteran who is eligible as a "spouse" or "surviving spouse" as described in paragraphs 2 and 3 of the definition of "eligible others" in N.J.A.C. 5A:5-1.2 and is a resident of this State.

3. Gold Star parents.

4. A veteran who is not a New Jersey resident.

[(c)] (b) All accountable assets shall be spent down and liquidated and used to pay resident's actual care and maintenance until:

1. A single applicant's maximum allowable assets do not exceed [\$20,000] **\$24,000** from all sources of accountable assets;

2. A married couple's maximum allowable assets do not exceed [\$80,000] **\$110,000** from all sources of accountable assets.

[(d)] (c) Admission eligibility is contingent upon a [facility's] **veterans' memorial home's** ability to meet the applicant's individual health care needs, which will be reviewed and determined by the [Admission Committees] **admission committees** of each [facility] **veterans' memorial home** and bed availability. The applicant shall also sign [a statement] **an Admission Agreement** that he or she will accept placement in the [facility] **veterans' memorial home** designated by the Adjutant General, that he or she understands all sources of income to include Social Security shall be considered when determining the care and maintenance fee, and that he or she will abide by the rules, regulations, and discipline of the [facility] **veterans' memorial home** to which admitted. The obligation of such [statement] **an Admission Agreement** shall remain in effect, as long as the resident remains on the census of one of the New Jersey [veterans] **veterans' memorial [facilities] homes.**

[(e)] (d) The following shall be denied admission into a New Jersey veterans' memorial [facility] **home:**

1. (No change)  
 2. Applicants who are active substance abusers, exhibit active psychiatric problems, or exhibit [behavioral actions which] **behaviors that** may pose a danger to self or others;

3. Applicants who refuse to sign the required [statement of compliance] **Admission Agreement** under [(d)] (c) above; [and]

**4. Applicants who do not require 24-hour skilled nursing care;**

**5. Applicants who have been denied admission to another New Jersey veterans' memorial home; and**

[4.] 6. (No change in text.)

[(f)] (e) An approved applicant [may] **shall** be subject to reevaluation in the following circumstances:

[1. A more than six months lapse from the time of application, before admission;]

**1. Prior to admission;**

2. (No change.)

3. An omission or **misrepresentation** of significant medical or financial information.

**(f) Significant changes in the information required under (e)2 or 3 above may result in denial of admission by the admissions committee as per N.J.A.C. 5A:5-4.1.**

(g) (No change.)

SUBCHAPTER 3. [PRE-ADMISSION SCREENING OF APPLICANTS] **THE ADMISSION PROCESS**

5A:5-3.1 [Sequence of screening activities] **Application requirement**

[(a) The admission to a veterans' memorial facility shall be conducted as follows:]

**(a) Applicants shall be eligible for admission consideration upon completion of the documentation and information reviews as follows:**

1. To establish basic eligibility of all applicants, the following documentation and information reviews are required:

**i. A completed application for admission;**

[i.] **ii. Service history;**

(1) (No change.)

[(2) A completed "Request Pertaining to Military Records" (Standard Form 180);]

[ii.] **iii. (No change in text.)**

[iii.] **iv. Medical status:**

(1) An application for [Medical] **Health Benefits (VA 10-10EZ)[:];**

[(A)] **(2) Medicare Part A, [and] B, and D or other creditable prescription coverage;**

[(B)] **(3) Other health insurances, including supplemental; [and]**

[(C) The coverages under (a)1iii(1)(A) and (B) above must be in effect at the time of admission if eligible and must remain in effect, as long as the individual is a resident of one of the New Jersey veterans' memorial

facilities. Eligible residents who do not maintain Medicare Part A and B and other supplemental health insurance shall not be allowed any medical fee deductions against their care and maintenance fee and shall be responsible for all related fees, as long as they select not to maintain medical insurance;

(2) A Medical Certificate (VA 10-10EZ);

(3) A Veterans Administration Referral for Community Nursing Home Care (10-1204) applies only if the applicant is currently under VA care or in a nursing home under VA contract; and]

**(4) The coverages under (a)1iv(1) and (2) above must be in effect at the time of admission if eligible and must remain in effect, as long as the individual is a resident of one of the New Jersey veterans' memorial homes. Eligible residents who do not maintain Medicare Part A and B and other supplemental health insurance shall not be allowed any medical fee deductions against their care and maintenance fee and shall be responsible for all related fees, as long as they select not to maintain medical insurance;**

[(4)] **(5) A Medical History Release [Request] Form as determined by the U.S. Veterans' Administration; and**

**(6) A Medical Certification VA 10-10SH;**

[iv.] v. Financial [eligibility] **disclosure:**

(1) Assets will be reviewed and considered in determining financial [eligibility] **responsibility;**

(2) Non-accountable assets will not be considered in determining accountable assets;]

Recodify existing (3)-(6) as **(2)-(5)** (No change in text.)

[(7)] **(6) A [legal] review shall be conducted of all irrevocable trusts;**

[v.] **vi. (No change in text.)**

[vi.] **vii. Other:**

(1) Verification of the **responsible party for funeral arrangements** and [responsible person] **responsibility.**

(A) (No change)

(2) Submission of advance directives for health care, if desired by the applicant, such as:

[(A) An advance directive;]

[(B)] **(A) A proxy directive (durable power of attorney for healthcare);**

[(C)] **(B) An [instruction] instructive directive (for example, a living will);**

[(D)] **(C) A combined directive (durable power of attorney for health and fiscal matters);**

[(E) A durable power of attorney for financial and medical matters; and

(F) A living will; and]

**(D) A Physician Order for Life Sustaining Treatment (POLST); and**

[(3)] **(E) Appointment of a representational payor, if desired by the applicant[; and].**

[2. Applicants shall be eligible for admission consideration upon the completion of the documentation and information for the following:

i. Service history;

ii. Social history;

iii. Medical status;

iv. Financial eligibility; and

v. Admission eligibility.]

**(b) Applicants shall be admitted to the New Jersey veterans' memorial home upon completion of the following:**

**1. Approval of the admission committee (N.J.A.C. 5A:5-4);**

**2. A signed Admission Agreement;**

**3. VA forms (as determined by the U.S. Veterans' Administration);**

**4. A Medical History Release Form (VA 10-10SH); and**

**5. The social services packet with facility release forms.**

SUBCHAPTER 4. ADMISSION REVIEW AND IMPLEMENTATION

5A:5-4.1 Admission review policy

(a) It is the policy of the New Jersey veterans' memorial [facilities] **homes** to have an admission committee **at each home** review all

completed and tentatively approved applications for appropriateness of placement. A tentatively approved application is one which has produced all required documents and meets admission and financial eligibility requirements. [In addition to financial eligibility, the] **The following areas will be considered in all applications for admission and may be grounds for rejection:**

- 1.-3. (No change.)
4. **Treatments/care required to meet the applicant's individual health care and psychological needs that are beyond the scope of the veterans' memorial home to provide;**
5. **An applicant's active participation in substance abuse that poses a present concern or a continuing problem; and**
6. **Whether an applicant poses danger to self or others.]**
5. **Applicants who are active substance abusers and/or exhibit active psychiatric problems and/or exhibit behavioral actions that may pose a threat to self or others;**
6. **Applicants who refuse to sign the required Admission Agreement;**
7. **Applicants who do not require 24-hour skilled nursing care; and**
8. **Applicants who have been denied admission to another New Jersey veterans' memorial home.**

(b) (No change.)

(c) If the committee rejects an applicant, the [facility] **veterans' memorial home** will provide written notice of denial and the reason for denial within 14 days to the applicant or representative. The notice of denial issued the applicant shall reference the manner in which, and to whom, the denial may be appealed by written request to The Adjutant General or designee within 30 days of the [facility's] written notice of denial **by the veterans' memorial home. The appeal letter shall be submitted by the applicant, family member, legal power of attorney, or legal guardian only.** The decision on the appeal will be considered the final agency action. The adverse decision appeal process is as follows:

1. (No change.)
2. Admission Committee requirements, in situations of denial and appeals, are to be referred to The Adjutant General or designee for consideration and follow up in accordance with (b) above. A copy of the Admission Committee's denial letter is to be forwarded to the Director, Division of Veterans Healthcare Services.]
- 3.] **2. When the [Admission Committee] admission committee requirements have been met, the applicants(s) awaiting guardianship or a final determination of an appeal process shall remain on the waiting list in the sequence effective the date the application was originally received, and in accordance with [(c)] (f) below.**

**(d) The decision appeal process is as follows:**

**1. In situations where the admissions committee requires additional information, follow-up evaluation, or participation in various counseling programs, consideration will be given for placement on the waiting list, following completion and receipt of documentation requested and requirements of the admission committee.**

**2. When the admission committee requirements have been met, the applicant(s) awaiting a final determination of an appeal process shall remain on the waiting list in the sequence effective the date the application was originally received, and in accordance with (f) below.**

[(d)] (e) Approved applicants will be placed on the **approved** waiting list.

(f) The waiting list process is as follows:

- 1.-2. (No change.)
3. There will be no consideration for [by-passing] **bypassing** approved applicants on the waiting list, except when bed availability is based on gender, veteran preference, and treatment needs (**that is, specialty units, infectious diseases, etc.**) or the applicant is a spouse of a residing resident.
4. If an approved applicant refuses admission at the time offered, the applicant will be placed at the bottom of the waiting list. **This is called an approved deferred admission.**
5. (No change.)

## SUBCHAPTER 5. CARE MAINTENANCE FEE COMPUTATION

### 5A:5-5.1 General requirements for computing skilled nursing monthly resident fee

(a) (No change.)

(b) At the time of admission and annually thereafter, based on a determined date, the computation of the monthly resident fee is calculated with the resident or representative payor. The calculation is determined by review of Federal and State income tax returns and all financial statements, income, inclusive of IRAs and annuities as accountable assets, as well as[,] any other financial transactions. This asset review will be required by May 15 with a return date no later than June 30 of each year. As of September 21, 1992, the resident fee will be based on 80 percent of the net income for all residents admitted thereafter. Those individuals residing in the [facilities] **veterans' memorial homes** prior to September 21, 1992 [or who were on the approved waiting list at that time], will have the resident fee based on 60 percent of the net income.

[(c)] The resident fee will be based on 80 percent of the net income, except for those admitted or on the approved waiting list prior to September 1992, not to exceed the established monthly rate set determined annually by the Adjutant General.]

[(d)] (c) (No change in text.)

[(e)] (d) The welfare fund is an account established at each [facility] **veterans' memorial home** pursuant to N.J.S.A. 38A:3-6.16. It is composed of funds specifically donated to the [facility] **veterans' memorial home** welfare fund, or monies, which have escheated to the [Welfare Fund] **welfare fund** from the personal needs account of deceased residents, leaving no will or next of kin. This trust fund is to be utilized for the benefit and general welfare of the resident population of the institution as a whole. This fund shall provide for, and maintain, a quality of life [which] **that** might otherwise not be possible for the residents and shall be administered by the Adjutant General in accordance with the provisions of N.J.S.A. 38A:3-6.16. Residents will be required to pay a monthly welfare fee of \$20.00 or 12 percent of the balance of their monthly income, whichever is less, excluding all allowable deductions and the care maintenance fee payment. These monies will be deposited in the [facility's] **veterans' memorial home's** welfare fund. [The remainder of the net income will be returned to the resident for personal use.]

[(f)] (e) Payment for the resident **care and maintenance** fee is due the first of each month.

Recodify existing (g)-(j) as **(f)-(i)** (No change in text.)

[(k)] (j) Care and maintenance fee accounts that become delinquent are referred to the Department of the Treasury for lien application proceedings as defined in the Department of the Treasury Policy and Procedure for Delinquent Accounts.

**(k) Service connected disability status shall be considered as part of the annual maintenance fee computations.**

### 5A:5-5.2 Formula for computing single resident's skilled nursing monthly resident fee based on an 80/20 percentage

(a) The monthly resident fee for a single 80/20 resident is based on the total gross income, minus allowable deductions. This figure is the net income. Eighty percent of the net income will be the resident fee charged. An additional \$20.00 or 12 percent of the balance of [their] **his or her** monthly income, whichever is less, will be deposited in the welfare fund of the [facility] **veterans' memorial home**. The remainder of the net income will be deposited in the resident's personal needs account.

(b) The allowable deductions for a single resident are as follows:

1. (No change.)
2. **Health and prescription** insurance premiums;
- 3.-5. (No change.)

**(c) The resident's fee will be based on the applicant's net income and assets, which include, but are not limited to, second and third homes, real estate, stock and bonds, etc. Full disclosure of worth is required as part of the admission process.**

**(d) If, at a later date, assets that were not reported upon admission are discovered, they will be added to the net income and worth of the resident, computed retroactively to the date of admission. This may necessitate a recalibration of the resident maintenance fee schedule.**



[(c)] (e) Any interest or payment received from a trust transfer or second or third home sale, etc., will be treated as income. Furthermore, in situations where a trust or transfer of assets has occurred within 36 months of submitting an admission application, the value of the trust and/or assets will be deemed an accountable asset for the balance of the 36-month period.

(f) Service connected disability status shall be considered as part of the annual maintenance fee computations.

5A:5-5.3 Formula for computing a married resident's skilled nursing monthly resident fee based on an 80/20 percentage

(a) The monthly resident fee for a married resident is based on the total personal income of the resident, minus allowable deductions. This figure is the net income. Eighty percent of the net income will be the resident fee charged. An additional \$20.00 or 12 percent of the balance of their monthly income, whichever is less, will be deposited in the welfare fund of the [facility] veterans' memorial home. [The remainder of the net income will be deposited in the resident's personal needs account.]

[(b)] The resident fee will be based solely on the applicant's income.

(c) Additional income received by a working spouse, following admission of the veteran, will remain as income to the working spouse.

(d) The community spouse must divulge all sources of their monthly income in order to file for consideration of allowable deductions. Allowable deductions will be offset by the community spouse's monthly income before the applicant's monthly income will be considered. In the event that each individual of the marriage is a resident, the resident fee for each will be calculated as for a single resident. Failure to make a full and complete disclosure will constitute a breach of the facility regulations and may be grounds for removal as provided for in N.J.S.A. 38A:3-6.9.]

(b) The community spouse must divulge all sources of the monthly income in order to file for consideration of allowable deductions.

1. If a working spouse has an income greater than the total of the monthly allowable deductions, then the calculations for the married resident will be as for a single resident.

2. Failure to make a full and complete disclosure will constitute a breach of the veterans' memorial home's regulations and may be grounds for removal as provided in N.J.S.A. 38A:3-6.9.

(c) In the event that each individual of the marriage is a resident, the resident fee for each will be calculated as for single resident and no married deductions will be allowed.

(d) If, at a later date, assets that were not reported upon admission are discovered, they will be added to the net income and worth of the resident, computed retroactively to the date of admission. This may necessitate a recalibration of the resident maintenance fee schedule.

(e) Service connected disability status shall be considered as part of the annual maintenance fee computations.

[(e)] (f) The allowable deductions for a married resident are as follows:

1. (No change.)

2. Health and prescription insurance premiums;

3.-4. (No change.)

5. Second mortgages on the primary residence will not be considered as deductions for computation of the resident maintenance fee, if obtained within 36 months of the submission of an application for admittance. Similarly, second and/or third homes will not be considered as deductions for the computation of the resident maintenance fee;

Recodify existing 5.-8. as 6.-9. (No change in text.)

[9.] 10. Clothing deduction shall be [\$60.00] \$75.00 per month per dependent;

[10.] 11. Telephone/television/internet service deduction shall be [\$100.00] \$125.00 per month;

[11.] 12. (No change in text.)

[12.] 13. Home maintenance deduction shall be [\$90.00] \$100.00 per month;

[13.] 14. (No change in text.)

[14.] 15. Guardianship/advance directives: The actual cost of legal fees up to a maximum of \$2,400 may be deducted. This deduction will be divided into 24 monthly installments, which will only be permitted as long as the resident resides in the veterans' memorial [facility] home.

This deduction will only be approved for a guardianship hearing/advance directive protocol, which was processed no later than one year prior to the date of application. Verification of cost and date of action shall be required; and

[15.] 16. (No change in text.)

Recodify existing (f) and (g) as (g) and (h) (No change in text.)

5A:5-5.4 Financial responsibilities for veterans' [skilled nursing facility] memorial home resident

(a)-(b) (No change.)

(c) The resident or the person who has control of the resident's financial accounts, income, and assets will be responsible for all financial obligations for the services not provided by the [facility] veterans' memorial home. This includes, but is not limited to:

1.-7. (No change.)

8. Deductible fees not covered by medical insurances; [and]

9. Payment for pharmaceuticals to reimburse Medicaid as required[.];

10. Telephone;

11. Television;

12. Outside personal laundry services;

13. Outside physician services;

14. Any non-payment of debts incurred by the resident, including healthcare costs; and

15. Personal purchases.

(d)-(f) (No change.)

SUBCHAPTER 6. RESIDENT TRANSFER, [OR] DISCHARGE, OR DEATH

5A:5-6.1 : Transfer, [or] discharge, or death of a resident

(a) Any resident may be removed from a veterans' [facility] memorial home on being restored to an ability to promote his or her own support and welfare in the community, [or] for immorality, [or] for fraud or willful misrepresentation, or refusal to abide by the rules, regulations, and discipline of the veterans' [facility] memorial home, as well as:

1.-3. (No change.)

[4. Expiration of the resident.]

4. Violation of Federal, State, or local laws, rules, or regulations.

(b)-(c) (No change.)

(d) Pre-paid care and maintenance fees shall be rebated to the resident/representative based upon the pro-rating of days and reconciliation of insurance claims after discharge or death.

(e) A resident who has been discharged or who voluntarily discharges him- or herself and wishes to return to a veterans' memorial home must submit a complete application for admission packet to be considered for readmission. The process will be in accordance with N.J.A.C. 5A:5-3 and 4.

(f) Upon the death of a resident, the veterans' memorial home will follow the procedures as given in the Division of Veterans' Healthcare Policy and Procedure manual, Business Office section, subsections 44-02-010, 44-02-011, and 44-02-013.