

Arizona Department of Veterans' Services

Five-Year-Review Report
Title 4. Professions and Occupations
Chapter 40. Arizona Department of Veterans' Services
Arizona State Veteran Home

Submitted January 15, 2015

Pursuant to A.R.S. § 41-1056 the Arizona Department of Veterans' Services submits the following five-year review report.

ADVS has published a set of rules that appear in the Arizona Administrative Code Title 4, Chapter 40.

The following information applies to all the rules in A.A.C. Title 4, Chapter 40.

Arizona Department of Veterans' Services

Overview of Rules

The Arizona Department of Veterans' Services' rules were originally drafted in 1995 and adopted January 2, 1996. In August 1999, the Arizona Veterans Service Commission became the Arizona Department of Veterans' Services. Under the commission, the agency was governed by a five-member commission appointed by and answerable to the Governor. As a result of amendments in August 1999 to A.R.S. §§ 41-601 through 41-604, the commission ceased functioning as a decision-making body and the agency director was appointed by the Governor and no longer reported to the Commission.

On September 11, 2004, the original rules were changed to reflect the legislative changes described above. Extensive changes were also made to conform to long-term, skilled nursing care industry practice. Additionally, changes were made to streamline procedures that were found to be cumbersome, unnecessarily time consuming, or outdated.

Effective August 2, 2008, the Notice of Final Rulemaking corrected two minor problems with the existing rules:

1. The website was changed for the agency (www.azdvs.gov).
2. Applicants seeking admission to the Arizona State Veteran Home frequently do not have their military separation documents available. In those instances, the Admission Coordinator can establish the applicant's eligibility by verifying that the individual has been treated as an inpatient or outpatient by the US Department of Veterans Affairs (VA). Evidence of treatment at federal hospitals or outpatient facilities administered by the VA is accepted as evidence of veteran status.

There have been no comments received regarding the admission rules since 1999.

A(1). General and Specific Statues Authorizing the Rules.

The Arizona Department of Veterans' Services' general authority derives from A.R.S. § 41-603(B)(6), which provides general authority to the department to adopt rules. In addition, A.R.S. § 41-603.01(D)(6), authorizes the department to "adopt rules necessary for the operation of the veterans' home."

A(2). Objective of the Rules.

The rules define eligibility for admission, the admissions process to ensure the facility can provide the needed level of care, identifying that appropriate resources exists to adequately care for the resident, resident responsibilities and conduct, involuntary discharge consistent with state law and based on resident conduct, change in level of care that exceeds the facilities ability to care for the resident or non-payment, and residents appeal rights.

A(3). Effectiveness of the Rules.

To date the rules created have efficiently provided the guidance necessary to identify those individuals eligible for admission to the State Veteran Home(s). The rules detail the specific eligibility and information required for admission by each applicant, and established an effective admissions process.

A(4) Consistency with other statutes and rules

In determining the rules are consistent with state and federal statutes and rules, the following statutes or rules were reviewed:

Under R4-40-101, Definitions:

- Administrator licensure - ARS 36-446 et seq.
- ARS § 36-2931 et seq. Long-term care system services. [Description of AHCCCS requirements for contractors providing care is under ARS 36-2939.]
- ARS § 36-401(A)(33) - defines nursing services.
- A.A.C. R9-10-412 describes nursing services and is included in the definition.
- 38 U.S.C. 7402 describes the appointment of physicians by the VA.
- A.R.S. Title 32, Ch. 13, or Ch. 17 outlines the licensure of physicians as defined in the rules for the Arizona State Veteran Home.
- Title XVIII of the Social Security Act is referenced in the definition of "Medicare," which is administered by the Centers for Medicare and Medicaid Services and appears in 42 U.S.C.1395 et seq.
- 38 CFR 3.7 for a definition of "veteran" status.

General reference:

- ARS § 41-1001 et seq. (statutes regarding rule making processes) and A.A.C. R1-6-203.
- 38 CFR Part 51, Per Diem for Nursing Home Care of Veterans In State Homes.
- A.A.C. Title 9, Health Services; Chapter 10, Department of Health Services - Health care Institutions: Licensing.
- A.A.C. Title 9, Az Health Care Cost Containment System, Chapter 28. Arizona Long-Term Care System.
- ARS 41-601 et seq - organic statutes for the Arizona Department of Veterans' Services
- 42 CFR 440.40, 440.140 & 440.155 Skilled Nursing Facility (and outlines services)
- Current Office of Administrative Hearing Statutes (ARS § 41-1092 et seq.)

A(5). Agency enforcement policy.

All of the rules are currently being enforced by the agency. The agency has not encountered problems enforcing the rules.

A(6). Clarity, Conciseness, and Understandability of the Rules.

The agency considers the language of the rules to be clear, concise and understandable except where changes are indicated.

A(7). Criticisms Received During the Previous Five Years.

The Department has not received written criticisms or email communications regarding these rules. There have been no written allegations, litigation, or administrative proceedings concerning these rules.

A(8). Estimated Economic Impact (EIS).

The Department believes there has been minimal or no economic, small business or consumer impact as anticipated in the 2008 EIS from the original making of the rules. The State Veteran Home(s) operate without state general fund funding, and although a second home (120-bed facility) has been added the department believes the impact remains minimal. ADVS does not charge any person for applying for admission to the Arizona State Veteran Home(s). Arizona taxpayers do not bear the costs of operating the ASVH and are not affected by the current rules. Due to the requirements and State Home policy for safe and secure resident discharges the involuntary discharge rule has minimal effect of persons affected by current rules.

Arizona Revised Statute § 41-603.01A. states: ASVH must operate as a self-sustaining facility[s].

A(9). Any Analysis Submitted to the Agency by Another Person regarding the rules' Impact on This State's Business Competitiveness as compared to the Competitiveness of Businesses in Other States.

No such analysis has been submitted by any party to ADVS.

A(10). If Applicable, how the Agency Completed the Course of Action Indicated in the Agency's Previous Five-Year Review Report.

A statewide moratorium on rule making has been in place since 2009. To date ADVS leadership has honored the moratorium and not requested an exception. As a result, the prior review changes and those recommended with this review will continue to wait the lifting of the statewide moratorium. In the previous report the agency determined that a change to R4-40-201(B) was required so that the number of non-veteran residents was based on the total number of VA-recognized beds rather than based on the number of residents (which varies from day to day). The agency can no longer support such a change and will not pursue the previously submitted course of action.

A(11) A Determination That the Rules Impose the Least Burden and Costs to Persons Regulated by the Rule, Including Paperwork and Other Compliance Costs Necessary to Achieve the Underlying Regulatory Objective.

The rules do not impose any unnecessary burdens of costs. The State Veteran Home provides the onsite medical assessment avoiding any medical evaluation cost. Applicants apply individually and voluntarily because they believe any minimal cost associated with the application process established by these rules is greatly outweighed by the care and quality of life offered to residents of the State Veteran Home(s).

A(12) A Determination That the Rule is Not More Stringent Than a Corresponding Federal Law Unless There is Statutory Authority to Exceed the Requirements of That Federal Law.

The agency has determined that after analysis, the rules are not more stringent than corresponding federal law.

A(13) For the Rules Adopted After July 29, 2010, That Requires the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037; Relating to Issuing General Permits.

The agency rules were adopted prior to July 29, 2010 and require no issuance of a regulatory permit, license or agency authorization.

The Rules were adopted prior to July 29, 2010. None of the Rules have been amended since that date.

ANALYSIS OF INDIVIDUAL RULES

R4-40-101

Objective

To define the terms used within Title 4, Chapter 40 to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation of the rules that reduce unnecessary repetition of the terms' definitions.

It was determined that the rule required change by adding "Gold Star Parent" to conform to VA regulation 38 CFR § 51.210 (d) which enabled state veteran nursing home(s) to furnish nursing care to "parents any of whose children died on active duty, commonly know as "Gold Star Parent".
The citation for nursing services is incorrectly stated as A.R.S. § 36-401A(34). The correct citation is A.R.S. §36-401A(33).

R4-40-201

Objective

The objective of the rule is to define eligibility for admission to the Arizona State Veteran Home (ASVH) and afford consistent interpretation. The purpose of this rule is to identify those applicants eligible for admittance to the ASVH and although limited, the ability of the ASVH to accept non-veteran residents and the administrators' responsibility for admitting only those applicants whose needs do not exceed the ASVH's ability to provide services at the time of application.

It was determined that the rule required change to R4-40-201 (A) and (B) to conform to VA regulation 38 CFR § 51.210 (d) which enabled state veteran nursing home(s) to furnish nursing care to "parent any of whose children died on active duty, commonly know as "Gold Star Parent".

R4-40-301

Objective

The objective of the rule is to identify where an application for admissions may be obtained and that each person requesting admittance into the ASVH must submit an application. The application and supporting records and documentation established by this rule are necessary to determine eligibility and the ASVH's ability to care for the applicant prior to approving admission into the ASVH.

It was determined that the rule required change to R4-40-301 (A) by updating where the application may be obtained from; as both the physical address and web site address have changed.

R4-40-302

Objective

The objective of the rule is twofold: (1) to outline the process the ASVH uses to review a completed application and notification of placement is given, and (2) the procedure the ASVH uses if immediate placement cannot be made. The rule was adopted to ensure transparency of the admittance process and to inform the public of the process, processing time and actions completed by the ASVH once an application for admission is received.

ASVH Administrators' determined the rule should be amended. The admissions coordinator shall determine whether an applicant is eligible for admission to ASVH by, obtaining approval from the business manager and the administrator or administrator's designee instead of consulting the business manager

R4-40-304

Objective

The objective of the rule is to define the process by which an applicant is admitted to the ASVH. The rule provides for notification by the admission's coordinator as to date, and time an accepted applicant can expect to be admitted. The rule further establishes the requirement for the applicant or responsible party to review, sign and agree to abide by certain ASVH policies relating to resident admissions, conduct and payment(s). This process is to ensure the applicant and/or legal representative understand the behavioral and financial expectations of a resident in the ASVH prior to admitting the resident.

R4-40-501

Objective

The objective of the rule is to establish responsibility for payment of resident care costs and to outline how bills are processed. Furthermore, the rule establishes when a refund or credit of any overpayments are received. The rule informs residents and responsible parties when to expect both payment notices and refunds when credit is due.

There is a typographical error in R4-40-501 (B) that needs to be corrected. The words "third-party" needs to be eliminated.

R4-40-601

Objective

The objective of the rule is to define the personal and social responsibilities of residents at ASVH and sets notification expectations by residents or legal representatives when certain changes occur in the residents' financial, physical, or psychological conditions. This rule informs resident and responsible parties to report changes in resident income and health. The rule also list certain prohibited activities within the ASVH. These requirements ensure the safety and well-being of residents, staff and public. Furthermore, Arizona Statue requires the ASVH to operate as a self-sufficient enterprise therefore notification of any change in a residents payer source will assist to ensure the home remains self sufficient, and ASVH staff can actively assist a resident or legal representative in identifying and applying for an alternative payer source.

R4-40-701

Objective

The rule defines the circumstances and procedure under which a resident may be discharged from the ASVH for a reason other than the resident's desire. The purpose of the rule is to ensure residents or legal representatives understand the circumstances under which the administrator may involuntarily discharge a resident from the ASVH. Additionally, the rule identifies appeal and re-admittance rights of an involuntarily discharged resident. This rule is necessary to protect the public, health, safety, and welfare of residents. Additionally, Arizona Statue requires the ASVH to operate as a self-sufficient enterprise. This rule assist the administrator in ensuring the ASVH remains self-sufficient.

R4-40-801

Objective

The objective of the rule is to set forth the procedure for residents to have readily accessible funds within the ASVH. The purpose of the rule is to establish and inform residents and legal representatives the requirements to set up a resident trust fund and details on management of resident trust fund accounts.

R4-40-901

Objective

The rule sets forth the procedure to request a hearing once an involuntary discharge notice has been given. The purpose of the rule is clarity and transparency. The rule informs the resident and the public of the procedure, time constraints and required information needed to request a hearing by the office of administrative hearings office.

R4-40-902

Objective

The objective of the rule is to ensure applicants who are denied admission to the Home or residents of the Home who are involuntarily discharged and the public are informed of the appeals process, and time limit to file an appeal provided in A.R.S. § 41. 1092 et. seq. Additionally, the rule describes procedures and circumstances when the ASVH Administrator may grant a rehearing. The rule ensures the public and residents are informed of their rights for a decision review or rehearing if certain conditions exists as determined by the ASVH administrator.

A(14) Course of Action the Agency Proposes to take regarding each Rule.

The Agency will seek to amend the rules by requesting exemption to the rule-making moratorium by June 30, 2016. The proposed changes to the rules would include a general update to citations and definitions: update R4-40-101 and R4-40-201 to conform with 38 CFR 51.210 admission of a gold star parent; clarify R4-40-201 by adding gold star parent; revise R4-40-301 to reflect how to obtain an application by updating address and website address; revise R4-40-302 to require that admissions be approved by the business manager with final approval by the administrator or the administrator's designee; R4-40-501 correct a typographical error regarding billing; change the language within R4-40-701 so that the legal citations are clear (Article 9 refers to R4-40-901 et seq. and is not an article that deals with an appeal of a discharge under ARS Title 41, Chapter 6)

The specific changes proposed are listed below:

Proposed Change #1:

R4-40-101

D "Applicant" means a veteran, spouse, or surviving spouse, or gold star parent who submits a written application for admission to the ASVH. Add definition "gold star parent" means parent any of whose children died while serving in the armed forces. J "Nursing services" means services defined in A.R.S. § 36-401A(34). The correct citation is A.R.S. §36-401A(33).

Proposed Change #2:

R4-40-201

(A) An applicant is eligible for admission to ASVH if the applicant is: 3. A surviving spouse ~~and~~ "," 4. A gold star parent and 5. Meets...

Proposed Change #3:

R4-40-302

(A) The admissions coordinator shall determine whether an applicant is eligible for admission to ASVH under R4-40-201 by:

1. Reviewing the application,
2. Obtaining an onsite medical assessment, if requested by the director of nursing,
3. Obtaining approval from the director of nursing, and
4. ~~Consulting with~~ obtaining approval from the business manager ~~AND~~ 5. Obtaining approval from the administrator or administrator's designee

Proposed Change #4:

R4-40-501

(B) The business manager shall send a bill to the resident or legal representative by the 10th of each month.

The bill, which is due upon receipt, requires payment for the ~~third party~~ following:

Proposed Change #5:

R4-40-701(C) A resident who is discharged involuntarily or legal representative may appeal under ARTICLE 9 AND A.R.S. Title 41, Chapter 6, Article 10 ~~and Article 9.~~