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1/28/06

NEBRASKA DEPARTMENT OF HEALTH  
AND HUMAN SERVICES

400 NAC 1

TITLE 400

NEBRASKA VETERANS' HOME SYSTEM

CHAPTER 1

RULES OF MEMBERSHIP

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RULES OF MEMBERSHIP

1-001 SCOPE AND AUTHORITY: These regulations are the rules of membership for the Nebraska Veterans' Home System. The regulations are authorized by Neb. Rev. Stat. §§ 80-314 to 80-331.

### 1-002 DEFINITIONS

Administrator means the licensed, full-time Administrator of a Veterans' Home.

Applicant means the veteran or other qualified individual who is seeking admission to the Home.

Asset means all real property and personal property, both tangible and intangible, owned by the applicant/member and his or her spouse.

Board means the Board of Inquiry and Review.

Department means the Nebraska Department of Health and Human Services.

Dependent child means a child less than 19 years of age who still lives in the member's home or a child less than 24 years of age who is a full-time student pursuing an accredited course of secondary or post-secondary education. Child includes court-ordered dependents.

Home means one of the Homes in the State Veterans' Home System.

Income means gain or recurrent benefit received in money or in-kind from any source including, without limitation:

- |   |   |
|---|---|
| 1. Alimony  | 9. Nursing home insurance               |
| 2. Distribution from a pension, individual retirement account, annuity, trust, or structured settlement | 10. Railroad retirement benefits        |
| 3. Dividends  | 11. Rental property income              |
| 4. Insurance  | 12. Royalties                           |
| 5. Interest   | 13. Social Security benefits            |
| 6. Land contract income   | 14. Spouse employment income            |
| 7. Military retirement disability benefits  | 15. VA compensation                     |
| 8. Military service benefits  | 16. VA non-service connected disability |
|   | 17. VA pension                          |
|   | 18. Workers compensation                |

Legal representative means an applicant's or member's attorney, attorney-in-fact (person holding a written power of attorney), court ordered guardian or conservator, trustee (of a properly executed trust) and such other person legally designated or legally appointed to represent the applicant or member.

Member means a person residing in a Home.

Secretary means the Director of the Nebraska Department of Veterans' Affairs in his/her capacity as Secretary to the Board of Inquiry and Review.

USDVA means the United States Department of Veterans Affairs.

1-003 ADMISSION AND MEMBERSHIP REQUIREMENTS: An applicant or person seeking admission on behalf of another person must submit an application in proper form.

1-003.01 Written Consent: Written consents for release of medical information and release of financial information sufficient to enable a Home to obtain current information from time to time respecting the member or his/her spouse or dependent child(ren) must be furnished to the Home by the member or his/her spouse or dependent child(ren) and/or legal representative.

1-003.02 Spouse or Dependent Child: A member's spouse or dependent child who seeks support must provide the Home and the Secretary with a signed Financial Statement in proper form including a list of all income, expenses as allowed by the Board, and assets.

1-003.03 Provision of Information: A spouse, other relative, legal representative or other fiduciary of a member has the same duties to the Department as the member with respect to provision of information respecting the member's financial affairs as requested.

1-003.04 Failure to Furnish Information: Failure to provide accurate and complete information on the application to the Home may result in denial of the application and/or subsequent discharge from the Home.

1-004 ADMISSION PRIORITY: Eligible applicants will be admitted in the order of their application for the type of care needed for the applicant, with veterans given preference over non-veterans.

1-005 APPLICATION APPROVAL: The decision to approve an application for admission to the Veterans' Home System is made by the Board. The Board will make the final decision on interim approvals at its next meeting.

1-005.01 Denial: If for any reason the Board does not approve an application, the applicant, the County Veteran Service Officer of the county in which the application originated, and the Department will be notified in writing of that decision by the Secretary.

1-005.02 Notification: An applicant must be notified in writing by the Secretary of the reasons for denial within ten business days of the decision.

1-005.03 Appeal: The notice of decision of denial must state the reason(s) for the denial and also provide the applicant with notification that review by the Board may be requested.

1-006 INTERIM ADMISSIONS: Subject to approval by the Board at its next meeting, persons qualifying for admission to the Home may be admitted without first having been approved by the Board provided the conditions prescribed by the Board for such an interim admission are met.

1-007 PAYMENT OF MAINTENANCE CHARGES: Maintenance charges are due and payable in advance each month, on or before the last business day of the month, and are delinquent if not paid when due.

1-007.01 Overdue Payment: When a member's monthly maintenance charge has not been paid in full within 60 days of the due date, the member's account may be referred by the Department for collection and the member may be discharged.

1-008 BENEFITS: A member must apply for all monetary benefits that would increase the member's overall income and assets, whether the benefits are state, federal, or private. Any increase as a result thereof must be applied to maintenance charges. If there is a failure to apply for all such benefits, the member may be discharged.

1-009 MAXIMUM MAINTENANCE CHARGE: The Board will determine the Veterans' Home System's maximum maintenance charge. The maximum maintenance charge is the standard monthly rate for a member's care, support, maintenance, and treatment in a Home as determined by the Board, in its discretion, considering:

1. Actual operating and treatment costs during the immediately preceding year;
2. The percentage of support being provided by USDVA; and
3. Other factors deemed relevant by the Department and the Board.

1-009.01 Notice: Any change in the maximum maintenance charge must be posted in places in the Homes accessible to members at least 30 days before the effective date of the rate change. If a member or his/her legal representative has provided the Administrator of the member's Home a written designation of the name and address of a person to receive notice on behalf of the member, the Administrator must mail notice of the change in the maximum maintenance charge to the designated person at least 30 days prior to the effective date of the change.

1-010 MEMBER'S MAINTENANCE CHARGE: Subject to review by the Board upon a timely appeal, the Department will determine each member's individual monthly maintenance charge based on his/her income and assets and applicable allowances and disregards as prescribed by the Board. Each member is liable each month for the lesser of:

1. The maximum maintenance charge; or

2. His/her individual monthly maintenance charge as determined by the Department considering the member's income and assets and Board-prescribed allowances and disregards as applicable.

1-010.01 Asset Level Method: A member will be charged the maximum maintenance charge if his/her assets, after allowances established by the Board, equal or exceed in value the maximum asset level prescribed by the Board.

1-010.02 Monthly Income Method: If the total value of a member's assets, after allowances established by the Board, is less than the maximum asset level prescribed by the Board, then the member's individual monthly maintenance charge will be the lesser of:

1. The amount by which the member's income exceeds applicable Board prescribed allowances; or
2. The maximum maintenance charge.

1-010.03 Restorative Exception: A member successful in restorative and rehabilitation efforts and who wishes to discharge to a less restrictive setting, such as independent living, will be allowed to be employed outside the Home for up to four complete months without that income being counted for maintenance. The income from this employment will be escrowed to assist the member in his/her transition to independent living.

1-010.04 Allowance Exception: No monthly allowance may be given for a spouse or dependent in a private or public institution when payment for his/her care is from a public agency.

1-010.05 Change In Member's Individual Maintenance Charge: A member's individual maintenance charge will be reviewed and recalculated annually and may be recalculated by the Department in between annual recalculation in the event of either an increase or reduction in either assets or income.

If an asset increase causes the member's assets, after allowances established by the Board, to equal or exceed in value the maximum asset level prescribed by the Board, the member will be charged the maximum maintenance charge for each month that the maximum asset level is equaled or exceeded at any time during that month. If not effective sooner due to a determination by the Department that the increased maintenance charge should be effective retroactively, the effective date of a recalculation due to an income increase will be the first day of the month immediately following the month in which the increase in income occurs and the effective date of a recalculation due to an asset increase will be the first day of the month immediately following acquisition of the asset.

1-010.06 Changes in Financial Circumstances: A change in the financial circumstances of the member or his/her spouse or dependent child(ren) must be reported to the Home business manager by the member and his/her spouse, other relative, legal representative or other fiduciary of the member within ten days of the occurrence of the change or their receipt of notice of the change, whichever is earlier.

1-010.07 Increases in Maintenance Charge: The Department may increase a member's monthly maintenance charge retroactive to either the date on which the additional income or asset is received or an earlier effective date if the effective date precedes actual receipt.

1-010.08 Transfer or Assignment to the Home: A member receiving an inheritance, back pay award, federal benefit or other asset will transfer and assign the same to the Department, subject to approval and acceptance by the Department, in an amount sufficient to assure that payment of the member's accrued and future monthly maintenance charges do not become delinquent.

1-010.09 Maintenance Charges when Absent From the Home: The maintenance charge for a member absent from the Home for any reason other than hospitalization will not be decreased or otherwise affected unless the member requested discharge prior to leaving the Home and completely vacated the Home consistent with his/her discharge request. The discharged member's application for readmission is subject to the Rules of Membership.

1-011 TRANSFER OF ASSETS: Transfer or assignment to another person or entity of an interest in real property of a member, member's spouse or dependent child(ren) for less than the county-assessed value, or of personal property of a member, member's spouse or dependent child(ren) with a fair market value exceeding \$5,000 for less than fair market value, within two years before the member's first application for admission to a Home, or thereafter, is cause for denial of the application or discharge of the member.

1-012 VOLUNTARY DISCHARGE: If a member voluntarily discharges without good cause on two or more occasions, his/her application for readmission to a Home will be denied for one year unless there are extenuating circumstances, subject to the approval of the Board in all cases. Good cause and extenuating circumstances are determined by the Board.

1-013 INVOLUNTARY DISCHARGE: A member may be involuntarily discharged if a danger to self or any other person or for other cause including, but not limited to, commission of any of the following acts by a member or the member's spouse, adult relative, legal representative or other fiduciary:

1. Submission of an application for admission which is inaccurate or incomplete;
2. Failure to pay the member's maintenance charge within 60 days of the due date;
3. Transfer or assignment of an interest in real property for less than county assessed value or of any personal property worth more than \$5,000 for less than fair market value;
4. Deprivation of any income or asset of an applicant or member or his/her spouse or dependent child(ren) which, absent such deprivation, would be considered in determining the maintenance charge or which adversely affects payment of the maintenance charge;

5. Transfer, either before or after admission, of income of a member or his/her spouse or dependent child(ren) or any asset into a trust and failure of the trustee to timely disburse amounts from the trust sufficient to assure that the member's maintenance charge does not become delinquent;
6. Consent to a divorce decree which deprives the member of any income or asset which would, absent such decree, have been considered in determining the member's maintenance charge;
7. Failure to timely report an asset increase or income increase;
8. Failure to timely report an inheritance, legacy, back pay award, federal benefit or other change in assets which are available or deemed available to the member or his/her spouse or dependent child(ren);
9. Failure to transfer or assign to the Department an inheritance, back pay award, federal benefit or other asset within 60 days of receipt upon request by the Department;
10. Failure to apply for all monetary benefits for which a member may qualify which would increase the member's assets and income and result in an increase in his/her monthly maintenance charge; or
11. Failure to furnish in a timely fashion written consent to release of either medical or financial information upon request of the Department.

#### 1-014 INVOLUNTARY DISCHARGE PROCEDURES

1-014.01 Notice of Situation: The Administrator must notify the member and his/her legal representative, if any, within 30 days of discovery of a situation that may require discharge except in emergency situations. In non-emergency situations, the member and his/her legal representative have 60 days after receipt of the notice to correct the situation as required by the Department. No notice is required for discharge due to an emergency.

1-014.02 Notice of Discharge: The Administrator may pursue discharge. The discharge notice in a non-emergency situation must be in writing and state the grounds for discharge. A copy of such notice will be sent to the Secretary of the Board of Inquiry and Review. Such decisions may be appealed to the Board by filing a written appeal with the Secretary. Any appeal will be dismissed if not filed in writing with the Secretary within 30 days of the issuance of the notice of discharge. Appeal will not stay involuntary discharge during the pendency of the appeal if the discharge is an emergency discharge.

1-014.03 Reapplication: A member involuntarily discharged for cause may not reapply for six months after discharge. When a member is involuntarily discharged based on medical reasons, the discharged member or his/her legal representative may reapply for admission upon written certifications by two doctors that any medical basis for the discharge no longer exists.

1-015 REQUESTS FOR HEARING: The Board will meet every three months or at the call of the Chairperson or Secretary to transact business at one of the Homes, or at an agreed-upon site as provided in Neb. Rev. Stat. § 80-319. Hearings will be conducted at these meetings as needed.

1-015.01 Regarding Maintenance Charges: Any member who is dissatisfied with the amount of maintenance he/she is paying may request a hearing before the Board by making a request in writing to the Board which details the complaint and reasons supporting the member's position.

1-015.02 Regarding Denial or Discharge: An applicant or member may appeal any denial of application or discharge decision by requesting a hearing before the Board. The request must be in writing and detail the complaint and reasons supporting the applicant or member's position and must be filed with the Secretary of the Board within 30 calendar days of the date of the letter of decision of denial or discharge.

1-015.03 Receipt of Appeal: The Secretary or his/her designee will provide written confirmation of receipt of the appeal to the member or his/her legal representative within ten days of receipt and provide the member or his/her legal representative written notice of the date, time and place of the Board meeting at which the appeal will be heard.

1-015.04 Attendance: If the member or his/her legal representative does not wish to attend the hearing before the Board, he/she may request that the Board decide the appeal on the basis of the written complaint and may submit supporting documentation to the Secretary prior to the Board's hearing on the appeal. The Board may allow any person to participate telephonically including witnesses providing testimony.

1-015.04A Correspondence: All correspondence with the Board must be sent, properly addressed, to the Secretary.

1-015.05 Quorum: There must be a quorum of five Board members present and voting to decide an appeal.

1-015.06 Recording: The Board will arrange for tape-recording of the appeal hearing and the Board vote on the appeal. Any party to a formal hearing before the Board may procure, at his/her expense, a court reporting service.

1-015.07 Testimony: Only the member appealing or his/her legal representative, the Department's representative, and witnesses having relevant personal knowledge will be allowed to speak at a member's appeal to the Board. Only Board members, the member appealing or his/her legal representative, and Department staff or their legal representative will be allowed to question witnesses. Testimony will be under oath.

1-015.08 Notice of Decision: The Secretary will send a copy of the dated, written decision to the Board, the Department representative, and the member or his/her representative.