Date of Notice to the Public: December 13, 2016

STATE OF RHODE ISLAND
OFFICE OF VETERANS' AFFAIRS
ADVANCED NOTICE OF DIRECT FINAL RULE-MAKING

In accordance with the Chapter 42-35 of the Rhode Island General Laws, as amended (specifically Section 42-35-2.11 of the amended Administrative Procedures Act) and pursuant to the provisions of Chapters 40-6-8 of the General Laws of Rhode Island as amended, the RI Office of Veterans Affairs hereby proposes to file the following Direct Final Rule:

RICR TITLE 195 – RHODE ISLAND OFFICE OF VETERANS AFFAIRS

CHAPTER 10, PART 2– RHODE ISLAND VETERANS HOME: ADMINISTRATIVE PROCEDURES FOR THE BILLING AND COLLECTION OF MAINTENANCE FEES

Effective January 2017, this rule is being amended to update the cost−of−living scale and per diem cost of maintenance for residents of the RI Veterans Home due to the annual change in the Consumer Price Index. Sections of the rule have been clarified and updated such as sections relating to income and deductions and the due date for financial statements. In addition, the rule has been amended to remove authority for the Office of Veterans Affairs from the Director of the Department of Human Services to the Director of the Office of Veterans Affairs pursuant to Chapter 30, Section 30-17.1-2, 30-17.1-5 and 30-17.1-6 of the General Laws of Rhode Island. The rules have also been reformatted and renumbered as required by RI General Laws, Section 42-35-2.11.

The RI Office of Veterans Affairs believes that this proposed action is noncontroversial and anticipates that no objections will be received to these proposed regulations given the fact that these proposed rules are a result of an annual cost-of-living update.

In the development of these rules, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

This proposed rule is accessible on the R.I. Secretary of State website (http://www.sec.state.ri.us/ProposedRules/) or available in hard copy upon request (401-462-2018 or RI Relay, dial 711 If no formal objection is received on or before January 12, 2017, the Department of Human Services will file the amendment without opportunity for public comment). All written objections should be sent to Bethany Caputo, Office of Policy Development, Department of Human Services, Louis Pasteur Building, Bldg. 57, Howard Avenue, Cranston, RI 02920 or Bethany.caputo@dhs.ri.gov and must be received not later than 11:59 PM on Thursday, January 12, 2017.

The Office of Veterans Affairs does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap in acceptance for or provision of services or employment in its programs or activities.

Concise Summary of Proposed Non-technical Amendments
(Amendment to an Existing Regulation)
State of Rhode Island and Providence Plantations
Office of Veterans Affairs

Concise Summary of Proposed Non-technical Amendments to the RI Code of Rules (RICR), Title 195, Chapter 10, Part 2- Rhode Island Veterans Home: Administrative Procedures for the Billing and Collection of Maintenance Fees. In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendments:

Effective January 2017, this rule is being amended to update the cost−of−living scale and per diem cost of maintenance for residents of the RI Veterans Home due to the annual change in the Consumer Price Index. Sections of the rule have been clarified and updated such as sections relating to income and deductions and the due date for financial statements. In addition, the rule has been amended to remove authority for the Office of Veterans Affairs from the Director of the Department of Human Services to the Director of the Office of Veterans Affairs pursuant to Chapter 30, Section 30-17.1-2, 30-17.1-5 and 30-17.1-6 of the General Laws of Rhode Island. The rules have also been reformatted and renumbered as required by RI General Laws, Section 42-35-2.11.

~~State of Rhode Island and Providence Plantations Department of Human Services~~
~~RHODE ISLAND VETERANS HOME~~
~~480 Metacom Avenue Bristol, Rhode Island 02809~~

~~ADMINISTRATIVE PROCEDURES FOR THE BILLING AND COLLECTION OF MAINTENANCE FEES AT THE RHODE ISLAND VETERANS HOME~~

~~March, 2015~~

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195-RICR-10-01-02

TITLE 195 – RHODE ISLAND OFFICE OF VETERANS AFFAIRS

CHAPTER 10 – RHODE ISLAND VETERANS HOME

PART 02 - RHODE ISLAND VETERANS HOME: ADMINISTRATIVE PROCEDURES FOR THE BILLING AND COLLECTION OF MAINTENANCE FEES

2.1 Introduction

A. The Director of ~~the Department of Human Services~~ Veterans Affairs is authorized under R.I. Gen. Laws § ~~Chapter 24~~30~~, Section~~ 30-~~24~~17.1-2, 30-17.1-5 and ~~30-24-10~~30-17.1-6 ~~of the General Laws of Rhode Island~~ to establish appropriate rules and regulations governing the maintenance fees at the Rhode Island ~~Veterans'~~Veterans Home.

B. The ~~Commandant~~ Administrator of the Rhode Island ~~Veterans'~~Veterans Home is the responsible person delegated by the Director of ~~the Department of Human Services~~ Veterans Affairs to administer these ~~said~~ rules and regulations for the billing and collection of maintenance fees at the Rhode Island ~~Veterans'~~Veterans Home.

C. ~~As with all policies of the Rhode Island Veterans' Home, t~~These regulations adhere to the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 200d, *et seq*.) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and the Department of Health and Human Services implementing regulations (45 C.F.R. Parts 80 and 84).

D. The ~~Rhode Island Department of Human Services (DHS)~~Office of Veterans Affairs does not discriminate on the basis of race, color, national origin, or handicap in acceptance for or provision of services or employment in its programs and activities. Under the provisions of applicable law, ~~DHS~~ the Office of Veterans Affairs does not discriminate on the basis of sex, age, creed or political belief.
~~For further information about these regulations and DHS grievance procedures for resolution of complaints of discrimination contact DHS at 600 New London Avenue, Cranston, Rhode Island, Telephone Number: 464-2121. The Coordinator for Community Relations and Equal Opportunity is the coordinator for implementation of Title VI; and the Vocational Rehabilitation Placement Supervisor is the coordinator for implementation of Section 504. The Director of DHS or her designee has the overall responsibility for DHS civil rights compliance.~~

2.1.1 Statutory Requirements

A. Pursuant to R.I. Gen. Laws § 30-24-10, ~~Veterans Admissible to Home - Fees T~~the ~~the~~ Director shall at the end of each fiscal year, determine the net per diem expenses of maintenance of residents in the facility and shall assess against each resident who has net income, as defined herein, a fee equal to eighty percent (80%) of the resident's net income, provided that such fee shall not exceed the actual cost of care and maintenance for such resident.

B. Net income is defined as gross income minus applicable federal and state taxes and minus

1. an amount equal to one hundred fifty dollars ($150) per month of residency,

2. fifty percent (50%) of any sum received due to wounds incurred under battle conditions for which the resident received the Purple Heart,

(3)c3. the amount paid by a resident for the support and maintenance of his or her spouse, parent(s), minor child(ren), or child(ren)who is/are blind or permanently and totally disabled as defined in Title XVI of the Federal Social Security Act subject to a maximum amount to be determined by rules and regulations as shall be adopted by the Director.

2.2 Domiciliary Care Program for Homeless Veterans (Veterans Transitional Supportive Program- VTSP)

A. Pursuant to R.I. Gen. Laws § 30-24-10.1, Tthe Director of the Department of Human Services Veterans Affairs is hereby authorized and empowered to establish and maintain a domiciliary care program for homeless veterans (Veterans Transitional Supportive Program, VTSP) at the Rhode Island Veterans Home.

B. Any veteran admitted to the Rhode Island Veterans Home pursuant to this section shall be exempt from the maintenance fee assessment established pursuant to R.I. Gen. Laws § section 30-24-10, provided, however, that the director shall assess against each veteran admitted under this program a monthly maintenance fee equal to ten percent (10%) of the veteran's monthly gross income, from whatever source derived and whether taxable or nontaxable.

C. In addition tThere will also be additional beds called "Extended VTSP" beds to which a monthly maintenance fee of thirty percent (30%) of the veteran's monthly gross income, from whatever source derived and whether taxable or non-taxable, will be charged.

1. Extended VTSP will be available to eligible veterans in the VTSP program, but occupancy will not exceed four (4) months.

2. The maintenance fee shall be paid monthly to the Veterans Home and shall be deposited in the Veterans Home fund. Any failure to make payment when due shall be cause for dismissal from the facility. Prior to any dismissal for non-payment of fees, the veteran shall be afforded administrative due process.

2.3 Financial Statement (Bus. 17)

A. Each person shall upon admission to the Home file a financial statement (Form (Bus. 17). The financial statement (Form Bus. 17) shall be used as the basis to establish the resident's charge.

B. It shall be the responsibility of the resident, guardian, or fiduciary to report to the Business Office of the Home any changes in income received for the resident within ten (10) days of receipt of such income.

Revised Financial Statement

C. Each resident shall file a revised financial statement between January 1 - 15no later than March 31st of each year. In addition thereto, each resident whose source or amount of income has changed shall complete a new financial statement within (10) days of receipt of such notice of change or of receipt of the income payments. The revised financial statement shall be used to reestablish the resident's monthly maintenance fee.

2.4 Gross Income Defined

A. Gross income is defined as earnings, pensions, and other benefits and all other monies received, including but not limited to the following:

1. Social Security (i.e., Old-Aage survivors Survivors, and Ddisability Iinsurance)

2. Temporary disability insurance

3. Employment security benefits

4. Veterans administration benefits

5. Railroad retirement benefits

6. Civil Service annuity

7. Worker's compensation

8. Prizes (Monetary)

9. Awards (Monetary)

10. Inheritance (Monetary)

11. Gifts (Monetary)

12. Rents

13. Interest

14. Dividends

15. Royalties

16. Alimony

17. Insurance proceeds

18. Allotments

19. Military Retirement

20. Trust accounts

~~. Refunds of Federal and State Taxes~~

21. Gains on sale of real and personal property including the sale of home

22. Any other source of income

B. Retroactive benefits payments shall be subject to the maintenance fee for the period of time covered by the benefit award and shall be added to all other income previously reported for the benefits period. The Home will then re-compute the maintenance fee previously determined for the benefit period and the resident will be billed for the full amount of any additional maintenance fee due for the benefit period.

C. Interest and dividends shall be prorated over a 12-month period commencing with the first month of each calendar year based on the amount received by the resident during the previous 12 month period.

D. All residents shall be required to apply for any income benefit to which the resident may be entitled. If requested by the Home, the resident or his/her guardian, conservator, or fiduciary shall authorize the Home to process the necessary application to secure such benefit.

2.5 Deductions from Gross Income

A. Prior to the determination and collection of any maintenance fee, the following deductions shall be allowed:

1. Federal and State taxes.

2. An amount equal to $150 per month for personal needs.

3. Patient Employee pay and therapeutic earnings.

4. Fifty percent (50%) of any sum received due to wounds incurred under battle conditions for -which the resident received the Purple Heart.

5. Guardianship Fees.

6. Support allowance.

7. Medicare Part B.

2.5.1 Federal and State Taxes

A. It shall be the responsibility of the resident to provide evidence of amounts paid for federal and state taxes by submitting to the Home's Business Office a true copy of the federal and state tax forms or submission of a canceled check or money order made payable to the federal and/or state governments for such taxes.

B. Such amounts paid for federal and state taxes shall be deducted from gross income for the month in which the verification is submitted to the Home's Business Office prior to determining the maintenance fee. Any tax payments in excess of gross income in a particular month shall be carried forward and deducted from the following month(s) gross income.

2.5.2 One Hundred Fifty Dollar Deduction

A. An amount equal to one hundred fifty dollars ($150) per month shall be deducted from the resident's gross income prior to determining the maintenance fee and any patient employee pay.

2.5.3 Special Therapeutic Personal Needs Deduction

A. Therapeutic employment in the public and private sector or sheltered workshops shall be subject to the maintenance fee as specified below.

1. Such employment must be part of a written plan with the resident.

2. In addition to the basic personal needs (Section 106) of $150 allowed by state law an additional $85 plus one-half (1/2) the remainder of earned income per month may be protected for personal needs. The maximum combined personal needs deduction cannot exceed $330 per month. Example: $150 + $85 + ($129 maximum) = $330)

2.5.4 Purple Heart Deduction

A. An amount equal to fifty percent (50%) of any sum received due to wounds incurred under battle conditions for which the resident received the Purple Heart shall be deducted from gross income prior to determining the maintenance fee.

B. It is the responsibility of the resident to provide evidence such as the Purple Heart order or any service records which states that the Purple Heart was awarded to the resident. The Business Office will assist the resident in the verification of the Purple Heart Award.

2.5.5 Guardianship Income/Fees

A. For purpose of these regulations "Guardianship Fees" shall mean: guardian fees, attorney fees, probate filing fees, and related expenses such as guardians, bonds.

B. As state law requires the guardian to file an accounting each year with the appropriate court, it shall be the guardian's responsibility to submit a copy of said annual accounting to the Rhode Island ~~Veterans'~~Veterans Home in the same month as approved by the court.

C. From the accounting the guardianship fees as stated above shall be used to determine the amount to be subtracted each month from the resident's gross income.

2.5.6 Support Deduction ~~(Bus. 18)~~

A. For purpose of determining the maintenance fee, there shall be ~~deducted~~ a deduction from the gross income the amount paid by a resident for the support and maintenance of his or her spouse, parent(s) or minor child(ren). For purposes of this regulation, determinations for a common law spouse will be based on Rhode Island law and 38 USC § 103(c). This amount is subject to a maximum to be computed based on the supported person's income as related to the cost of living scale below.

B. For purpose of determining the maintenance fee, there shall be ~~deducted~~ a deduction from ~~the~~ gross income the amount paid by a resident for the support and maintenance of his or her adult child who is permanently and totally disabled as defined in Title XVI of the Federal Social Security Act, subject to a maximum amount to be computed based on the supported person's income as related to the adopted cost of living scale.

C. Verification of Support

1. The resident must ~~have~~ provide~~d~~ support prior to admission.

2. The resident and/or person to be supported must provide evidence as to manner/method, amount and beginning of support.

D. Amount of Support

1. When the supported person's income is below the cost of living scale for the family size, the resident will be allowed a deduction in an amount that will, when added to the supported person's income, provide the supported person total income equal to the cost of living scale for the family size.

2. Any support allowance authorized for a minor shall be provided to that responsible person having custody of the minor.

3. A support allowance may not be authorized for any person who is confined to a private or public institution when payment for their care is from a public agency.

E. When supported person(s) income is in excess of the cost of living scale, no deduction will be granted for that person.

F. It shall be the responsibility of the resident to provide evidence of amounts paid for the support and maintenance of any person and to submit a supported person's statement of income (Bus. 18 for each person).

G. Each resident shall file a revised supported persons Statement of Income (Bus. 18) ~~annually between January 1 - 15~~no later than March 31st each year. In addition, the resident shall file a revised supported persons Statement of Income (Bus. 18) for each person whose source or amount of income changes.

H. Any change in support status shall be reported immediately by the resident.

I. Failure to report correct financial data of the supported person resulting in the determination/granting of an erroneous support allowance shall be cause for the discontinuance of the resident's support allowance. Any indebtedness owed the State of Rhode Island shall be paid in full or by other appropriate arrangements before a support allowance is authorized again.

2.5.7 Cost of Living Scale

	INCOME* MONTHLY	INCOME ANNUALLY
1.	$1,980~~62~~	$~~$23,540~~23,760
2.	~~$2,655~~$2,670	~~$31,860~~$32,040
3.	~~$3,348~~$3,360	~~$40,180~~$40,320
4.	~~$4,042~~$4,050	~~$48,500~~$48,600
5.	~~$4,735~~$4,740	~~$56,820~~$56,880
6.	~~$5,428~~$5,430	~~$65,140~~$65,160
Reference: U.S. Department of Health & Human Services and the RI Executive Office of Health & Human Services: Income Qualification Guidelines *Income as used in this instance means the gross earned or unearned income.		

~~Reference: U.S. Department of Health & Human Services~~
~~RI Department of Health & Human Services: Income Qualification Guidelines~~
~~*Income as used in this instance means the gross earned or unearned income.~~

2.6 Verification of Data

A. The Home reserves the right to verify and confirm any data from any agency or person having custody of such data the resident or dependent has submitted on the Financial Statement (Bus. 17) and/or the supported person's Statement of Income (Bus. 18) to insure the proper determination of the maintenance fee.

2.7 Per Diem Cost

A. The Director shall, at the end of each fiscal year (June 30), determine the net per diem expenses of maintenance of residents in the facility for nursing and domiciliary care which shall be used as the basis for all maintenance fees assessed during the twelve (12) month period commencing the following January 1 of each year.

PER DIEM COST Fiscal Year Ending June 30, ~~2015~~2016	
Nursing Care (per day)	
Actual Cost	$~~384.80~~449.21
Less VA Allowance	$~~102.38~~103.61
	$~~282.42~~345.60

B. It shall be the responsibility of each resident or his/her fiduciary to see that his/her established maintenance fee is paid in full at the Home's business office on/or before the tenth (10th) calendar day of each month.

2.8 Maintenance Fees

A. A fee equal to eighty percent (80%) of the resident's net income shall be assessed against each resident who net income provided that such fee shall not exceed the actual cost of care and maintenance for such residents.

2.8.1 Payment of Maintenance Fees

A. Each resident shall be billed on the first day of each month on his or her Statement of Charges ~~(Form 160)~~ for the maintenance fee assessed for the current month of residency.

B. A resident whose funds are on deposit with the Home's designated bank may sign an automatic withdrawal slip to have his/her maintenance fee automatically withdrawn from his/her account. Said resident shall not receive ~~Form 160,~~ a Statement of Charges each month.

C. Monthly maintenance fees in an amount under one dollar ($1.00) shall be exempt from the collections process.

D. All residents (admitted after July 1, 2001) will be billed on the tenth day of each month on Statement of Charges for the number of days in the current month.

E. When a resident is admitted after the first day of the month, the first month's maintenance fee shall be based on the number of days remaining in the month including the day of admission.

~~**New Admissions**~~
~~All residents (Admitted after July 1, 2001) will be billed on the tenth day of each month on Statement of Charges (Form 160) for the number of days in the current month.~~

~~**Admission**~~
~~When a resident is admitted after the first day of the month, the first month's maintenance fee shall be based on the number of days remaining in the month including the day of admission.~~

2.8.2 Hospitalized Residents

A. When a resident is hospitalized, his/her maintenance fee shall not be decreased, abated, or otherwise affected by the hospitalization unless the resident is discharged from the Home.

B. However, if the hospitalized resident elects to relinquish a bed, that resident shall be discharged. Once the resident has been discharged he shall have the right to reapply for admission subject to the procedures for the application and admission of veterans to the Rhode Island Veterans Home.

C. If no election to relinquish a bed is made by either the resident or his nominee within fifteen (15) days from the date of absence, the resident shall be maintained on the roles subject to the procedure for billing and collection of maintenance fees at the Rhode Island Veterans Home.

2.8.3 Inter-ward Transfers

A. Should a resident be transferred from one area of care to another, his/her maximum maintenance fee charge shall be adjusted to reflect the area of care the resident is receiving. the new rate shall take effect the day after the transfer.

2.8.4 Resident on Pass, Leave or AWOL

A. The maintenance fee for a resident who is absent from the Home on pass, extended leave, or absent without official leave (AWOL) shall not be decreased, abated, or otherwise affected unless the resident is discharged from the Home.

B. If such resident chooses to relinquish a bed, that resident will be discharged. Once the resident has been discharged he shall have the right to reapply for admission subject to the procedures for the application and admission of veterans to the Rhode Island Veterans' Veterans Home.

C. If no election to relinquish a bed is made by either the resident or his nominee within fifteen (15) days from the date of absence, the resident shall be maintained on the roster subject to the procedures for billing and collection of maintenance fees at the Rhode Island Veterans' Veterans Home.

2.8.5 Discharges

A. Upon being discharged the resident shall be responsible to make full payment of all maintenance fees incurred through the day of discharge.

B. The resident's per diem rate for the month of discharge shall be based on the number of days the resident was carried on the books.

2.8.6 Failure to Pay Maintenance Fees

A. Maintenance fees shall be paid monthly to the Home and any failure to make payment when due shall be the cause for dismissal from the facility. Prior to dismissal, the resident shall be afforded administrative procedural due process in accordance with Section 1212.10.

B. A veteran who has been discharged for non-payment of maintenance fees or who has left the Home without paying his/her maintenance fees, who applies for readmission to the Home must pay any indebtedness owed the State of Rhode Island in full prior to readmission.

2.9 Net Income

A. Net income is defined as gross income minus federal and state taxes, minus an amount equal to one hundred fifty dollars ($150) per month of residency for personal needs, minus any patient employee pay, minus an amount equal to fifty percent (50%) of any sum received due to wounds incurred under battle conditions for which the resident received the Purple Heart, minus guardianship fees allowed in Section ~~108~~2.5.5, and minus the amount paid by a resident for the support and maintenance of a dependent(s) subject to the maximum dependent deduction allowed in Section ~~109~~2.5.6.

2.10 Rights to Appeal

A. A resident or his/her fiduciary who is not in agreement with the maintenance fee assessment or any other determination made pursuant to these rules and regulations may request an informal review by the Assistant Administrator.

1. A resident or his/her fiduciary shall make an oral or written request for such an informal review at the Business Office of the Home within ten (10) days of receipt of the maintenance fee assessment or other determination. The determination of the Assistant Administrator is subject to further informal review by the Associate Director upon oral or written request to the Office of the Associate Director within ten (10) days of the determination of the Assistant Administrator.

2. If a resident or his/her fiduciary is aggrieved by the determination of the Associate Director, he/she may within ten (10) days thereof file a written request for a formal hearing before the Director of ~~the Department of Human Services~~ Veterans Affairs or his or her designee. This formal hearing shall be conducted in accordance with the provisions of the Rhode Island Administrative Procedures Act (R.I.G.L. Title 42, Chapter 35) which require, in part, that a record of hearing be made and that all parties be afforded the opportunity to respond and present evidence and argument on all issues involved. The decision of the Director or his or her designee shall be in writing and a copy thereof delivered or mailed to each party.

3. If a resident or his/her fiduciary is aggrieved by the decision of the Director or her designee, he/she may seek judicial review of the decision in the Superior Court of the State.

4. If a resident or his/her fiduciary requests an informal review or formal hearing, he/she may be represented by an authorized representative, such as legal counsel, relative, friend, or other person.