

## NOTICE OF PUBLIC HEARING

The Nebraska Department of Veterans' Affairs (NDVA) will hold a public hearing for rulemaking on Tuesday May 16, 2023 beginning at 8:30 a.m. Central Time in the NDVA Office on the 4<sup>th</sup> Floor of the Nebraska State Office Building at 301 Centennial Mall South, Lincoln, Nebraska.

Draft copies of the proposed regulations to be adopted, amended, or repealed are available for examination at the NDVA office, Monday through Friday between 8:00 a.m. and 5:00 p.m. and on the Nebraska Secretary of State's website at [www.sos.ne.gov](http://www.sos.ne.gov). The description of the fiscal impact on state agencies, political subdivisions, and persons regulated by the proposals is available at each of these locations. The proposed changes will have no fiscal impact on state agencies, political subdivisions, or persons regulated by the proposals.

All interested persons may attend and testify orally or by written submission at the hearing. Interested persons may also submit written comments to NDVA prior to the hearing, at [ndva@nebraska.gov](mailto:ndva@nebraska.gov) which will be entered into the hearing record if received at NDVA offices by 5:00 p.m. May 15, 2023.

Hearings will be held on the following:

1. Amendment to Title 400, Rules and Regulations of the Nebraska Department of Veterans' Affairs. Changes to Chapter 1 add, delete, modify definitions. Chapter 2 adopts the Attorney General's Model Rules for practice and procedure. Chapter 3 adopts existing Title 443, Chapter 1, Nebraska Veterans' Aid Fund, into Title 400, as revised to include statutory changes including adding transportation as an allowable reimbursable expenditure, and to clarify the appeal procedure to the Veterans' Advisory Commission. Chapter 4 to adopt existing Title 443, Chapter 4, guidance for waiver of tuition into Title 400, as revised to reflect statutory changes allowing the application to be submitted directly to NDVA and allowing simultaneous waivers. Chapter 5 provides guidance for the State Veteran Cemeteries, adopting federal provisions relating to memorialization and interment. Changes to Chapter 6, State Veterans' Homes regulations, amend and update references from DHHS to NDVA throughout, update terminology, update the lookback period for transfers or assignments of property, and reflect how NDVA and the State Veterans' Homes Board operate including appeals from Board decisions.
2. Repeal of Title 443. Relevant portions of this Title, Chapters 1 and 4, are proposed to be amended into Title 400, as explained above. The remaining portions of this Title are obsolete or only apply to the internal workings of NDVA and are proposed to be repealed.

If auxiliary aids or reasonable accommodations are needed to participate in the hearing, or if hearing impaired, please contact NDVA at 402-471-2458 no later than May 9, 2023.

## DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Veterans' Affairs	
Title: 400	Prepared by: NICOLE S ZIMMERMANN
Chapter: 1	Date prepared: 12/29/2022
Subject: NEBRASKA VETERANS' HOME SYSTEM	Telephone: 531-220-1433

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & a Description of Impact:

State Agency: No fiscal impact.

Political  
Subdivision: No fiscal impact.

Regulated  
Public: No fiscal impact.

If indeterminable, explain why:

NEBRASKA DEPARTMENT OF  
VETERANS' AFFAIRS

400 NAC 1

Throughout this Title the following definitions shall apply:

- 001 Department is the Nebraska Department of Veterans' Affairs;
- 002 Director is the Director of the Nebraska Department of Veterans' Affairs;
- 003 Home is one of the licensed nursing home facilities operated by the Department;
- 004 USDVA is the United States Department of Veterans' Affairs.

CHAPTER 2 RULES OF PRACTICE AND PROCEDURE

001 NEGOTIATED RULEMAKING This section establishes the rules and regulations to petition for negotiated rulemaking for matters under the jurisdiction of the Department.

001.01 The Department adopts and incorporates by reference the Model Rules promulgated by the Attorney General for procedures governing negotiated rulemaking found at 53 NAC 1.

002 AGENCY RULE MAKING This section establishes the rules and regulations for a person or entity to petition for rulemaking to promulgate, amend, or repeal a rule or regulation regarding matters under the jurisdiction of the Department.

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003 AGENCY DECLARATORY ORDERS This section establishes the rules and regulations for a person to seek a declaratory order regarding a matter under the jurisdiction of the Department.

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004 HEARINGS IN CONTESTED CASES This section establishes the rules and regulations to petition for a hearing to enforce the legal rights, duties, or privileges of a specific party regarding certain matters under the jurisdiction of the Department.

004.01 The Department, for matters not otherwise covered by regulations governing the Department, adopts and incorporates by reference the Model Rules promulgated by the Attorney General for procedures governing hearings in contested cases found at 53 NAC 4.

004.02 This section shall not create a right of appeal or right to contest an agency action which is not specifically authorized by statute or Department regulations.

004.03 This section does not apply to appeals under this Title relating to applications for the Nebraska Veterans' Aid Fund, or to any appeals under this Title relating to the following:

004.03A Applications for admission to a Home;

004.03B Determination of an individual's member contribution;

004.03C Applications for readmission to a Home after voluntary discharge; or

004.03D Involuntary discharge from a Home.

Chapter 3 NEBRASKA VETERANS' AID FUND

001 DEFINITIONS\_The following definitions shall apply to this Chapter:

001.01 Applicant is a qualified individual who is seeking aid from the Department;

001.02 Commission is the Veterans' Advisory Commission created by Neb. Rev. Stat. § 80-401.06.

001.03 Designee is an employee of the Department designated by the Director to receive and approve for payment or disapprove applications for aid pursuant to Neb. Rev. Stat. § 80-401.03(2).

001.04 Deputy Director is the Deputy Director of the Department.

001.05 Fund is the Nebraska Veterans' Aid Fund created by Neb. Rev. Stat. § 80-401 from which aid is granted.

002 ELIGIBILITY

002.01 The Fund is intended as a temporary emergency fund to assist eligible veterans and their dependents in time of need when an emergency occurs and funds available from other sources such as private resources (income, savings, loans, etc.), regular funds or agencies, pension, compensation, insurance, unemployment compensation and sick benefits, etc., are not sufficient for their immediate needs.

002.01A Aid will not be granted to eligible veterans or dependents whose emergency is caused by violation of law or State of Nebraska Rules and Regulations, and as a general rule, will not be furnished to families of such veterans.

002.01B Voluntary unemployment or refusal to work by eligible veterans or dependents does not constitute an emergency.

002.02 The Fund is available to assist in paying for food, shelter, fuel, transportation, wearing apparel, family support services, medical aid, surgical aid, and in assisting with the funeral expenses of qualifying discharged veterans.

002.02A Before aid is provided, the applicant must secure an itemized estimate or provide documentation of the actual cost. A claim may not be paid if not previously authorized by the Director, Deputy Director or Designee.

002.02B Veterans should seek medical treatment from a USDVA facility whenever possible if they are unable to pay for care in a private facility. When applying for medical aid, the applicant must present itemized statements, Explanation(s) of Benefits (EOB), and a physician's statement of physical condition and treatment.

002.02C The Fund is not intended to pay all of an applicant's medical and hospital expenses, but it may be used to assist with other sources to help alleviate need.

002.02D The Fund does not pay maternity expenses unless there are other complications causing unexpected additional expenses.

002.03 Aid may normally be granted for a period as recommended by the Commission.

002.04 Prospective applicants should not incur liabilities in the expectation of securing a grant from the Fund.

### 003 APPLICATIONS FOR AID

003.01 Application for aid shall be made through the local post of any recognized veterans organization or with a county veterans service officer. The applicant shall answer all questions and furnish the information requested and sign the application in the proper place before a county veterans service officer, officer of the post, or other competent authority. Only when an applicant is absent, physically unable, incompetent or deceased should the application be filed by another member of the family, and the reason therefore should be shown in the proper space.

003.02 Applications for aid may be cancelled after thirty (30) calendar days if no response has been received from requests for submission of required documents; clarification of conflicting information; completion of unanswered questions or other information necessary to provide an appropriate decision.

003.03 Membership in a veterans organization is not necessary to apply for and receive aid from the Fund.

003.04 The applicant is notified in all cases when a decision on the application has been made. When aid has been granted, the applicant is notified when payment has been sent.

004 APPEAL OF DISALLOWED CLAIMS When a claim is disallowed by the Deputy or Designee, the applicant may request reconsideration. To request reconsideration, the applicant must send the request for reconsideration to the Director, in writing within fifteen (15) business days from the date the decision was mailed by the Department. The applicant must provide reasons why the application should be reconsidered. The Director or his or her designee will affirm, modify or reverse the decision of the Deputy Director or Designee and the applicant will be notified of the decision.

004.01 An applicant may appeal the decision made by the Director or his or her designee to disallow a claim to the Commission.

004.02 The applicant may, within fifteen (15) business days after the notice of the decision from the Director or his or her designee was mailed by the Department, file with the

Chairman of the Commission a written notice of appeal setting forth facts and grounds for the appeal.

004.03 The Commission shall convene to hear the appeal of a denial for aid from the Fund.

004.03A The Chairperson of the Commission shall fix a time and place for the hearing, which shall not be later than three (3) months following the date of filing the request for appeal.

004.03B The Chairperson of the Commission may convene either an in person or virtual hearing.

004.00C The applicant may appear in person at the hearing and/or be represented by legal counsel.

004.03D The applicant shall be granted the opportunity to present either oral or written testimony in support of the claim, whether or not same testimony has previously been submitted.

004.03E The Director, or his designee or legal counsel, shall have the right to rebut or explain any testimony which might be submitted.

004.00F The Commission shall have the power to grant a continuance of the hearing to afford either the applicant or the Director, his or her designee, or legal counsel, the opportunity to present additional evidence.

004.04 Following the hearing, the Commission shall make its findings, and may affirm, modify or reverse the decision of the Director or his or her designee.

004.04A The findings and decision of the Commission shall be final and will be reported by the Commission to the Director and the applicant.

004.04B The Director will comply with the decision of the Commission within ten (10) business days after receipt of its findings and decision.

## CHAPTER 4 WAIVER OF TUITION

001 Applications must be submitted in a timely manner for proper checking and certification. Applications for waiver of tuition for a school term which has concluded will be processed only to verify with a school that the applicant would have been eligible if the application had been submitted prior to or during the school term.

002 All applications must be accompanied by proof of honorable service, or discharge under honorable conditions, of the veteran upon whose record the application is based.

003 The Department will obtain certification from the USDVA as to the eligibility of an applicant under Neb. Rev. Stat. § 80-411(2)(b). The Director will determine whether the applicant is eligible for the waiver, and if so, will forward the application to the state supported school chosen by the applicant, certifying the applicant's eligibility.

004 Simultaneous waivers are allowed, provided the primary/initial institution acknowledges, in writing, that the credits earned at the secondary/alternative institution will transfer to the degree program of the primary institution. Each application for waiver shall be submitted to the Department on a separate application. The secondary waiver shall only be effective for the term being applied for.

CHAPTER 5 VETERAN CEMETERY DIVISION

001 The State Veteran Cemetery(ies) operated by the Department follow: (a) the GI Bill Improvement Act of 1977, Pub. L. No. 95-202 § 401, 91 Stat 1433, 1449-1459 (1977), (b) National Cemetery Administration Directive 3210/1 (rev. June 8, 2020), (c) 38 CFR § 3.7(x) (2011) and (d) 38 USC §§ 2402(a) and 2408 (2022) for eligibility for interment, the provision of memorial markers and all other aspects of memorialization and interment. These regulations are attached hereto and incorporated herein by reference as "Attachment A."

002 The State Veteran Cemetery(ies) operated by the Department adopts the National Cemetery Administration's National Shrine Commitment Operational Standards and Measures, Version 4.0, (rev. October 2009) as guidelines for general appearance of the cemetery and maintenance of the associated grounds and buildings. These standards are available for inspection from the Department upon request.

CHAPTER 6 NEBRASKA STATE VETERANS' HOMES

001 DEFINITIONS Throughout this Chapter, the following definitions apply:

001.01 Administrator is a person duly appointed to manage a Home, who holds a license to serve as a full-time nursing home administrator in the State of Nebraska.

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

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

001.04 Board is the Veterans' Homes Board.

001.05 Business Office is a division in the Home responsible for members' finances.

001.06 Dependent child is a child of the applicant or member who lives with the applicant, or resides in the member's former residence, and is (a) less than 19 years of age, or (b) less than 24 years of age and is a full-time student pursuing an accredited course of secondary or post-secondary education. Dependent includes court-ordered dependent(s).

001.07 Income means gain or recurrent benefit received in money or in-kind from any source including, but not limited to:

001.07A Alimony and support payments;

001.07B Distribution from a pension, individual retirement account, annuity, trust, or structured settlement;

001.07C Dividends;

001.07D Farm Income;

001.07E Grants;

001.07F Insurance, including but not limited to, nursing home insurance;

001.07G Interest;

001.07H Land contract income;

001.07I Military retirement income, disability benefits and/or service benefits;

001.07J Railroad retirement benefits;

001.07K Rental property and lease income;

001.07L Reportable gambling winnings;

001.07M Royalties;

001.07N Social Security benefits;

001.07O Spouse employment income;

001.07P Unemployment compensation;

001.07Q USDVA compensation, non-service connected disability and/or pension;

001.07R Wages, including severance payments; and/or

001.07S Workers' Compensation benefits.

001.08 Legal representative is an applicant's or member's attorney, attorney-in-fact, court ordered guardian or conservator, trustee, or such other person legally designated or appointed to represent the applicant or member.

001.09 Member is a person residing in a Home.

001.10 Secretary is the Director in his or her capacity as Secretary to the Veterans' Homes Board.

001.11 Transfer or assignment of real property is the transfer or assignment to another person or entity of an interest in real property of an applicant, applicant's spouse or applicant's dependent child(ren) for less than the county-assessed value, or of personal property of an applicant, applicant's spouse or applicant's dependent child(ren) with a fair market value exceeding \$5,000 for less than fair market value, within five (5) years before the applicant's first application for admission to a Home, or thereafter.

## 002 APPLICATION AND ADMISSION

002.01 Applications for admission will be submitted on forms developed by the Department.

002.02 Eligible applicants will be admitted in the order completed applications are received for the type of care they need, with veterans given preference over non-veterans.

### 002.03 BOARD AUTHORITY

002.03A The decision to approve or deny an application for admission to the Home is made by the Board.

002.03B The Chairperson of the Board shall have the authority with the approval of the Secretary to waive a guideline or policy established by the Board for the purposes of expediting the admission of a member or for safeguarding the health, safety, or welfare of a potential or current member of the Home. All such actions of the Chairperson shall be reviewed and voted on by the Board at its next meeting. In the absence of the Chairperson, the Vice-Chair shall have the same authority.

002.04 INTERIM ADMISSION\_Subject to approval by the Board at its next meeting, persons qualifying for admission to a Home may be admitted on an interim basis before the Board meets and approves the application, provided the applicant meets all other eligibility requirements and no applicant on the waiting list has a higher priority.

002.05 DENIAL

002.05A An application for admission may be denied by the Board for any reason to include, but not be limited to the following:

- (1) Submission of an application for admission which is inaccurate or incomplete;
- (2) The applicant has been convicted of a felony;
- (3) The applicant is listed as a High Risk/Level 3 sex offender on the Nebraska State Patrol Sex Offender Registry;
- (4) Transfer or assignment of real property;
- (5) Deprivation of any income or asset of an applicant or member or his or her spouse which, absent such deprivation, would be considered in determining the member contribution or which adversely affects payment of the member contribution;
- (6) Transfer of income or of any asset of a member or his or her spouse into a trust and failure of the trustee to timely disburse amounts from the trust sufficient to assure that the member contribution does not become delinquent;
- (7) Consent to a divorce decree which deprives the applicant or member of any income or assets which would, absent such decree, have been considered in determining the member contribution;
- (8) Failure to furnish either medical or financial information or to provide written consent to release of both medical and financial information; and/or
- (9) The Home is unable to meet the needs of an applicant.

002.05B If the Board denies an application, the Secretary will notify the applicant, the county veterans service officer of the county in which the application originated, and the Department in writing within ten (10) business days of the decision. The notice will state the reason(s) for the denial.

002.05C The decision of the Board to deny an application is final.

002.06 WRITTEN CONSENTS Written consents for release of medical and/or financial information to enable a Home to obtain current information regarding the member and/or member's spouse will be furnished to the Home by the member, member's spouse, and/or member's legal representative upon admission and at any time upon request by the Home.

002.07 DEDUCTION FOR MEMBER'S SPOUSE AND/OR DEPENDENT CHILD(REN) A member's spouse will provide the Home and the Secretary with a signed Financial Statement including a list of all assets and a listing of income and expenses allowed by the Board.

### 003 MEMBER CONTRIBUTIONS

003.01 The Board will determine the Veterans' Home's maximum member contribution. The maximum member contribution is the standard monthly rate to defray the cost of a member's care, support, and treatment in a Home as determined by the Board considering factors the Department and the Board deem relevant.

003.02 Any change in the maximum member contribution will be posted in places in the Homes accessible to members at least thirty (30) days before the effective date of a rate change. If a member or his or her legal representative has provided the Home's Administrator a written designation of the name and address of a person to receive notice on behalf of the member, the Administrator or his or her designee will mail notice of the change in the maximum member contribution to the designated person at least thirty (30) days prior to the effective date of the change.

003.03 Member contributions are due and payable in advance of each month, on or before the last business day of the preceding month and are delinquent if not paid when due.

003.04 If a member's monthly member contribution has not been paid in full within sixty (60) days of the due date, the Department may refer the member's account for collection and the member may be discharged.

003.05 A member's monthly member contribution is based on his or her income and assets and applicable allowances as prescribed by the Board. Each member is liable for:

003.05A The maximum member contribution if his or her assets, after allowances established by the Board, equal or exceed in value the maximum asset level set by the Board; or

003.05B The amount by which the member's income exceeds allowances established by the Board if the total value of a member's assets, after allowances established by the Board, is less than the maximum asset level set by the Board.

003.06 A member who is successful in restorative and rehabilitation efforts 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 (4) complete months without that income being counted toward the member contribution. The income from this employment will be escrowed to assist the member in his or her transition to independent living.

003.07 A monthly deduction may not be given for a spouse or dependent in a private or public facility when payment for his or her care is from public funding.

003.08 A member's individual member contribution will be reviewed and recalculated annually and may be recalculated in between annual recalculation in the event of a change in assets or income.

003.08A 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 set by the Board, the member will be charged the maximum member contribution 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 that the increased member contribution 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.

003.09 A change in the financial circumstances of the member or his or her spouse, including but not limited to inheritance, back pay award, federal benefits or other assets, will be reported to the Business Office by the member, his or her spouse, other relative, legal representative or other fiduciary within ten (10) days of the occurrence of the change or receipt of notice of the change, whichever is earlier.

003.09A A member will apply for all state, federal, or private monetary benefits that would increase the member's overall income and assets. Any increase as a result will be applied to the member contribution. If there is a failure to apply for all such benefits, the member may be discharged.

003.10 The member contribution 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 or her discharge request. The discharged member's application for readmission is subject to Chapter 6, Section 002 of this Title.

003.11 Any member who is dissatisfied with the member contribution he or she is paying may, at any time, request a review of the member's monthly member contribution by making a request in writing to the Business Office detailing the member's dissatisfaction with his or her member contribution and reasons supporting it.

003.11A If the member is not satisfied with the resolution provided by the Business Office of the review, the member may ask that the Secretary or his or her designee review the decision of the Business Office by making a request in writing to the Secretary.

#### 004 DISCHARGE

004.01 If a member voluntarily discharges without good cause on two or more occasions, his or 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. Good cause and extenuating circumstances are determined by the Board.

004.02 A member may be involuntarily discharged if deemed 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, legal representative or other fiduciary:

004.02A Submission of an application for admission which is inaccurate or incomplete;

004.02B Failure to pay the member's member contribution within sixty (60) days of the due date;

004.02C Transfer or assignment of an interest in real property;

004.02D Deprivation of any income or asset of an applicant or member or his or her spouse or dependent child(ren) which, absent such deprivation, would be considered in determining the member contribution or which adversely affects payment of the member contribution;

004.02E Transfer, either before or after admission, of income of a member or his or 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 contribution does not become delinquent;

004.02F 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 contribution;

004.02G Failure to report an asset and/or income increase within thirty (30) days;

004.02H Failure to 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 or her spouse or dependent child(ren) within thirty (30) days;

004.02I 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 or her monthly member contribution;

004.02J Failure to furnish written consent to release medical or financial information within five (5) business days upon request; and/or

004.02K Failure to comply with Department or Board policies for applicants or members.

004.03 The Administrator will notify the member and/or member's legal representative, within thirty (30) days of discovery of a situation that may require

discharge except in emergency situations. In non-emergency situations, the member and/or his or her legal representative have sixty (60) days after receipt of the notice to correct the situation as required. No notice is required for discharge due to an emergency.

004.04 The discharge notice in a non-emergency situation will be in writing and state the grounds for discharge. A copy of such notice will be sent to the Secretary. All involuntary discharge notices will be submitted to the Board for final determination. Involuntary discharge may occur in emergent situations pending the Board final determination.

004.04A A member involuntarily discharged for cause may not reapply for six (6) months after discharge. When a member is involuntarily discharged based on medical reasons, the discharged member or his or her legal representative may reapply for admission upon written certification by two (2) physicians that any medical basis for the discharge no longer exists.

#### 005 REQUESTS FOR BOARD DETERMINATION

005.01 Involuntary discharge determinations will be considered at meetings of the Board.

005.02 The member or member's legal representative may attend the meeting of the Board and may submit supporting documentation to the Secretary prior to the Board's meeting. All correspondence with the Board will be sent, properly addressed, to the Secretary. The Board may allow any person to participate telephonically including witnesses providing testimony.

005.03 The Secretary will send a copy of the dated, written determination of the Board, to the Department representative and to the member or his or her legal representative.

TITLE 400 ~~NEBRASKA VETERANS' HOME SYSTEM~~

CHAPTER 1 ~~RULES OF MEMBERSHIP~~

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>SECTION</u>	<u>PAGE</u>
Admission and Membership Requirements	003	2
Admission Priority	004	2
Application Approval	005	2
Benefits	008	3
Definitions	002	1
Interim Admissions	006	3
Involuntary Discharge	013	5
Involuntary Discharge Procedures	014	6
Maximum Maintenance Charge	009	3
Member's Maintenance Charge	010	3
Payment of Maintenance Charges	007	3
Requests for Hearing	015	7
Scope and Authority	001	1
Transfer of Assets	011	5
Voluntary Discharge	012	5

NEBRASKA DEPARTMENT OF  
VETERANS' AFFAIRS

400 NAC 1

~~EFFECTIVE~~ ~~NEBRASKA DEPARTMENT OF HEALTH~~ ~~400 NAC 1~~  
~~1/28/06~~ ~~AND HUMAN SERVICES~~

~~TITLE 400~~ ~~NEBRASKA VETERANS' HOME SYSTEM~~

~~CHAPTER 1~~ ~~RULES OF MEMBERSHIP~~

CHAPTER 1 DEFINITION OF TERMS

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NEBRASKA DEPARTMENT OF  
VETERANS' AFFAIRS

400 NAC 2

EFFECTIVE ~~NEBRASKA DEPARTMENT OF HEALTH~~  
1/28/06 ~~AND HUMAN SERVICES~~

400 NAC 1

TITLE 400 ~~NEBRASKA VETERANS' HOME SYSTEM~~

CHAPTER 1 ~~RULES OF MEMBERSHIP~~

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NEBRASKA DEPARTMENT OF 400 NAC 2  
VETERANS' AFFAIRS  
EFFECTIVE NEBRASKA DEPARTMENT OF HEALTH 400 NAC 1  
1/28/06 AND HUMAN SERVICES  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

1 004.03B Determination of an individual's member contribution;  
2 004.03C Applications for readmission to a Home after voluntary discharge; or  
3 004.03D Involuntary discharge from a Home.  
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NEBRASKA DEPARTMENT OF  
VETERANS' AFFAIRS

400 NAC 3

EFFECTIVE ~~NEBRASKA DEPARTMENT OF HEALTH~~  
1/28/06 ~~AND HUMAN SERVICES~~

400 NAC 1

TITLE 400 ~~NEBRASKA VETERANS' HOME SYSTEM~~

CHAPTER 1 ~~RULES OF MEMBERSHIP~~

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002 ELIGIBILITY

002.01 The Fund is intended as a temporary emergency fund to assist eligible veterans and their dependents in time of need when an emergency occurs and funds available from other sources such as private resources (income, savings, loans, etc.), regular funds or agencies, pension, compensation, insurance, unemployment compensation and sick benefits, etc., are not sufficient for their immediate needs.

002.01A Aid will not be granted to eligible veterans or dependents whose emergency is caused by violation of law or State of Nebraska Rules and Regulations, and as a general rule, will not be furnished to families of such veterans.

002.01B Voluntary unemployment or refusal to work by eligible veterans or dependents does not constitute an emergency.

002.02 The Fund is available to assist in paying for food, shelter, fuel, transportation, wearing apparel, family support services, medical aid, surgical aid, and in assisting with the funeral expenses of qualifying discharged veterans.

002.02A Before aid is provided, the applicant must secure an itemized estimate or provide documentation of the actual cost. A claim may not be paid if not previously authorized by the Director, Deputy Director or Designee.

NEBRASKA DEPARTMENT OF 400 NAC 6  
VETERANS' AFFAIRS  
EFFECTIVE NEBRASKA DEPARTMENT OF HEALTH 400 NAC 4  
1/28/06 AND HUMAN SERVICES  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

1 002.02B Veterans should seek medical treatment from a USDVA facility  
2 whenever possible if they are unable to pay for care in a private facility. When  
3 applying for medical aid, the applicant must present itemized statements,  
4 Explanation(s) of Benefits (EOB), and a physician's statement of physical  
5 condition and treatment.

6 002.02C The Fund is not intended to pay all of an applicant's medical and  
7 hospital expenses, but it may be used to assist with other sources to help  
8 alleviate need.

9 002.02D The Fund does not pay maternity expenses unless there are other  
10 complications causing unexpected additional expenses.

11 002.03 Aid may normally be granted for a period as recommended by the Commission.

12 002.04 Prospective applicants should not incur liabilities in the expectation of securing  
13 a grant from the Fund.

14 003 APPLICATIONS FOR AID

15 003.01 Application for aid shall be made through the local post of any recognized  
16 veterans organization or with a county veterans service officer. The applicant shall  
17 answer all questions and furnish the information requested and sign the application in  
18 the proper place before a county veterans service officer, officer of the post, or other  
19 competent authority. Only when an applicant is absent, physically unable, incompetent  
20 or deceased should the application be filed by another member of the family, and the  
21 reason therefore should be shown in the proper space.

22 003.02 Applications for aid may be cancelled after thirty (30) calendar days if no  
23 response has been received from requests for submission of required documents;  
24 clarification of conflicting information; completion of unanswered questions or other  
25 information necessary to provide an appropriate decision.

26 003.03 Membership in a veterans organization is not necessary to apply for and receive  
27 aid from the Fund.

28 003.04 The applicant is notified in all cases when a decision on the application has been  
29 made. When aid has been granted, the applicant is notified when payment has been  
30 sent.

31 004 APPEAL OF DISALLOWED CLAIMS When a claim is disallowed by the  
32 Deputy or Designee, the applicant may request reconsideration. To request reconsideration,  
33 the applicant must send the request for reconsideration to the Director, in writing within fifteen  
34 (15) business days from the date the decision was mailed by the Department. The applicant

NEBRASKA DEPARTMENT OF VETERANS' AFFAIRS 400 NAC 6  
EFFECTIVE 1/28/06 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES 400 NAC 1  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

1 must provide reasons why the application should be reconsidered. The Director or his or her  
2 designee will affirm, modify or reverse the decision of the Deputy Director or Designee and  
3 the applicant will be notified of the decision.

4 004.01 An applicant may appeal the decision made by the Director or his or her  
5 designee to disallow a claim to the Commission.

6 004.02 The applicant may, within fifteen (15) business days after the notice of the  
7 decision from the Director or his or her designee was mailed by the Department, file  
8 with the Chairman of the Commission a written notice of appeal setting forth facts and  
9 grounds for the appeal.

10 004.03 The Commission shall convene to hear the appeal of a denial for aid from the  
11 Fund.

12 004.03A The Chairperson of the Commission shall fix a time and place for the  
13 hearing, which shall not be later than three (3) months following the date of  
14 filing the request for appeal.

15 004.03B The Chairperson of the Commission may convene either an in person  
16 or virtual hearing.

17 004.00C The applicant may appear in person at the hearing and/or be  
18 represented by legal counsel.

19 004.03D The applicant shall be granted the opportunity to present either oral or  
20 written testimony in support of the claim, whether or not same testimony has  
21 previously been submitted.

22 004.03E The Director, or his designee or legal counsel, shall have the right to  
23 rebut or explain any testimony which might be submitted.

24 004.00F The Commission shall have the power to grant a continuance of the  
25 hearing to afford either the applicant or the Director, his or her designee, or  
26 legal counsel, the opportunity to present additional evidence.

27 004.04 Following the hearing, the Commission shall make its findings, and may affirm,  
28 modify or reverse the decision of the Director or his or her designee.

29 004.04A The findings and decision of the Commission shall be final and will  
30 be reported by the Commission to the Director and the applicant.

31 004.04B The Director will comply with the decision of the Commission within  
32 ten (10) business days after receipt of its findings and decision.

NEBRASKA DEPARTMENT OF  
VETERANS' AFFAIRS

400 NAC 4

EFFECTIVE ~~NEBRASKA DEPARTMENT OF HEALTH~~  
1/28/06 ~~AND HUMAN SERVICES~~

400 NAC 1

TITLE 400 ~~NEBRASKA VETERANS' HOME SYSTEM~~

CHAPTER 1 ~~RULES OF MEMBERSHIP~~

1 CHAPTER 4 WAIVER OF TUITION

2 001 Applications must be submitted in a timely manner for proper checking and  
3 certification. Applications for waiver of tuition for a school term which has concluded will be  
4 processed only to verify with a school that the applicant would have been eligible if the  
5 application had been submitted prior to or during the school term.

6 002 All applications must be accompanied by proof of honorable service, or discharge  
7 under honorable conditions, of the veteran upon whose record the application is based.

8 003 The Department will obtain certification from the USDVA as to the eligibility of an  
9 applicant under Neb. Rev. Stat. § 80-411(2)(b). The Director will determine whether the  
10 applicant is eligible for the waiver, and if so, will forward the application to the state supported  
11 school chosen by the applicant, certifying the applicant's eligibility.

12 004 Simultaneous waivers are allowed, provided the primary/initial institution  
13 acknowledges, in writing, that the credits earned at the secondary/alternative institution will  
14 transfer to the degree program of the primary institution. Each application for waiver shall be  
15 submitted to the Department on a separate application. The secondary waiver shall only be  
16 effective for the term being applied for.

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NEBRASKA DEPARTMENT OF  
VETERANS' AFFAIRS

400 NAC 5

EFFECTIVE \_\_\_\_\_ NEBRASKA DEPARTMENT OF HEALTH  
1/28/06 \_\_\_\_\_ AND HUMAN SERVICES

400 NAC 1

TITLE 400 \_\_\_\_\_ NEBRASKA VETERANS' HOME SYSTEM

CHAPTER 1 \_\_\_\_\_ RULES OF MEMBERSHIP

1 CHAPTER 5 VETERAN CEMETERY DIVISION

2 001 The State Veteran Cemetery(ies) operated by the Department follow: (a) the GI Bill  
3 Improvement Act of 1977, Pub. L. No. 95-202 § 401, 91 Stat 1433, 1449-1459 (1977), (b)  
4 National Cemetery Administration Directive 3210/1 (rev. June 8, 2020), (c) 38 CFR § 3.7(x)  
5 (2011) and (d) 38 USC §§ 2402(a) and 2408 (2022) for eligibility for interment, the provision of  
6 memorial markers and all other aspects of memorialization and interment. These regulations are  
7 attached hereto and incorporated herein by reference as "Attachment A."

8

9 002 The State Veteran Cemetery(ies) operated by the Department adopts the National Cemetery  
10 Administration's National Shrine Commitment Operational Standards and Measures, Version  
11 4.0, (rev. October 2009) as guidelines for general appearance of the cemetery and maintenance  
12 of the associated grounds and buildings. These standards are available for inspection from the  
13 Department upon request.

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	NEBRASKA DEPARTMENT OF	400 NAC 6
	VETERANS' AFFAIRS	
EFFECTIVE	NEBRASKA DEPARTMENT OF HEALTH	400 NAC 1
1/28/06	AND HUMAN SERVICES	
TITLE 400	NEBRASKA VETERANS' HOME SYSTEM	
CHAPTER 1	RULES OF MEMBERSHIP	

1

2

3

4

NEBRASKA DEPARTMENT OF VETERANS' AFFAIRS 400 NAC 6  
EFFECTIVE 1/28/06 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES 400 NAC 1  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

## CHAPTER 6 NEBRASKA STATE VETERANS' HOMES

001 DEFINITIONS Throughout this Chapter, the following definitions apply:

~~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

001.01 Administrator is a person duly appointed to manage a Home, who holds a license to serve as a full-time nursing home administrator in the State of Nebraska.

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

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

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

001.04 Board ~~is the Veteran's Homes Board.~~ means the Board of Inquiry and Review.

001.05 Business Office is a division in the Home responsible for members' finances.

Department means the Nebraska Department of Health and Human Services.

001.06 Dependent child means ~~is a~~ child of the applicant or a member who lives with the applicant, or resides in the member's former residence, and is (a) less than 19 years of age, or (b) ~~who still lives in the member's home or a child less than 24 years of age who and~~ is a full-time student pursuing an accredited course of secondary or post-secondary education. Child-Dependent includes court-ordered dependent(s).

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

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

001.07A Alimony and support payments;

001.07B Distribution from a pension, individual retirement account, annuity, trust, or structured settlement;

001.07C Dividends;

001.07D Farm Income;

001.07E Grants;

NEBRASKA DEPARTMENT OF VETERANS' AFFAIRS 400 NAC 6  
EFFECTIVE 1/28/06 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES 400 NAC 1  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

001.07F Insurance, including but not limited to, nursing home insurance;  
001.07G Interest;  
001.07H Land contract income;  
001.07I Military retirement income, disability benefits and/or service benefits;  
001.07J Railroad retirement benefits;  
001.07K Rental property and lease income;  
001.07L Reportable gambling winnings;  
001.07M Royalties;  
001.07N Social Security benefits;  
001.07O Spouse employment income;  
001.07P Unemployment compensation;  
001.07Q USDVA compensation, non-service connected disability and/or pension;  
001.07R Wages, including severance payments; and/or  
001.07S Workers' Compensation benefits.

- |   |   |
|---|---|
| 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                |

001.08 Legal representative means is 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 or other such other person legally designated or legally appointed to represent the applicant or member.

001.09 Member means is a person residing in a Home.

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

	NEBRASKA DEPARTMENT OF	400 NAC 6
	VETERANS' AFFAIRS	
EFFECTIVE	NEBRASKA DEPARTMENT OF HEALTH	400 NAC 1
1/28/06	AND HUMAN SERVICES	
TITLE 400	NEBRASKA VETERANS' HOME SYSTEM	
CHAPTER 1	RULES OF MEMBERSHIP	

001.11 Transfer or assignment of real property is the transfer or assignment to another person or entity of an interest in real property of an applicant, applicant's spouse or applicant's dependent child(ren) for less than the county-assessed value, or of personal property of an applicant, applicant's spouse or applicant's dependent child(ren) with a fair market value exceeding \$5,000 for less than fair market value, within five (5) years before the applicant's first application for admission to a Home, or thereafter.

USDVA means the United States Department of Veterans Affairs.

## 002 APPLICATION AND ADMISSION

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

002.01 Applications for admission will be submitted on forms developed by the Department.

002.02 Eligible applicants will be admitted in the order completed applications are received for the type of care they need, with veterans given preference over non-veterans.

### 002.03 BOARD AUTHORITY

002.03A The decision to approve or deny an application for admission to the Home is made by the Board.

002.03B The Chairperson of the Board shall have the authority with the approval of the Secretary to waive a guideline or policy established by the Board for the purposes of expediting the admission of a member or for safeguarding the health, safety, or welfare of a potential or current member of the Home. All such actions of the Chairperson shall be reviewed and voted on by the Board at its next meeting. In the absence of the Chairperson, the Vice-Chair shall have the same authority.

002.04 INTERIM ADMISSION Subject to approval by the Board at its next meeting, persons qualifying for admission to a Home may be admitted on an interim basis before the Board meets and approves the application, provided the applicant meets all other eligibility requirements and no applicant on the waiting list has a higher priority.

	NEBRASKA DEPARTMENT OF	400 NAC 6
	VETERANS' AFFAIRS	
EFFECTIVE	NEBRASKA DEPARTMENT OF HEALTH	400 NAC 4
1/28/06	AND HUMAN SERVICES	
TITLE 400	NEBRASKA VETERANS' HOME SYSTEM	
CHAPTER 1	RULES OF MEMBERSHIP	

#### 002.05 DENIAL

002.05A An application for admission may be denied by the Board for any reason to include, but not be limited to the following:

- (1) Submission of an application for admission which is inaccurate or incomplete;
- (2) The applicant has been convicted of a felony;
- (3) The applicant is listed as a High Risk/Level 3 sex offender on the Nebraska State Patrol Sex Offender Registry;
- (4) Transfer or assignment of real property;
- (5) Deprivation of any income or asset of an applicant or member or his or her spouse which, absent such deprivation, would be considered in determining the member contribution or which adversely affects payment of the member contribution;
- (6) Transfer of income or of any asset of a member or his or her spouse into a trust and failure of the trustee to timely disburse amounts from the trust sufficient to assure that the member contribution does not become delinquent;
- (7) Consent to a divorce decree which deprives the applicant or member of any income or assets which would, absent such decree, have been considered in determining the member contribution;
- (8) Failure to furnish either medical or financial information or to provide written consent to release of both medical and financial information; and/or
- (9) The Home is unable to meet the needs of an applicant.

002.05B If the Board denies an application, the Secretary will notify the applicant, the county veterans service officer of the county in which the application originated, and the Department in writing within ten (10) business days of the decision. The notice will state the reason(s) for the denial.

002.05C The decision of the Board to deny an application is final.

NEBRASKA DEPARTMENT OF VETERANS' AFFAIRS  
EFFECTIVE 1/28/06 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

~~002.06 WRITTEN CONSENTS 1-003.01 Written Consent:~~ Written consents for release of medical information and/or ~~release of financial information sufficient to enable a Home to obtain current information regarding the member and/re member's spouse from time to time respecting the member or his/her spouse or dependent child(ren) must~~ will be furnished to the Home by the member, member's spouse, or his/her spouse or dependent child(ren) and/or legal representative upon admission and at any time upon request by the Home.

002.07 DEDUCTION FOR MEMBER'S SPOUSE AND/OR DEPENDENT CHILD(REN) A member's spouse will provide the Home and the Secretary with a signed Financial Statement including a list of all assets and a listing of income and expenses allowed by the Board.

~~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 Veterans Service Officer of the county in which the application originated, and the Department will be notified in writing of that decision by the Secretary.

NEBRASKA DEPARTMENT OF 400 NAC 6  
VETERANS' AFFAIRS

EFFECTIVE 1/28/06 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES 400 NAC-1

TITLE 400 NEBRASKA VETERANS' HOME SYSTEM

CHAPTER 1 RULES OF MEMBERSHIP

~~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.

### 003 MEMBER CONTRIBUTIONS

003.01 The Board will determine the Veterans' Home's maximum member contribution. The maximum member contribution is the standard monthly rate to defray the cost of a member's care, support, and treatment in a Home as determined by the Board considering factors the Department and the Board deem relevant.

003.02 Any change in the maximum member contribution will be posted in places in the Homes accessible to members at least thirty (30) days before the effective date of a rate change. If a member or his or her legal representative has provided the Home's Administrator a written designation of the name and address of a person to receive notice on behalf of the member, the Administrator or his or her designee will mail notice of the change in the maximum member contribution to the designated person at least thirty (30) days prior to the effective date of the change.

~~003.03 1-007 PAYMENT OF MAINTENANCE CHARGES:~~ Maintenance charges Member contributions are due and payable in advance of each month, on or before the last business day of the preceding month, and are delinquent if not paid when due.

~~003.04 1-007.01 Overdue Payment:~~ When If a member's monthly maintenance charge member contribution has not been paid in full within sixty (60) days of the due date, the Department may refer the member's account may be referred by the Department for collection and the member may be discharged.

003.05 A member's monthly member contribution is based on his or her income and assets and applicable allowances as prescribed by the Board. Each member is liable for:

	NEBRASKA DEPARTMENT OF	400 NAC 6
	VETERANS' AFFAIRS	
EFFECTIVE	NEBRASKA DEPARTMENT OF HEALTH	400 NAC 1
1/28/06	AND HUMAN SERVICES	
TITLE 400	NEBRASKA VETERANS' HOME SYSTEM	
CHAPTER 1	RULES OF MEMBERSHIP	

003.05A The maximum member contribution if his or her assets, after allowances established by the Board, equal or exceed in value the maximum asset level set by the Board; or

003.05B The amount by which the member's income exceeds allowances established by the Board if the total value of a member's assets, after allowances established by the Board, is less than the maximum asset level set by the Board.

003.06 A member who is successful in restorative and rehabilitation efforts 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 (4) complete months without that income being counted toward the member contribution. The income from this employment will be escrowed to assist the member in his or her transition to independent living.

003.07 A monthly deduction may not be given for a spouse or dependent in a private or public facility when payment for his or her care is from public funding.

003.08 A member's individual member contribution will be reviewed and recalculated annually and may be recalculated in between annual recalculation in the event of a change in assets or income.

003.08A 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 set by the Board, the member will be charged the maximum member contribution 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 that the increased member contribution 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.

003.09 A change in the financial circumstances of the member or his or her spouse, including but not limited to inheritance, back pay award, federal benefits or other assets, will be reported to the Business Office by the member, his or her spouse, other relative, legal representative or other fiduciary within ten (10) days of the occurrence of the change or receipt of notice of the change, whichever is earlier.

## VETERANS' AFFAIRS

EFFECTIVE

NEBRASKA DEPARTMENT OF HEALTH

400 NAC 1

1/28/06

AND HUMAN SERVICES

TITLE 400

NEBRASKA VETERANS' HOME SYSTEM

CHAPTER 1

RULES OF MEMBERSHIP

~~1-008 BENEFITS:003.09A~~ A member must ~~will~~ apply for all state, federal, or private monetary benefits that would increase the member's overall income and assets. ~~, whether the benefits are state, federal, or private. Any increase a s~~ result thereof ~~must~~ will be applied to maintenance charges the member contribution. 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~~

	NEBRASKA DEPARTMENT OF	400 NAC 6
	VETERANS' AFFAIRS	
EFFECTIVE	NEBRASKA DEPARTMENT OF HEALTH	400 NAC 1
1/28/06	AND HUMAN SERVICES	
TITLE 400	NEBRASKA VETERANS' HOME SYSTEM	
CHAPTER 1	RULES OF MEMBERSHIP	

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 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 a 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.

NEBRASKA DEPARTMENT OF 400 NAC 6  
VETERANS' AFFAIRS  
EFFECTIVE NEBRASKA DEPARTMENT OF HEALTH 400 NAC 1  
1/28/06 AND HUMAN SERVICES  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

~~1-010.08003.10~~ Maintenance Charges when Absent From the Home: The maintenance charge member contribution for a member absent from the Home for any reason other than hospitalization will not be decreased or other affected unless the member requested discharge prior to leaving the Home, and completely vacated the Home consistent with his or /her discharge request. The discharged member's application for readmission is subject to the Rules of Membership Chapter 6, Section 002 of this Title.

003.11 Any member who is dissatisfied with the member contribution he or she is paying may, at any time, request a review of the member's monthly member contribution by making a request in writing to the Business Office detailing the member's dissatisfaction with his or her member contribution and reasons supporting it.

003.11A If the member is not satisfied with the resolution provided by the Business Office of the review, the member may ask that the Secretary or his or her designee review the decision of the Business Office by making a request in writing to the Secretary.

~~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.~~

004 DISCHARGE

~~004.011-012~~ VOLUNTARY DISCHARGE: If a member voluntarily discharges without good cause on two or more occasions, his or /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.

~~004.02 1-013~~ INVOLUNTARY DISCHARGE: A member may be involuntarily discharged if deemed 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:

NEBRASKA DEPARTMENT OF VETERANS' AFFAIRS 400 NAC 6  
EFFECTIVE 1/28/06 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES 400 NAC 1  
TITLE 400 NEBRASKA VETERANS' HOME SYSTEM  
CHAPTER 1 RULES OF MEMBERSHIP

~~1.004.02A~~ Submission of an application for admission which is inaccurate or incomplete;

~~2.004.02B~~ Failure to pay the member's maintenance charge member contribution within sixty (60) days of the due date;

~~3.004.02C~~ 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;~~

~~4.004.02D~~ Deprivation of any income or asset of an applicant or member or his or 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 member contribution;

~~5.004.02E~~ Transfer, either before or after admission, of income of a member or his or 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 member contribution does not become delinquent;

~~6.004.02F~~ 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 member contribution maintenance charge;

~~7.004.02G~~ Failure to timely report an asset and/or increase ~~or income~~ increase within thirty (30) days;

~~8.004.02H~~ 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 or her spouse or dependent child(ren) within thirty (30) days;

~~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;~~

NEBRASKA DEPARTMENT OF 400 NAC 6  
VETERANS' AFFAIRS

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EFFECTIVE 1/28/06 NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES 400 NAC 1

---

TITLE 400 NEBRASKA VETERANS' HOME SYSTEM

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CHAPTER 1 RULES OF MEMBERSHIP

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~~10.004.02I~~ 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 or /her monthly ~~maintenance charge~~ member contribution; ~~or~~

~~11.004.02J~~ Failure to furnish in a timely fashion written consent to release of either medical or financial information within five (5) business days upon request of the Department; ~~and/or~~

004.02K Failure to comply with Department or Board policies for applicants or members.

1-014 INVOLUNTARY DISCHARGE PROCEDURES

004.03 1-014.01 ~~Notice of Situation:~~ The Administrator ~~must~~ will notify the member and/or member's ~~his/her~~ legal representative, ~~if any,~~ within thirty (30) days of discovery of a situation that may require discharge except in emergency situations. In non-emergency situations, the member and/or his or /her legal representative have sixty (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.

004.04 1-014.02 ~~Notice of Discharge:~~ The Administrator ~~may~~ pursue discharge. The discharge notice in a non-emergency situation ~~must~~ will 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. All involuntary discharge notices will be submitted to the Board for final determination. Involuntary discharge may occur in emergent situations pending the Board final determination. 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.

004.04A 1-014.03 ~~Reapplication:~~ A member involuntarily discharged for cause may not reapply for six (6) months after discharge. When a member is involuntarily discharged based on medical reasons, the discharged member or his or /her legal representative may reapply for admission upon written certifications by two (2) ~~doctors~~ physicians that any medical basis for the discharge no longer exists.

	NEBRASKA DEPARTMENT OF	400 NAC 6
	VETERANS' AFFAIRS	
EFFECTIVE	NEBRASKA DEPARTMENT OF HEALTH	400 NAC 4
1/28/06	AND HUMAN SERVICES	
TITLE 400	NEBRASKA VETERANS' HOME SYSTEM	
CHAPTER 1	RULES OF MEMBERSHIP	

#### 005 REQUESTS FOR BOARD DETERMINATION

005.01 Involuntary discharge determinations will be considered at meetings of the Board.

005.02 The member or member's legal representative may attend the meeting of the Board and may submit supporting documentation to the Secretary prior to the Board's meeting. All correspondence with the Board will be sent, properly addressed, to the Secretary. The Board may allow any person to participate telephonically including witnesses providing testimony.

005.03 The Secretary will send a copy of the dated, written determination of the Board, to the Department representative and to the member or his or her legal representative.

NEBRASKA DEPARTMENT OF  
VETERANS' AFFAIRS

400 NAC 6

EFFECTIVE ~~NEBRASKA DEPARTMENT OF HEALTH~~ 400 NAC 1  
1/28/06 ~~AND HUMAN SERVICES~~

TITLE 400 ~~NEBRASKA VETERANS' HOME SYSTEM~~

CHAPTER 1 ~~RULES OF MEMBERSHIP~~

1

2 ~~1-015 REQUESTS FOR HEARING:~~ The Board will meet every three months or at the call  
3 of the Chairperson or Secretary to transact business at one of the Homes, or at an agreed-upon  
4 site as provided in Neb. Rev. Stat. § 80-319. Hearing will be conducted at these meetings as  
5 needed.

6 ~~1-015.01 Regarding Maintenance Charges:~~ Any member who is dissatisfied with the  
7 amount of maintenance he/she is paying may request a hearing before the Board by  
8 making a request in writing to the Board which details the complaint and reasons  
9 supporting the member's position.

10 ~~1-015.02 Regarding Denial or Discharge:~~ Any applicant or member may appeal any  
11 denial of application or discharge decision by requesting a hearing before the Board.  
12 The request must be in writing and detail the complaint and reasons supporting the  
13 applicant or member's position and must be filed with the Secretary of the Board within  
14 30 calendar days of the date of the letter of decision of denial or discharge.

15 ~~1-015.03 Receipt of Appeal:~~ The Secretary or his/her designee will provide written  
16 confirmation of receipt of the appeal to the member or his/her legal representative  
17 within ten days of receipt and provide the member or his/her legal representative  
18 written notice of the date, time and place of the Board meeting at which the appeal will  
19 be heard.

20 ~~1-015.04 Attendance:~~ If the member or his/her legal representative does not wish to  
21 attend the hearing before the Board, he/she may request that the Board decide the  
22 appeal on the basis of the written complaint and may submit supporting documentation  
23 to the Secretary prior to the Board's hearing on the appeal. The Board may allow any  
24 person to participate telephonically including witnesses providing testimony.

25 ~~1-015.04A Correspondence:~~ All correspondence with the Board must be sent,  
26 properly addressed, to the Secretary.

27 ~~1-015.05 Quorum:~~ There must be a quorum of five Board members present and  
28 voting to decide an appeal.

29 ~~1-015.06 Recording:~~ The Board will arrange for tape recording of the appeal hearing  
30 and the Board vote on the appeal. Any party to a formal hearing before the Board may  
31 procure, at his/her expense, a court reporting service.

32 ~~1-015.07 Testimony:~~ Only the member appealing or his/her legal representative, the  
33 Department's representative, and witnesses having relevant personal knowledge will  
34 be allowed to speak at a member's appeal to the Board. Only Board members, the

~~NEBRASKA DEPARTMENT OF~~ 400 NAC 6  
~~VETERANS' AFFAIRS~~  
~~EFFECTIVE~~ ~~NEBRASKA DEPARTMENT OF HEALTH~~ ~~400 NAC 1~~  
~~1/28/06~~ ~~AND HUMAN SERVICES~~  
  
~~TITLE 400~~ ~~NEBRASKA VETERANS' HOME SYSTEM~~  
  
~~CHAPTER 1~~ ~~RULES OF MEMBERSHIP~~

~~1 member appealing or his/her legal representative, and witnesses having relevant~~  
~~2 personal knowledge will be allowed to speak at a member's appeal to the Board. Only~~  
~~3 Board members, the member appealing or his/her legal representative, and Department~~  
~~4 staff or their legal representative will be allowed to question witnesses. Testimony will~~  
~~5 be under oath.~~

~~6 1-015.08 Notice of Decision: The Secretary will send a copy of the date, written~~  
~~7 decision to the Board, the Department representative, and the member or his/her~~  
~~8 representative.~~