

October 20, 2023

## OVERSIGHT REQUIREMENTS FOR STATE VETERANS HOMES

**INTRODUCTORY NOTE:** 38 C.F.R. § 51 uses Department of Veterans Affairs (VA) medical center of jurisdiction. In Veterans Health Administration (VHA) policy documents (directives and notices), VA medical facility is used. For the purposes of this policy, VA medical facility of jurisdiction is the same as VA medical center of jurisdiction.

### 1. PURPOSE

a. This notice serves as interim policy regarding updated oversight requirements for State Veterans Homes (SVH). This notice provides an overview to the field of new processes for the administration, oversight and certification procedures for Recognition, Annual, and For-Cause Surveys of SVHs providing nursing home care, domiciliary care and adult day health care. **AUTHORITY:** 38 U.S.C. §§ 1710, 1720, 1741-1745, 38 C.F.R. Part 51.

b. As stated in paragraph 13, VHA Directive 1145.01, Survey Requirements for State Veterans Homes, dated February 18, 2021, is rescinded. This notice serves as interim policy for SVH oversight requirements.

### 2. BACKGROUND

a. SVHs across the United States provide nursing home care, domiciliary care and adult day health care. The State receives a per diem payment from VA for providing care to eligible Veterans when VA recognizes the home as a SVH. In addition, VA's survey and certification process is required for the SVH that provides nursing home care, domiciliary care or adult day health care to continue to receive per diem payments. The State owns, operates and manages all SVHs. VA is required to survey SVHs to ensure the homes meet all applicable 38 C.F.R. Part 51 regulations to be eligible for continued per diem payments.

b. In 2022, VA modernized the national survey process of the SVH program. This modernization included VA contracting with a private vendor to survey all applicable standards under Subparts D, E and F of 38 C.F.R. Part 51. All requirements applicable to eligibility, rates and payments under Subpart C of 38 C.F.R. Part 51 are surveyed by personnel within the VHA Central Office (VHACO) Office of Geriatrics and Extended Care (GEC). With SVH Modernization, VA employees at the VA medical facilities of jurisdiction are no longer responsible for any portions of the SVH survey.

c. The goals of the SVH survey process are to ensure SVHs are in compliance with 38 C.F.R. Part 51 regulations and to ensure eligible Veterans are receiving the best quality of care in a safe environment. This notice provides a standardized approach for the following:

- (1) VHA procedures for Recognition, Annual and For-Cause Surveys.
- (2) The communication and relationships between VHACO, Veteran Integrated Services Networks (VISNs), VA medical facilities of jurisdiction, SVHs and the contracted surveyors on the VA Survey Team.
- (3) Full utilization of defined VA standards for long-term care support and services.
- (4) VA external review survey process at SVHs.

### 3. DEFINITIONS

a. **Adverse Event.** For purposes of this notice, adverse events are events that occur in SVH, not determined to be a sentinel event, but reportable to public health agencies pursuant to State regulations.

b. **Corrective Action Plan.** A corrective action plan (CAP) states specific interventions to correct non-compliance with target dates for remediation; identifies trends and patterns; considers core causes; and includes a plan to monitor effectiveness over time.

c. **Immediate Jeopardy.** An immediate jeopardy (IJ) is a situation in which the SVH's non-compliance with one or more 38 C.F.R. Part 51 regulations has caused, or is likely to cause, serious injury, harm, impairment or death to a resident. This includes any condition that poses an immediate threat to public or patient safety.

d. **Per Diem.** Per diem is the daily rate of reimbursement for care that SVH provide to eligible Veterans, established by VA for each SVH program of care.

e. **Recognition Month.** The recognition month is the month of determination for the recognition and certification of a SVH by VA. This month can change with another VA Recognition Survey or a written agreement between officials of the SVH and the Director, VA medical facility of jurisdiction/designee and approval by GEC.

f. **Removal Plan.** A removal plan is a document presented by the SVH leadership to the VA Survey Team after an IJ has been identified. A removal plan outlines the action SVH leadership will take to prevent serious harm from occurring or recurring. The VA Survey Team remains onsite or connected with SVH leadership (for virtual surveys) until an acceptable removal plan is in place.

g. **Scope and Severity Matrix.** The scope and severity matrix is a tool developed by the Centers for Medicaid and Medicare Services (CMS) that VA has adopted to assess the scope of a deficiency (e.g., whether the deficiency was isolated to one resident or was widespread), and the severity of the deficiency (e.g., whether an individual suffered injury, harm, impairment or death). **NOTE:** *The CMS Program Scoring Algorithm can be found at: <http://www.cms.gov/Medicare/Provider-Enrollmentand-Certification/SurveyCertificationGenInfo/downloads/SCLetter09-05.pdf>.* **NOTE:** *This*

*linked document is outside VA control and may not conform to Section 508 of the Rehabilitation Act of 1973.*

h. **Sentinel Event.** As outlined in 38 C.F.R. Part 51, a sentinel event is an adverse event that results in the loss of life, limb or permanent loss of function.

i. **State Home Online Survey Tool.** The State Home Online Survey Tool (SHOST) is a VA web-based tool that is used as a repository to store historical VA Survey Reports.

j. **State Official.** State official refers to the individual of the State agency responsible for the SVH.

k. **State Survey.** A state survey is a periodic, resident-centered inspection that gathers information about the quality of service furnished in a SVH to determine compliance with the requirements for participation. This survey is performed by the State to ascertain if a SVH meets the requirements for participation in the CMS program. The State survey evaluates performance and the provision of life safety, quality of care and quality of life.

l. **State Veterans Home.** SVH means a home, recognized and certified by VA, which a State has established primarily for the care of Veterans disabled by age, disease or otherwise, who by reason of such disability are incapable of earning a living. A SVH may provide nursing home care, domiciliary care and/or adult day health care. A SVH is owned and operated by the State.

m. **VA Medical Facility.** For purposes of this notice, the VA medical facility of jurisdiction is generally located closest to the SVH that has filed an application for VA recognition. The Director of the VA medical facility of jurisdiction is the authority unless the reference or regulation is specific to another type of Director or authority.

n. **VA-Administered Survey Types.**

(1) **Recognition Survey.** A Recognition Survey is an announced survey of a SVH that is used to determine its compliance with VA standards, including compliance with all applicable Federal, State and local laws and the relevant professional standards for VA purposes to recognize the home as a SVH.

(2) **Annual Survey.** An Annual Survey is an unannounced survey performed yearly to determine SVHs' compliance with VA standards to achieve certification in order for the SVH to receive continued per diem payments.

(3) **For-Cause Survey.** A For-Cause Survey is an unannounced survey authorized by GEC to review a specific concern, or a series of incidents, complaints, deficiencies or events that may jeopardize the health or safety of residents. The VA Survey Team must be on site within 15 working days after official notification is made by GEC.

o. **VA Survey Team.** The VA Survey Team consists of surveyors from the VA-contracted survey vendor as well as a National Program Manager, SVH Quality and Oversight. The surveyors from the contracted vendor are responsible for reviewing all applicable standards under subparts D, E and F of title 38 C.F.R. Part 51; GEC personnel with primary responsibility for the SVH are responsible for reviewing all applicable standards under subpart C of 38 C.F.R. Part 51.

#### 4. POLICY

It is VHA policy that all SVHs are surveyed in accordance with 38 C.F.R. Part 51 regulations and timelines in order to ensure the health and well-being of Veterans in each SVH.

#### 5. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for:

(1) Ensuring overall VHA compliance with this notice.

(2) Making a written determination to recognize a home as a SVH based on a current survey that the home and its management meet all the applicable standards of 38 C.F.R. Part 51 (see paragraph 6.I.)

b. **Assistant Under Secretary for Health for Patient Care Services/Chief Nursing Officer.** The Assistant Under Secretary for Health for Patient Care Services/Chief Nursing Officer is responsible for:

(1) Assigning the VA medical facility of jurisdiction.

(2) Supporting GEC with implementation and oversight of this notice.

(3) Reviewing Executive Director of GEC's recommendation for, and making final determination of, the assignment of the VA medical facility of jurisdiction for a new or existing SVH.

c. **Assistant Under Secretary for Health for Operations.** The Assistant Under Secretary for Health for Operations is responsible for:

(1) Communicating the contents of this notice to each of the VISNs.

(2) Providing oversight of VISNs to assure compliance with this notice, relevant standards and applicable regulations.

d. **Executive Director, Geriatrics and Extended Care.** The Executive Director of GEC is responsible for:

(1) Providing oversight for the field's compliance with this notice and ensuring corrective action is taken if non-compliance has been identified.

(2) Responding to a State's request letter requesting recognition, as well as notifying them of survey and the necessary required documents in seeking the Under Secretary for Health's recognition.

(3) Reviewing VISN Director recommendation for the assignment of the VA medical facility of jurisdiction for a new or existing SVH and sending recommendation to the Assistant Under Secretary for Health for Patient Care Services.

(4) Reviewing the recommendation from the National Program Manager, SVH Quality and Oversight regarding whether any additional evidence submitted by a State for review following a Recognition Survey in which the applicable requirements were not met is sufficient to grant recognition and making a recommendation to the Under Secretary for Health regarding awarding or denying recognition based on all available evidence.

(5) Once a SVH has been recognized by VA, ensuring the SVH is properly surveyed at least annually in accordance with the requirements, timelines and certification given, as appropriate.

(6) Reviewing all survey reports and CAPs to confirm compliance with VA standards prior to granting and signing any letter of certification to the SVH.

(7) In accordance with the delegation of authority, annually providing written certification to a SVH for a full certification if the survey had no deficiencies or a provisional certification when the CAP is accepted, and converting the provisional certification to a full certification when the SVH has completed the submitted CAP with evidence to demonstrate that they are fully compliant with applicable 38 C.F.R. Part 51 regulations.

(8) Reviewing and making a final determination regarding all Informal Dispute Resolution (IDR) requests submitted by SVHs in response to a VA Annual or For-Cause Survey.

(9) Receipt and recording of State written notice required by 38 C.F.R. § 51.210(b) of individuals responsible for oversight of a SVH home including: the SVH Administrator; the director of nursing services (or other individual in charge of nursing services); and the State employee responsible for oversight of a SVH if a contractor operates the SVH.

e. **National Director, Facility Based Care Programs.** The National Director of Facility Based Care (FBC) in GEC is responsible for:

(1) Providing operational guidance for the SVH program.

(2) Appointing the Contract Officer Representative (COR) for the national survey contract.

f. **Chief, State Veterans Homes.** The Chief of State Veterans Homes is responsible for:

- (1) Providing the oversight and operational management of the SVH program for VA.
- (2) Establishing policy, national program development, research and quality oversight of all SVH programs across VHA.
- (3) Setting national standards for the treatment and services Veterans receive.
- (4) Developing national metrics to assess and improve Veteran outcomes.
- (5) Reviewing need for and authorizing For Cause Surveys.

g. **National Program Manager, SVH Quality and Oversight.** The National Program Manager for Quality and Oversight is responsible for:

- (1) Promoting SVH program development through operational guidance, support, email groups, conference calls and educational programs.
- (2) Providing survey oversight for the SVH program.
- (3) Coordinating and scheduling Recognition Surveys and For Cause Surveys, reviewing deficiencies and providing recommendations on appropriate actions.
- (4) Communicating VA's requirements for participation in the SVH program and the survey process to State officials and SVH Administrators.
- (5) Communicating with the Director, VA medical facility of jurisdiction, regarding their responsibilities for the SVH survey process as specified in this directive.
- (6) Completing the review of applicable 38 C.F.R. Part 51 regulations for all SVH surveys, including writing any needed deficiencies on the survey report.
- (7) Providing the SVH VA Medical Facility Representative and VISN leadership an electronic copy of the recognition letter signed by the Under Secretary for Health.
- (8) Reviewing and providing comments for all survey reports.
- (9) Sending a letter with a copy of the completed survey report to the SVH management, the Director of the VA medical facility of jurisdiction, the SVH VISN Liaison, the VISN Director, the State official authorized to oversee operations of the SVH and the State Governor within 20 business days from the last day of the on-site survey. ***NOTE: A CAP is required for any standard rated as "Not Met." The CAP is submitted via email to the designated authorized authority via the National SVH Program Manager for Quality & Oversight, per Pod, no later than 20 working days from receipt of the final survey report and letter of request for a CAP.***
- (10) Reviewing any additional evidence submitted by a State for review following a Recognition Survey in which the applicable requirements were not met and making a recommendation to the Executive Director of GEC/designee or the Director of the VA

medical facility of jurisdiction regarding whether the Under Secretary for Health should award or deny recognition based on all available evidence.

(11) Reviewing all submitted CAPs for acceptability, appropriateness and timeliness and subsequently making a recommendation to the Executive Director of GEC/designee or the Director of the VA medical facility of jurisdiction regarding the need for a CAP revision and/or granting the SVH provisional certification.

(12) Reviewing all submitted CAP evidence for verification of CAP implementation and sustainment and subsequently making a recommendation to the Executive Director of GEC/designee or the Director of the VA medical facility of jurisdiction regarding the need for additional CAP evidence and/or granting the SVH provisional certification.

(13) Sending all provisional and full certification letters to the SVH management, the Director of the VA medical facility of jurisdiction, the SVH VISN Liaison and the VISN Director.

(14) Ensuring oversight of all the surveyors who are part of the VA-contracted survey vendor that conducts SVH surveys, including quarterly observations of the contracted surveyors' performance and the accuracy of the contracted surveyors' survey reports for each SVH. This includes both on-site and virtual survey observations of contracted surveyor performance with documentation and necessary action or feedback to the contractor.

(15) Monitoring and sharing trends in SVH survey result data.

(16) Notifying the designated SVH VISN liaison of the scheduled date(s) for all surveys; placing the scheduled survey dates on the SVH SharePoint site, available here: <https://dvagov.sharepoint.com/sites/vhastate-veterans-homes?e=1%3A9257c3b362d34ddda343c8959925778e>. **NOTE:** *This is an internal VA website not available to the public.*

(17) Conducting two-way communication with SVH VISN liaisons and designated SVH VA medical facility representatives.

(18) Receiving and processing SVH disputes, which can come from any SVH Administrator, and implementing the IDR process.

(19) Receiving, reviewing, documenting and analyzing all SVH reported adverse events and sentinel events received from the VHA Issue Brief Tracker.

h. **Veterans Integrated Services Network Director.** The VISN Director is responsible for:

(1) Ensuring that all VA medical facilities within the VISN comply with this notice and that appropriate corrective action is taken if non-compliance has been identified.

(2) Administering the SVH program within the VISN in accordance with established VHA national policies, procedures and timelines.

(3) Making a recommendation to GEC to identify the VA medical center of jurisdiction for a new or existing SVH.

(4) Appointing a SVH VISN liaison to perform the duties listed under the SVH VISN Liaison (see paragraph 5.i.). When appointing this position, the VISN Director must ensure that the SVH VISN liaison has the knowledge, skills and abilities in external review procedures and performance improvement.

(5) Meeting with the SVH VISN liaisons as needed to ensure awareness of any issues at the SVH.

(6) Submitting issue briefs (IBs) to the VHA Issue Brief Tracker in accordance with 38 C.F.R. § 51.120(a)(3).

(7) Ensuring the suffix code request to VHA Finance is completed when a new SVH is recognized by a signed letter from the Under Secretary for Health.

i. **State Veteran Home Veterans Integrated Services Network Liaison.** The SVH VISN Liaison is responsible for:

(1) Managing the SVH program within the VISN.

(2) Serving as the main liaison between the SVH VA medical facility representative and GEC.

(3) Reviewing IBs for completeness and requesting additional information from the VA medical facility Director, if necessary.

(4) Reviewing all VA SVH survey reports and CAPs sent by the GEC National Program Managers.

(5) Attending quarterly national SVH conference calls.

(6) Ensuring each SVH has a VA Medical Facility Representative designated by the VA medical facility Director for the VA medical facility of jurisdiction and notifying GEC when there are any changes or updates.

(7) Providing a mechanism for sharing information between the SVH VA medical facility representatives within the VISN (e.g., mail groups, conference calls and face-to-face meetings).

(8) Promoting positive relationships between the SVH management and SVH VA medical facility representatives.

(9) Communicating with GEC as needed for guidance regarding survey results, trends or concerns.

(10) Serving as an educational resource for VA medical facility staff employees in the VISN regarding the SVH program.

(11) Providing guidance to the SVH VA medical facility representative(s) and effectively communicating with State officials and GEC staff employees.

j. **VA Medical Facility Director.** The Director, VA medical facility of jurisdiction, provides oversight for the VA medical facility SVH program and is responsible for:

(1) Ensuring overall VA medical facility compliance with this notice and that appropriate corrective action is taken if non-compliance has been identified.

(2) Appointing a VA employee to serve as the SVH VA medical facility representative to perform the duties listed under SVH VA medical facility representative (see paragraph 5.k.).

(3) Notifying GEC and the SVH VISN Liaison in writing when there is a change in the SVH VA medical facility representative.

(4) Meeting with the SVH VA medical facility representative, as necessary, to ensure awareness of any issues at the SVH.

(5) Ensuring familiarity with all contracts, sharing agreements, Memoranda of Understanding and Telehealth Service Agreements between the SVH and the VA medical facility.

(6) Communicating with the SVH VISN Liaison on matters concerning the SVH.

(7) Approving and submitting IBs to the VISN according to the process outlined in the current VHA Guide to Issue Briefs.

(8) Having awareness of VA SVH survey reports and CAPs sent by the GEC National Program Managers.

(9) In accordance with regulatory authority granted in §51.30(b)(d)(e), electing to sign any letter to the SVH in place of the Executive Director of GEC/designee.

(10) In accordance with regulatory authority granted in §51.20(c), electing to complete or to delegate to the Executive Director of GEC/designee the review of the recommendation from the National Program Manager, SVH Quality and Oversight regarding whether any additional evidence submitted by a State for review following a recognition survey in which the applicable requirements were not met is sufficient to grant recognition and making a recommendation to the Under Secretary for Health regarding awarding or denying recognition based on all available evidence.

(11) Maintaining open lines of communication with SVH leadership.

(12) Preparing the suffix code request to VHA Finance through the VISN Director when a new SVH is recognized by a signed letter from the Under Secretary for Health.

k. **State Veteran Home VA Medical Facility Representative.** The SVH VA medical facility representative is designated by the Director, VA medical facility of jurisdiction, and is responsible for:

(1) Managing the SVH program at the VA medical facility level.

(2) Coordinating communication between SVH management, Director, VA medical facility of jurisdiction, SVH VISN liaison and GEC.

(3) Responding to inquiries from SVH management and referring SVH management to the appropriate VA office for assistance.

(4) Assisting the SVH, SVH VISN liaison and GEC, as requested.

(5) Immediately notifying the Director, VA medical facility of jurisdiction and SVH VISN Liaison that a sentinel event, negative publicity or any situation resulting in immediate jeopardy (IJ) to residents' health or safety has occurred. This includes preparing and submitting the IB to the appropriate level, clarifying any questions and continuing to update the SVH VISN liaison until resolution.

(6) Serving as an educational resource for VA medical facility staff employees and SVH staff employees regarding the SVH program.

## **6. RECOGNITION SURVEY PROCESS**

a. A Recognition Survey is required when a SVH seeks to become eligible for VA per diem payments. The Recognition Survey is conducted to review policies, procedures, processes, care and treatment, life safety and all other applicable requirements of the appropriate level of care standards. If the survey determination is that the applicable requirements and standards are not met, recognition will not be recommended to the Under Secretary for Health. In a Recognition Survey, the State has the right to submit a response to the Under Secretary for Health, including any additional evidence, no later than 30 calendar days after the date of the notification to the State.

b. To begin the recognition process, the State sends a written request for recognition, bed numbers and level of care signed by the authorizing State official to GEC. GEC notifies the Director, VA medical facility of jurisdiction, of the recognition application for informational purposes. GEC then coordinates the VA Survey Team.

c. After receipt of a letter requesting recognition, VA will survey the home in accordance with 38 C.F.R. § 51.31 to determine whether the home and program of care meet the applicable requirements of 38 C.F.R. Part 51, Subpart C, and the applicable

standards in Subparts D, E or F of this part. For purposes of the recognition process, including the survey, references to SVH in the standards apply to homes that are being considered by VA for recognition as SVH. The Recognition Survey is an announced survey of a SVH. GEC sends written notification to the State of which documents must be available and presented at time of the survey along with the electronic link to the Federal regulations.

d. GEC provides the VA Survey Team the previous VA survey report if the SVH failed the previous Recognition Survey. The contracted survey vendor is responsible for obtaining the State report and State quality indicator report, if applicable, before starting the survey.

e. The VA Survey Team will conduct an entrance conference at the time of arrival at the SVH, as well as daily debriefs and exit conferences with SVH management and staff employees, as appropriate.

f. The entrance conference provides the opportunity for the VA Survey Team and SVH to discuss the scope and schedule for the survey. Entrance conferences must be scheduled at a mutually agreeable time. At the meeting, the VA Survey Team must outline survey objectives, survey time schedules and the process of reporting. The SVH must designate a member of their staff as the primary contact person for the VA Survey Team questions and assistance. Any areas of concern for the SVH must be brought up at this stage. Daily debrief conferences must discuss any developing deficiencies or areas of concern. Final exit conferences inform the SVH of any identified areas of likely noncompliance with 38 C.F.R. Part 51 regulations.

g. A Recognition Survey generally occurs after the original construction or renovations to a SVH are complete. VA will not conduct a Recognition Survey unless the required minimum requirements are met. For nursing homes and domiciliaries, the State home must have at least 20 residents or a number of residents consisting of at least 50% of the resident capacity. For adult day health care programs, the program must have at least ten participants or a number of participants consisting of at least 50% of the participant capacity of the program.

h. The Recognition Survey is performed within 10 business days of authorization by GEC, or at a specific requested date by the SVH.

i. Any surveyor on the VA Survey Team may identify a deficiency against a standard. This requires the surveyor who identified the deficiency to provide a written description of the deficiency to include the condition that exists and a scope and severity rating. A rating of each deficiency must be provided on the final survey report.

j. GEC sends a letter with a copy of the finalized survey report to SVH management in 20 business days from the last day of the survey.

k. If the survey report indicates that the SVH does meet the standards, GEC sends a letter addressed to the Under Secretary for Health recommending whether, based on the survey, the SVH and SVH management meet the standards in 38 C.F.R. Part 51.

l. If the survey report indicates that the SVH does not meet the standard(s) in 38 C.F.R. Part 51, GEC notifies the SVH in writing of the standard(s) “Not Met.” GEC ensures a copy of this notification and the survey report are sent to the Director of the VA medical facility of jurisdiction, the SVH VISN Liaison, the VISN Director, the State official authorized to oversee operations of the SVH and the State Governor. This letter must include the reasons for the recommendation and indicate that the State has the right to submit a response to the Under Secretary for Health, including any additional evidence, no later than 30 calendar days after the date of notification to the State. After receipt of a recommendation from GEC and allowing 30 calendar days for the State to respond to a negative recommendation and to submit evidence, the Under Secretary for Health will award or deny certification based on all available evidence. The SVH leadership will be notified of the decision in writing. Adverse decisions may be appealed to the Board of Veterans’ Appeals.

m. A request for a CAP is not required for a failed Recognition Survey because the survey is pass or fail only. The SVH can take the amount of time needed to reach full compliance and make another request for recognition when those “Not Met” standards have been corrected.

n. A Recognition Survey checklist is provided by the National Program Manager, SVH Quality and Oversight to the SVH management that outlines required forms, information, data and letters that are to be electronically sent to GEC. The recognition checklist must be completed in its entirety by the SVH and all required documentation is requested to be submitted to GEC within 14 business days from date of GEC’s request.

o. The recognition will remain in effect unless the State requests that the recognition be withdrawn, or the Under Secretary for Health decides that the SVH does not meet VA standards. After a SVH is recognized, any new annex, new branch or other expansion in the size or capacity of a SVH, or any relocation of the SVH to a new facility must be separately recognized.

p. When a SVH that received a failed Recognition Survey corrects the deficiencies identified in the failed Recognition Survey, they must notify the National Program Manager, SVH Quality and Oversight that they are ready for another full Recognition Survey to be scheduled. GEC will schedule the next Recognition Survey.

q. The State must report any decreases in the capacity for a particular program of care to GEC no later than 30 calendar days after such decrease and must provide an explanation for the decrease.

## **7. ANNUAL SURVEY PROCESS**

a. An annual unannounced survey must be completed on one of the following three timelines: every 12 months during the recognition anniversary month; or at least once every 270-450 calendar days at VA discretion, as specified in 38 C.F.R. § 51.30. The Executive Director of GEC/designee or the Director, VA medical facility of jurisdiction,

certifies whether a SVH providing nursing home care, domiciliary care and/or adult day health care meets VA standards for continued per diem payments.

b. During all SVH surveys, the VA Survey Team uses a recognized industry standard survey process for long-term care support services. The length of the survey is based on the individual number of recognized beds and the level of care in each SVH. The VA Survey Team must possess and review the previous VA survey, State report, if applicable, and the VA quality indicator report before starting the survey.

c. The VA Survey Team will conduct an entrance conference at the time of arrival at the SVH, as well as daily debriefs and exit conferences with SVH management and staff employees, as appropriate.

d. The entrance conference provides the opportunity for the VA Survey Team and SVH to discuss the scope and schedule for the survey. Entrance conferences must be scheduled at a mutually agreeable time. At the meeting, the VA Survey Team must outline survey objectives, survey time schedules and the process of reporting. The SVH must designate a member of their staff as the primary contact person to assist and answer questions for the VA Survey Team. Any areas of concern of the SVH must be brought up at this stage. Daily debrief conferences must discuss any developing deficiencies or areas of concern. Exit conferences must keep the SVH informed about how the survey is going. No final ratings are to be given at the exit conference.

e. GEC provides clarification to standards, as needed during the survey.

f. Any surveyor on the VA Survey Team may identify a deficiency against a standard. This requires the surveyor who identified the deficiency to provide a written description of the deficiency to include the condition that exists and a scope and severity rating. A rating of each deficiency must be provided on the final survey report.

g. GEC sends a signed written letter of the survey results with the final survey report to the SVH management no later than 20 business days from the last day of the survey. GEC will ensure a copy of the written letter and official survey report are sent to the Director, VA medical facility of jurisdiction, the SVH VISN liaison, the VISN Director, the State official authorized to oversee operations of the SVH and the State Governor.

h. The letter includes the following information:

(1) Identifies all standards rated "Not Met."

(2) States reasons for the decision on any standard rated "Not Met."

(3) Requests submission of a written CAP from SVH management to remedy each deficiency in a specific amount of time for each standard(s) rated "Not Met" no later than 20 business days upon receipt of the letter.

i. GEC requests submission of the CAP within 20 business days of when the SVH received the survey report and letter. GEC also will request the SVH to submit evidence of corrective actions with the CAP(s) for all deficiencies listed.

j. If SVH facility management has a concern regarding their final survey report, GEC has established a standardized approach which is the IDR Standard Operating Procedure. This procedure is defined on the SVH SharePoint site. Through the IDR, all concerns will be resolved prior to the State's submission of the CAP.

k. SVH leadership submits their CAP to GEC within 20 business days of when the SVH received the survey report and letter. GEC reviews the submitted CAP within 20 business days from date of CAP submission. GEC has the discretion to accept or not accept the CAP and can request additional information directly from the SVH.

l. If GEC does not accept the CAP, GEC must request the SVH to submit a revised CAP or additional information in writing for the CAP to be returned no later than 10 business days after receipt of the request.

m. If GEC accepts the CAP, the Executive Director of GEC/designee or the Director, VA medical facility of jurisdiction must send a provisional certification letter to the SVH management. GEC will also apprise the Director, VA medical facility of jurisdiction, the SVH VISN liaison, the VISN Director of the CAP acceptance and send a copy of the provisional certification letter.

n. A provisional certification will be issued only upon a determination that:

(1) The SVH or home management does not meet one or more of the standards;

(2) The deficiencies do not jeopardize the health or safety of the residents; and

(3) The plan is reasonable and the Executive Director of GEC/designee or the Director, VA medical facility of jurisdiction, sent written notice to the appropriate person(s) at the State home informing them that the Executive Director of GEC/designee or Director agrees to the plan.

o. GEC must notify the official in charge of the SVH of the provisional certification in writing. A full certification will be issued by GEC only upon a determination that the SVH or facility management meet all standards at the time of the Annual Survey, or when the agreed-upon CAP to remedy each deficiency has been demonstrated to be implemented and sustained. Sustained CAP implementation will be verified by GEC's review of evidence submitted by the SVH management of how the CAP for each deficiency has been put in place.

p. When a full certification is granted, GEC must notify the official in charge of the SVH in writing. GEC will also apprise the Director, VA medical facility of jurisdiction, the SVH VISN liaison, the VISN Director of the full certification and send a copy of the full certification letter.

## 8. FOR CAUSE SURVEY PROCESS

a. A For Cause Survey may be authorized by GEC to review a major or significant specific concern, or a series of incidents, complaints, deficiencies or events that may jeopardize the health or safety of residents. This is still a full survey but focuses on the specific events or acts that prompted the survey. The VA Survey Team must be on site within 15 business days after official notification from GEC to the contracted survey vendor.

b. The decision to initiate a For Cause Survey is determined by GEC based on all available information, trends, reports and recommendations made by the SVH VISN liaison and Director, VA medical facility of jurisdiction. This is an unannounced survey to the SVH.

c. All other For Cause Survey process steps and timelines follow b-q as outlined above in 7. Annual Survey Process.

## 9. IMMEDIATE JEOPARDY

Immediate Jeopardy (IJ) is a situation in which the SVH's non-compliance with one or more 38 C.F.R. Part 51 regulations has caused or is likely to cause serious injury, harm, impairment or death to a resident, participant or the public. The process for handling these situations during a survey is as follows:

a. The contracted survey vendor has the responsibility for surveying all applicable 38 C.F.R. Part 51 clinical, life safety and administrative regulations as well as a subset of fiscal regulations. GEC personnel have the responsibility for surveying the remaining applicable 38 C.F.R. Part 51 regulations in subpart C. Any member of the VA Survey Team may propose an IJ situation on a survey to the entire VA Survey Team.

b. When a member of the VA Survey Team encounters a situation that they believe warrants an IJ discussion or review, they must share that information with the entire VA Survey Team.

c. During a SVH survey, surveyors shall notify the Contracted Vendor Project Manager of a potential IJ if any regulations are suspected to be rated at Levels J, K or L in the Scope and Severity Matrix.

d. The VA Survey Team will communicate with the Project Director for the contracted vendor. Upon discussion and review of the findings and evidence discovered on site at the SVH, the VA Survey Team and the Project Director will determine whether the evidence supports an IJ or not. The Project Director is to immediately notify GEC of the situation, the finding, level, federal regulation and when SVH management has been notified.

e. The VA Survey Team is to immediately notify the SVH facility management to request a removal plan to correct the situation.

f. Upon discussion and review of the findings and evidence discovered on site at the SVH and how the IJ was identified by the Survey Team, the Project Director for the contracted vendor will make a telephone call to the VA Contracting Officer Representative (COR). The Project Director will also email a summary of the findings and evidence to the VA COR.

g. The VA COR/designee will communicate the summary information to GEC leadership as well as the Director, VA medical facility of jurisdiction, the SVH VISN liaison and the VISN Director.

h. The VA Survey Team remains on site when an immediate jeopardy is determined and ensures that the SVH corrects the deficiency immediately with a written removal plan. If the survey is virtual, the surveyors will remain in contact with SVH leadership until it has been demonstrated that the immediacy of the deficient practice has been corrected with a written removal plan.

i. The Contracted Vendor Project Director is to immediately notify the VA COR/designee when the removal plan is received and approved. The accepted removal plan must be sent by email to the VA COR within one business day of acceptance of the plan. The VA COR will communicate the accepted removal plan information to GEC leadership as well as the Director, VA medical facility of jurisdiction, the SVH VISN liaison and the VISN Director.

j. The contracted vendor surveyors will participate in a conference call as necessary and determined by either the GEC Program Office or VA Medical Center of jurisdiction to discuss and review the IJ and the removal plan that was accepted. Call to be arranged by GEC Program Office.

k. The contracted vendor shall provide in writing to VA COR a preliminary report for findings rated J, K or L in the Scope and Severity Matrix within one working day of the IJ finding.

## **10. RECORDS MANAGEMENT**

All records regardless of format (e.g., paper, electronic, electronic systems) created in this directive shall be managed in accordance with the National Archives and Records Administration (NARA) approved records schedules found in VHA Records Control Schedule 10-1. Questions regarding any aspect of records management should be addressed to the appropriate Records Officer.

## **11. REFERENCES**

- a. 38 U.S.C. § 1710.
- b. 38 U.S.C. § 1720.
- c. 38 U.S.C. §§ 1741-1745.

d. 38 C.F.R. Part 51.

e. VHA GEC SharePoint for SVH, available here:

<https://dvagov.sharepoint.com/sites/vhastate-veterans-homes?e=1%3A9257c3b362d34ddda343c8959925778e>. **NOTE:** *This is an internal VA website that is not available to the public.*

f. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Program Scoring Algorithm: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter09-05.pdf>. **NOTE:** *This linked document is outside VA control and may not conform to Section 508 of the Rehabilitation Act of 1973.*

**12. RESPONSIBLE OFFICE:** The Office of Geriatrics and Extended Care (12GEC) is responsible for the content of this VHA notice. All inquiries concerning this action should be addressed to the Facility-Based Care group at [VHAGECFBC@va.gov](mailto:VHAGECFBC@va.gov).

**13. RESCISSIONS:** VHA Directive 1145.01, Survey Requirements for State Veterans Homes Care, dated February 18, 2021, is rescinded.

**14.** This VHA notice will expire and be archived on October 31, 2024.

**BY DIRECTION OF THE OFFICE OF THE  
UNDER SECRETARY FOR HEALTH:**

/s/ M. Christopher Saslo  
DNS, ARNP-BC, FAANP  
Assistant Under Secretary for Health  
for Patient Care Services/CNO

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