

**INITIAL STATEMENT OF REASONS
CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS**

**TITLE 12. DIVISION 2. CHAPTER 4, SUBCHAPTER 1, SECTION 501.2
ELIGIBILITY DETERMINATION**

Purpose

The purpose of this regulation is to make specific how the California Department of Veterans Affairs (CalVet) determines eligibility for admission to California Veterans Homes and to clarify the criteria for admission in accordance with the Military and Veterans Code (MVC).

California Veterans Homes Historical Perspective

Under the direction of its Secretary, CalVet currently operates eight Veterans Homes that are located Yountville, Barstow, Chula Vista, Lancaster, Ventura, West Los Angeles, Fresno and Redding. Beginning in 1884 with the opening of the Yountville Veterans Home, one of the nation's first long-term care homes for Civil War and Mexican-American War veterans, California has maintained a commitment to caring for veterans and their families.

The Veterans Homes, which provide long-term health care services for more than two thousand aged or disabled veterans and their spouses and domestic partners, widows of Medal of Honor recipients, and widows of former prisoners of war, are certified by the United States Department of Veterans Affairs (USDVA) and licensed by the California Department of Public Health and the California Department of Social Services. The Veterans Homes carry out CalVet's goal of providing care for aged or disabled veterans their spouses and domestic partners, widows of Medal of Honor recipients, widows of former prisoners of war.

Problem Statement

This regulation is necessary because California MVC Section 1012 envisions that not enough space will be available for all eligible veterans but does not define with sufficient specificity how the Veterans Homes will apply eligibility determination and admission criteria. CalVet has the responsibility to proactively define eligibility and admissions criteria with more detail than the statute provides. The current regulation was written when one Home existed and was adopted prior to the development of all eight sites in the California Veterans Home system.

California Veterans Homes are limited by statute, licensing, and budget as to how many individuals may be admitted as members and what levels of care are provided. All eight Veterans Homes, collectively, offer admission to four levels of care: domiciliary, residential facility care for the elderly, intermediate facility care, and skilled nursing facility care (including skilled nursing memory care).

Authority

The MVC 1012 governs eligibility determination and admission criteria for the California Veterans Homes.

Summary of the Proposed Regulations

The proposed changes to the California Code of Regulations (CCR) Section 501.2 Eligibility Determination clarify the basic eligibility determination and admission criteria for applicants to the California Veterans Homes.

Specific Purpose and Rationale

This regulation helps ensure a fair and equitable admissions process by defining in greater detail the eligibility requirements of and admission criteria of the eight California Veterans Homes.

This action removes ambiguity and clarifies eligibility determination and admission criteria that are missing from MVC 1012 and MVC 1033.1(c). Without unambiguous language, eligibility determination and admission criteria may be subject to interpretation and re-interpretation, resulting in the potential for an application process that lacks uniformity and equity.

To carry out the admissions process, CalVet classifies applicants on the basis of their initial level of self-sufficiency, a process that is rationally related to the goal of providing life-long care to as large a group as possible, given limited resources and a huge population of potentially eligible California veterans.

Each Veterans Home must provide for the health and safety of members as required by the state licensing agencies that regulate facilities by levels of care, the USDVA and the Center for Medicare and Medicaid Services. Licensing agencies may include, but are not limited to, California Department of Health Care Services and California Department of Social Services.

CalVet has an obligation to provide for the health, safety, and care needs of each current member of a Veterans Home before serving a prospective new resident, that is, an applicant.

Services and programs may be available at one Veterans Home, but not at another. These may include speech therapy, respiratory therapy, occupational therapy, physical therapy, in-house audiology services, recreation services, medication assistance, memory care, skilled nursing care, fully independent living, or other programs. Additionally, each home has unique buildings, room accommodations and storage space, electrical systems, therapeutic services, and grounds. There may be space at one home for a member's vehicle, mobility device, or furniture which may not be available at another site due to differences in the layout, electrical outlets, walkway and hallway widths, and fire marshal allowances. Some sites have private bedrooms or baths; other sites may have semi-private bedrooms and bathrooms or shared bathrooms.

MVC 1012 was revised by the 2017 California State Legislature through Senate Bill 96, also authorizing the Trailer Bill. The revised MVC authorizes investigation of the applicant’s personal background and the regulation proposal clarifies that criminal background checks may be conducted. The purpose of the check is to help ensure that a safe and secure environment is provided at each Veterans Home. For the safety and security of Veterans Home members, the regulation provides language to exclude applicants whose background indicates incompatibility with a safe and secure community environment such as applicants with a history of elder abuse, assault, or theft.

CalVet determines eligibility for admission and applies admission criteria in a fair and equitable manner in accordance with Section 1012 of the MVC. The rationale for this regulation is to provide clarity to applicants and the general public on the admission criteria and how eligibility is determined for admission to the Veterans Homes.

Residency and health care at the Veterans Homes are taxpayer-supported public benefits, not unlike those of the USDVA which provides medical services for disabled veterans with limited income. Eligibility for such benefits must be determined by specific criteria.

The Veterans Homes mission is providing long-term care for veterans that are aged or disabled. This regulation addresses the obligation CalVet to ensure that eligibility determination and admissions criteria are fair, equitable, and are written in accordance with statutory authorization.

Chart of Regulation Text and Reasons

CCR 501.2 Eligibility Determination	
Regulation Text	Reasons
<p>(a) <u>Definitions</u></p> <p>(1) <u>“Aged” veteran means a veteran who is 55 or older.</u></p> <p>(2) <u>“Disabled” veteran means a veteran that is certified by the United States Department of Veterans Affairs (USDVA) as having a service-connected disability or is certified disabled by the California Department of Social Services.</u></p>	<p>MVC Section 1012 is the main source for the Veterans Homes eligibility and admission criteria, as it provides that the Veterans Homes are for veterans that are “aged or disabled” and meet other conditions for eligibility.</p> <p>Because the term “aged” and the term “disabled” remain undefined in the code, however, the meaning of each term is left open to interpretation.</p> <p>CalVet’s adoption of “55 and above” as the definition of “aged” is in harmony with the definition of “senior citizen” provided in California Civil Code Section 51.3, a related statute establishing accessible housing for the</p>

	<p>elderly. This threshold age of 55 appears both on CalVet’s website as well as in its admissions policy.</p> <p>CalVet defines disabled in accordance with the rules and regulations of the USDVA and the State of California Department of Public Health.</p>
<p><u>(3) “Joint application” is an application by a veteran applicant and a spouse or domestic partner.</u></p> <p><u>(4) “Joint Admission” occurs when a veteran and spouse or domestic partner obtain are admitted to the same Veterans Home.</u></p> <p><u>(5) “Joint Residency” is when a veteran and a spouse or domestic partner live at the same Veterans Home.</u></p>	<p>MVC 1012 authorizes Veterans Homes to provide joint residency to spouses and domestic partners of eligible veterans under specific conditions. To provide transparent and equitable rules for applicants and members, CalVet finds it necessary to define in regulation the terms joint admission, joint application, and joint residency</p> <p>MVC 1012 delineates eligibility requirements for veteran applicants and further states that the Veterans Home is also “...for the spouses or domestic partners of these persons if all of the following conditions, as are applicable, are satisfied:</p> <p>(1) Space is available.</p> <p>(2) Joint residency will be in the best interests of the Veterans Home member, as determined by the administrator.</p> <p>(3) The spouse or domestic partner is a bona fide resident of this state at the time of application for admission to the Veterans Home and either is married to, and has resided with, the veteran applicant for at least one year, or is the widow or widower of a recipient of the Medal of Honor or a former prisoner of war....”</p>
<p>(a) <u>(b)</u> The Veterans Home shall determine an applicant's eligibility after a thorough review of all available military data (pursuant to Section 1012 of the MVC), <u>financial</u>, medical, <u>personal</u>, and social information.</p> <p>(b) <u>(c)</u> The Veterans Home shall not admit</p>	<p>For Subsections (b) and (c) the current language is retained with new lettering along with the addition of the terms “financial” and “personal” to Subsection (a).</p> <p>The terms “financial” and “personal” have been added because revisions to Section 1012 of the</p>

<p>applicants with a current history of behavioral patterns or traits which would be incompatible with a safe and secure community environment at the Veterans Home.</p>	<p>MVC make clear that CalVet has authorization to examine financial and personal information of applicants and members.</p>
<p><u>(d) To consider an applicant for admission, the Veterans Home must have:</u></p> <p><u>(1) The resources to provide for the applicant’s required level of care and specific needs within its existing services and resources as determined by a CalVet-led preadmission evaluation.</u></p> <p><u>(2) A bed available that is not needed by a current member of the Veterans Home at the required level of care.</u></p>	<p>The Veterans Home must provide for the health and safety of members as required by the state licensing agencies that regulate facilities by levels of care, the USDVA and the Center for Medicare and Medicaid Services.</p>
<p><u>(e) To be eligible for admission, applicants shall:</u></p> <p><u>(1) Demonstrate proof of current bona fide California residency by presenting for verification one or more of the following: a current valid California Driver License; a current valid California Identification Card; a public utility statement with the name of the applicant and a California address dated within 90 days prior to the date of application; the applicant’s prior year California State Tax Return showing a California physical address; or other documentation that demonstrates California residency, as determined by the administrator.</u></p>	<p>In accordance with MVC 1012, applicants must be bona fide state residents to be eligible for admission to a Veterans Home. This Subsection explains how CalVet determines residency. This revision lists the documents that an applicant may submit to a Veterans Home to establish state residency for purposes of establishing eligibility.</p>
<p>(2) Qualify as aged or disabled.</p>	<p>This revision is made in accordance with the revisions to MVC Section 1012 in the 2017 Trailer Bill.</p> <p>Previously, the MVC used the term “aged and disabled” while the revised Code states “aged or disabled.”</p>

	The intent of the change and the use of or is to make clear that the applicant and member may be both aged and disabled, only disabled, or only aged.
(3) Have served active duty service in the Armed Forces of the United States of America as determined by the USDVA. (4) Have been discharged from military service <u>under conditions other than dishonorable.</u>	This revision is made in accordance with the revisions to MVC Section 1012 in the 2017 Trailer Bill. Previously, the MVC used the term “honorable conditions” while the revised Code states “other than dishonorable.”
(5) Be eligible for health care benefits, hospitalization, or domiciliary care in a Veterans facility in accordance with the rules and regulations of the USDVA, and enrolled in the USDVA health care program.	The Veterans Home must provide for the health and safety of members as required the USDVA in its capacity under the Veterans Home Program. Accordingly, veteran applicants must be eligible for residency under the rules of the USDVA.
(6) <u>Obtain basic medical insurance policies and maintain them throughout their residency in accordance with the MVC 1033.1(c) and CCR 501(e).</u>	This revision is made in accordance with the revisions to MVC Section 1033.1(c) in the 2017 Trailer Bill. Previously, the MVC did not specify that a Veterans Home member was required to maintain medical insurance.
(f) <u>A veteran and his or her nonveteran spouse or domestic partner may submit a joint application for admission to a Veterans Home.</u> (1) <u>Nonveterans are not eligible for admission without a joint application with a veteran spouse or domestic partner with the exceptions of widows or widowers of Medal of Honor recipients and former prisoners of war. Eligible widows or widowers may not apply for joint admission with a nonveteran spouse or domestic partner.</u> (2) <u>The nonveteran spouse or domestic partner</u>	MVC Section 1012 states that certain nonveterans may be eligible for admission to a Veterans Home, including spouses or domestic partners of veteran applicants, widows or widowers of Medal of Honor recipients, and widows or widowers of former prisoners of war. The proposed regulations for spouse and domestic partner residency provide rules for equitable practices in the administration and operation of the Veterans Home. The Veterans Home must provide for the health and safety of members as required by the state

<p><u>must meet all eligibility determination and admission criteria requirements that apply to veteran applicants with the exceptions of requirements related to military service or eligibility for Veterans benefits.</u></p>	<p>licensing agencies that regulate facilities by levels of care, the USDVA, and the Center for Medicare and Medicaid Services. The Veterans Homes must have rules for all members that provide equity for the all members while also complying with state and federal laws and licensing requirements.</p>
<p>(3) The <u>veteran applicant</u> and the nonveteran spouse or domestic partner applicant must have resided together and must have been married or have had a registered domestic partnership for at least one year prior to submitting an application to a Veterans Home.</p>	<p>In accordance with the revised MVC, CalVet establishes a one-year rule for the veteran applicant and nonveteran spouse or domestic partner to have resided together and either to have been married or had a registered domestic partnership prior to applying for admission to a Veterans Home.</p> <p>The MVC amendment adds domestic partner, strikes Veterans Home member, and adds veteran applicant as follows: “(3) The spouse <u>or domestic partner</u> is a bona fide resident of this state at the time of application for admission to the Veterans Home and either is married to, and has resided with, the Veterans Home member <u>veteran applicant</u> for at least one year, or is the widow or widower of a recipient of the Medal of Honor or a former prisoner of war (POW).”</p> <p>Prior to the 2017 Trailer Bill amendment, this portion of the MVC Section 1012 contained the term “Veterans Home member” whereas the revised Code uses the term “veteran applicant” when referring to the one year rule for couples to have resided together and been married or in a domestic partnership before making a joint application to a Veterans Home.</p> <p>With the 2017 Trailer Bill amendment, this portion of the MVC is silent on joint application by a current Veterans Home member and a spouse or domestic partner when the marriage or domestic partnership began after the veteran became a member of a Veterans Home.</p>

<p><u>(4) The veteran and spouse or domestic partner shall maintain residency at the same Veterans Home when space is available and unless medically contraindicated. If one member of a couple is transferred to a different Veterans Home, the other member of the couple shall move to the same destination Veterans Home when space is available unless medically contraindicated.</u></p>	<p>This Subsection clarifies how the Veterans Home implement MVC 1012 (a)(1) and (2).</p> <p>MVC 1012(a) states the Veterans Homes eligibility requirements for veterans and adds that the Veterans Home is also "...for the spouses or domestic partners of these persons if all of the following conditions, as are applicable, are satisfied:</p> <p>(1) Space is available.</p> <p>(2) Joint residency will be in the best interests of the Veterans Home member, as determined by the administrator.</p>
<p><u>(g) The Veterans Home may conduct a criminal background check of an applicant or member. The Veterans Homes shall not admit an applicant or allow for the continued residency of any member who has been convicted of a felony or a misdemeanor crime that indicates incompatibility with a safe and secure community environment such as elder abuse, assault, or theft or is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law; or an applicant that is currently serving on parole or probation for a criminal conviction.</u></p> <p><u>The Secretary or a designee may exempt applicants from this Subsection on a case-by-case basis if the applicant can prove, to the satisfaction of the Secretary or designee, that admission of the applicant will not endanger residents, staff, visitors, or property, or otherwise harm the community environment or the licensure or certification of the Veterans Home. If, at any point during the application process, an applicant is found to be ineligible for admission in accordance with this Subsection, the application shall be suspended and the applicant shall not be considered for</u></p>	<p>In accordance with the MVC Section 1012 as revised by the 2017 Trailer Bill, CalVet may investigate an applicant's or member's personal background for suitability of becoming or continuing residency as a member.</p> <p>In legislative hearings and in this regulation proposal, CalVet interprets the statute to mean that criminal background checks may be conducted on applicants and members as needed to help determine the suitability of an applicant who is seeking initial admission or a member's continued residency at a Veterans Home.</p> <p>The purpose of the regulation is to provide a safe and secure environment for Veterans Home members. Safety and security are critical to the mission of the Veterans Homes as a matter of human rights and to comply with state and federal licensing requirements.</p>

<u>admission unless and until an exemption is granted.</u>	
<u>(h) An applicant who does not meet eligibility requirements will not be considered for admission.</u>	<p>The purpose of this statement is to avoid waste of resources that could occur if CalVet was required to go through the lengthy and substantive admission process with applicants who are clearly not eligible for admission.</p>

Evaluation of Consistency/Compatibility with Existing Regulations

CalVet has researched existing regulations and determined that the proposed regulation is consistent and compatible with them.

Local Mandate Determination

CalVet finds that the proposal will not impose a mandate on local agencies or school districts.

Fiscal Impact Estimate

CalVet finds that the proposed regulation will have no new fiscal impact on the General Fund. The proposed regulation will not result in costs to any local agencies or school districts. The proposed regulation will not result in any other nondiscretionary cost or savings imposed on local agencies.

Economic Impact Assessment

CalVet has made an initial determination that this proposal on eligibility determination and admission criteria of the eight California Veterans Homes shall not have a significant economic impact. In accordance with 11346.5(a) (8) CalVet hereby declares that such a determination has been made.

Creation or Elimination of Jobs within the State

CalVet does not anticipate a significant impact on jobs in California due to the proposed revision of Section 501.2 Eligibility Determination. CalVet anticipates that no jobs shall be created; none shall be eliminated. CalVet made this conclusion because Section 501.2 Eligibility Determination clarifies but does not significantly change the existing rules for eligibility determination and admission criteria at the California Veterans Homes.

CalVet finds that the regulation proposal will not increase the capacity of the Veterans Homes to care for additional members. Given that the status quo will be maintained in terms of the number of members served, there will be no new jobs created as a result of the regulation.

Creation of New Businesses or the Elimination of Existing Businesses within the State

CalVet has concluded that Section 501.2 Eligibility Determination will not create any new businesses within the State of California. CalVet is not aware of any businesses who deals with, or profits from, providing rules on eligibility determination and admission criteria to the Veterans Homes.

Existing businesses will not be eliminated as a result of this regulation, nor will new businesses be created. The Veterans Homes are public entities administered by CalVet, a state agency. Private businesses are not involved in determining the eligibility or admission criteria for applicants.

Expansion of Businesses Currently Doing Business within the State

Businesses currently doing business within California will not expand due to the revision of Section 501.2 Eligibility Determination.

Health and Welfare of California Residents, Worker Safety, and the State's Environment

CalVet anticipates that the regulation will benefit the health and welfare of members of the Veterans Homes of California. The regulation seeks to ensure that Veterans Home members continue to reside in a safe and secure environment by providing for the exclusion of prospective members whose history indicates they may not be adaptable to the Veterans Home environment or might jeopardize the safety and security of members.

CalVet has not identified any benefits in the areas of worker safety or the state's environment. The reason no benefits were identified it that the regulation does not address worker safety or the state's environment.

Consideration of Reasonable Alternatives

When considering reasonable alternatives, CalVet staff held a videoconference with Veterans Home administrators and other staff to obtain their input on admissions regulation proposals related to state residency requirements, nonveteran spouse admission, and types of military discharges allowed for eligibility for admission.

With regard to state residency requirement, an alternative considered was having a specific length of time required as a prerequisite for eligibility determination. CalVet found that some states required an applicant to have one or more years of state residency prior to applying for

admission. Due to the broad range of circumstances that arise among California veterans, however, CalVet finds it best to require one or a number of documents to verify state residency in lieu of verifying a defined length of residency. This is particularly important for providing services to homeless veterans, who are far more likely to lack significant documentation.

CalVet staff identified the eligibility requirements for nonveteran spouses at state Veterans Homes in the other 49 states and the Commonwealth of Puerto Rico. Slightly more than half of the other states allow nonveteran spouses to apply for admission and be admitted on a space available basis. Pursuant to MVC 1012, CalVet is obliged to consider nonveteran spouses for admission on a space available basis. Therefore, discontinuing the consideration of nonveteran spouses for admission was ruled out as a reasonable alternative.

One of the differences between California's Veterans Home system and other states is the range of levels of care. Some states have Veterans Homes that offer only skilled nursing facilities and do not offer assisted living or domiciliary care. Due to the agency's statutory obligations to serve aged or disabled veterans, CalVet does not consider it a reasonable alternative to change the available levels of care.

Studies and Reports that CalVet Relied On

A New Approach to California's Veterans Homes, Report #237 (March 2017) by the Little Hoover Commission. <http://www.lhc.ca.gov>.

The California State Auditor Report 2012-1109 (May 2013) by Elaine M. Howie, CPA, included the recommendation that CalVet's admission policies should be adopted as regulations. <https://www.bsa.ca.gov/reports/summary/2012-119>.

The Legislative Analyst's (January 2017) report by Mac Taylor titled "Understanding the Veterans Service Landscape in California" describes the demographics of California's veterans and provides a high-level overview of veterans services provided in the Veterans Homes and services provided in the community. The report reviews the federal and state services available to veterans for long-term care, transitional housing, mental and behavioral health, and employment assistance and provides findings. The report highlights issues for legislative consideration and offer options to improve service delivery within the Veterans Homes. <http://www.lao.ca.gov/reports/2017/3525/veterans-services-011717.pdf>.

CalVet staff obtained data from the National Association of State Veterans Homes on how state veteran's homes across the nation address eligibility determination and admission criteria. Eligibility determination requirements, admission criteria, and regulations of California Veterans Homes were compared with those of other states.