

DATE: 03-11-91

CITATION: VAOPGCPREC 08-91
Vet. Aff. Op. Gen. Couns. Prec. 08-91

TEXT:

SUBJECT: Clarification of Certain Provisions of Public Law 86-639 and DM & S Circular 10-209.

(This opinion, previously issued as Opinion of the General Counsel 2-61, dated January 12, 1961, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Chief Medical Director

1. We have construed your memorandum of December 1, 1960, subject as above, in the light of subsequent informal discussions, as a request for our opinion concerning the following questions:

During the period in which a veteran is being or will be furnished medical services in preparation for admission to a hospital, or within which he is receiving post-hospital care, pursuant to Public Law 86-639, as implemented by Circular 10-209, and while he is neither at a VA facility nor traveling to or from such facility under prior authorization and at VA expense:

a. If the veteran dies during such period, is the VA responsible for the cost of burial, funeral, and transportation expenses as through death occurred while the deceased was properly hospitalized by the VA?

b. Is VA responsible for the cost of hospital care furnished to such veteran in a non-VA facility as a result of an emergency developing during such period?

2. Public Law 86-639 authorizes the VA to furnish medical services for a non-service-connected disability in preparation for admission of a veteran who has been determined to need hospital care and who has been scheduled for admission, as well as post-hospital care where such is found necessary to complete hospital care. Both the Senate and the House Committee reports on this legislation state that its purpose is to accelerate the rate of patient turnover in VA hospitals. It is apparent that the new law is not intended to authorize additional benefits for veterans with non-service-connected disabilities but is merely designed to permit a more effective utilization of VA hospital beds through a more rapid rate of patient turnover.

3. Section 903 of title 38, United States Code, provides, subject to certain limitations, that where death occurs in a VA facility the Administrator shall transport the body to the place of burial in addition to paying the actual cost (not to exceed \$250) of the burial and funeral. VA Regulation 2605(D) provides as follows:

"A person properly hospitalized who dies:

(1) While on a pass for a period not in excess of 72 hours; or

(2) Who is absent without leave for a period not in excess of 24 hours (cases in which absence without leave arises at expiration of pass are not included); is considered as having died while hospitalized."

4. Clearly, death occurring during the period in which the veteran is being or will be furnished medical services in preparation for admission to a hospital, and while he is not actually at a VA facility or traveling to or from such facility under prior authorization, cannot be said to be a death which "occurs in a Veterans' Administration facility to which the deceased was properly admitted for hospital or domiciliary care ..." (38 U.S.C. § 903.) Nor, do the provisions of VA Regulation 2605(D) (see paragraph 3 above) contemplate that a veteran who dies while being furnished post-hospital care following discharge from bed-occupancy care shall be considered as having died while hospitalized.

5. In view of the foregoing, and subject to the conditions stated in paragraph 1 above, it is the opinion of this office that the provisions of 38 U.S.C. § 903 are not applicable to a veteran who dies during the period he is being or will be furnished medical services in preparation for admission to a hospital or while he is receiving post-hospital care pursuant to Public Law 86- 639.

6. Section 610, title 38, United States Code, authorizes the Administrator, within the limits of Veterans' Administration facilities, to furnish hospital care to certain persons, including veterans with non-service-connected disabilities who are unable to defray the expenses of necessary hospital care. Section 601(4)(C) defines the term "Veterans' Administration facilities" to include: "private facilities for which the Administrator contracts in order to provide hospital care (i) in emergency cases for persons suffering from service-connected disabilities or from disabilities for which such persons were discharged or released from the active military, naval, or air service;". (Emphasis supplied.)

7. VA Regulation 6050(B)(1) provides, inter alia, as follows:

"Beneficiaries in need of treatment of an emergent condition arising from a service-connected disorder ... may be authorized hospitalization in any private, state, or municipal hospital, preferably one under contract." (Emphasis supplied.)

8. Neither the statutes nor the regulations authorize utilization of facilities other than those under direct and exclusive jurisdiction of the VA for the hospitalization of veterans with non-service-connected conditions, emergent or otherwise, except for certain specified cases presumably not involved in the question here under consideration. The provisions of Public Law 86-639 relate specifically to veterans in need of hospital care for non-service-connected disabilities. As previously noted, the law does not purport to authorize additional benefits for such veterans nor does it change the criteria governing eligibility for hospital care at Government expense.

9. Accordingly, it is the further opinion of this office that the VA is not responsible for the cost of hospital care furnished in a non-VA facility to a veteran not otherwise entitled thereto, as a result of an emergency developing during the period contemplated in paragraph 1 above.

HELD:

VA is not responsible for the cost of burial, funeral, and transportation expenses for a veteran's death occurring during the period in which the veteran was being or was to be furnished medical services for a non- service-connected disability in preparation for the veteran's admission to a VA hospital. Further, in this case, in an emergency, VA is not responsible for the cost of hospital care furnished to such veteran in a non-VA facility.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Opinion Gen. Couns. PREC. 08-91