

DATE: 03-11-91

CITATION: VAOPGCPREC 31-91
Vet. Aff. Op. Gen. Couns. Prec. 31-91

TEXT:

SUBJECT: Interpretation of Section 618, Title 38, U.S.C.

(This opinion, previously issued as Opinion of the General Counsel 20-75, dated July 18, 1975, 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

QUESTION:

Is it legally permissible to allow participation of outpatients in the Incentive Therapy program?

COMMENTS:

This was in response to a memorandum from the Chief Medical Director, which stated in part:

"It is our understanding that in the past an opinion was written that limits Incentive Therapy to inpatients and members in hospitals and domiciliaries.

"This presents a major barrier to the continuing effective treatment of veteran patients on an outpatient or ambulatory care basis. Various outpatient programs (Day treatment Centers, Day Hospitals, etc.) have consistently used Industrial Therapy as a preferred treatment approach for selected patients. It has been used successfully to enable patients to remain out of the hospital. Patients have seen their work therapy as an indication that they were contributing individuals and, therefore, had personal worth and dignity. Staff from several hospitals calling this office with questions relative to the interim issues have expressed grave concern that if outpatients could not be included in Incentive Therapy, there would be a significant number who would have to be readmitted. Another population which would be adversely affected, if the present interpretation is continued, are those patients on community care placement whose work therapy placement has been a major factor in their being able to maintain themselves outside the hospital."

Section 618 reads as follows:

"§ 618. Therapeutic and rehabilitative activities

"The Administrator, upon the recommendation of the Chief Medical Director, may utilize the services of patients and members in Veterans' Administration hospitals and domiciliaries for therapeutic and rehabilitative purposes, at nominal remuneration, and such patients and members shall not under these circumstances be held or considered as employees of the United States for any purpose. The Administrator shall prescribe the conditions for the utilization of such services.

In the past, this statute has been construed to exclude outpatients from participating in the Incentive Therapy program. The rationale for this construction was that "the legislative history of this law makes clear that the sole intent and purpose of its enactment was to provide legislative authority for a program for patients and members in VA hospitals and domiciliaries, similar to the then existing member-employee program, but in which the participants would not be considered as employees of the United States for any purpose." (Unpublished opinion of the General Counsel dated October 8, 1964, directed to the Chief Medical Director.) Although that opinion may have correctly described the nature of Incentive Therapy in 1962 when section 618 was enacted, we believe a broader construction of 618, to allow participation of outpatients, would be legally permissible, in the light of the new trend in medicine to provide needed care and treatment, to the extent feasible, on an ambulatory basis.

In our opinion, there was no need for a specific statutory reference to the therapeutic and rehabilitative activities mentioned in 38 U.S.C. § 618 in order for such activities to be provided to veterans in need thereof. General authority to operate a complete medical and hospital service existed before section 618 was added to the law by Public Law 87-574. Within this broad authority to operate a complete medical and hospital service is the inherent authority to develop various methods of therapeutic and rehabilitative treatment programs, such as Occupational Therapy, Physical Therapy, and Incentive Therapy. The need for section 618 arose solely because domiciliary member-employees had been considered Government employees for some purposes. The real purpose of the act, therefore, was to make the legislative determination that members and patients doing work for therapeutic purposes in hospitals and domiciliaries would not be considered employees of the United States for any purpose.

The intent of Congress, as clearly stated in the statute itself, was to allow the Administrator to "prescribe the conditions for the utilization of such services." While the language in the statute referring to "patients and members in Veterans' Administration hospitals and domiciliaries" is descriptive of the class of individuals to which the exemption from employment status was intended to apply, it was not intended to limit the scope of the authority of the Administrator

to prescribe conditions for utilization of their services. Moreover, it should be noted that the term patient encompasses both inpatients and outpatients.

Furthermore, when an outpatient comes to the hospital to receive treatment, he or she is, during the period of receiving such treatment, a patient in the hospital.

Thus, we believe the statutory language of 38 U.S.C. § 618 can be construed to encompass all patients who are participating in rehabilitative treatment programs, even though they may be coming in for treatment from an outpatient status. To give the statute the restrictive construction that has heretofore been given would, in our view, defeat the original purpose of the legislation. Such a construction would not only limit the ability of the VA to operate a dynamic medical program, but would be counter to the recent trend to outpatient or ambulatory treatment.

The 1964 opinion by this office, referred to above, is modified accordingly.

HELD:

The term "patients" may be read generically so that outpatients as well as inpatients may be considered within the scope of the provisions of 38 U.S.C. § 618 for participation in the Incentive Therapy program.

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