

DECEDENT AFFAIRS

1. REASON FOR ISSUE: This Veterans Health Administration (VHA) directive updates Department of Veterans Affairs (VA) policy pertaining to patients who expire while receiving VA authorized hospital care, nursing home, or domiciliary care.

2. SUMMARY OF MAJOR CHANGES: Major changes include:

a. Reflecting the current authority of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012, Public Law 112-260 (2013) and Title 38 Code of Federal Regulations (CFR) 3.1700.

b. Clarifying responsibilities and procedures for processing unclaimed remains.

3. RELATED ISSUES: VHA Directive 2011-016 and VHA Handbook 1106.01.

4. RESPONSIBLE OFFICE: VHA Member Services (10NF) is responsible for the contents of this VHA directive. Questions may be addressed to VHAMSPABUSINESSPOLICYALLSTAFF@VA.GOV.

5. RESCISSIONS: VHA Handbook 1601B.04, dated February 8, 2013, is rescinded.

6. RECERTIFICATION: This VHA directive is scheduled for recertification on or before the last working day of December 2022. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

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Executive in Charge

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DECEDENT AFFAIRS

1. PURPOSE

This Veterans Health Administration (VHA) directive provides policy and procedures pertaining to patients who expire while receiving Department of Veterans Affairs (VA)-authorized hospital, nursing home, or domiciliary care. **AUTHORITY:** Title 38 United States Code (U.S.C.) 101; 38 U.S.C. 2301-2308; Title 38 Code of Federal Regulations (CFR) 3.1700-3.1713; and 38 CFR 17.170.

2. DEFINITIONS

a. **Authorized Admission.** Authorized admission means a Veteran who has been medically evaluated and accepted for admission by a VA clinician as a patient for hospital, nursing home, or domiciliary care under 38 U.S.C. 1710 or 1711(a) in a VA health care facility or an authorized non-VA health care facility under 38 U.S.C. 1703 or 1720.

b. **Burial.** Burial means all the legal methods of disposing of the remains of a deceased person, including, but not limited to cremation, at sea, and medical school donation. **NOTE:** For types of VA burial benefits, see 38 CFR 3.1700.

c. **Constructively Hospitalized.** An admission or dead on arrival (DOA) case that is authorized and documented in Computerized Patient Record System (CPRS) while the Veteran is in the Emergency Department (ED), but the Veteran expires before actually being moved to an inpatient ward, the Veteran is considered constructively hospitalized by VA.

d. **Next of Kin.** A close relative of the Veteran eighteen years of age or older. The next of kin (NOK) of a deceased individual will be considered a personal representative of the deceased person for the purposes of this directive. When there is more than one surviving NOK, the personal representative will be determined based on the following hierarchy: spouse, adult child, parent, adult sibling, grandparent, adult grandchild, close friend. **NOTE:** Any questions regarding discrepancies with NOK should be addressed to District Counsel.

e. **Non-VA Health Care Facility.** Non-VA health care facilities mean authorized admission to facilities other than VA health care facilities.

f. **Not Constructively Hospitalized.** An admission or DOA case that was not previously authorized or documented while in the ED or outpatient area and expires, the Veteran is considered not constructively hospitalized, is not admitted to the VA health care facility and is not entitled to help with burial benefits through VHA.

g. **VA Health Care Facility.** An authorized admission to a VA health care facility means:

- (1) Over which the Secretary of Veterans Affairs has direct jurisdiction;

(2) For which the Secretary contracts; and

(3) Public or private facilities at which the Secretary provides recreational activities for patients receiving care under 38 U.S.C. 1710.

h. **Unclaimed Veterans.** Veterans who expire in a VA health care facility or a non-VA health care facility under authorized admission at VA expense with no next of kin to claim their remains and insufficient funds to cover burial expenses.

3. POLICY

It is VHA policy that the remains of patients who expire while receiving VA authorized hospital care, nursing home, or domiciliary care be handled in a dignified manner.

4. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for ensuring overall VHA compliance with this directive.

b. **Deputy Under Secretary for Health for Operations and Management.** The Deputy Under Secretary for Health for Operations and Management is responsible for:

(1) Communicating the contents of this directive to each of the Veterans Integrated Services Networks (VISN);

(2) Ensuring that each VISN Director has the sufficient resources to fulfill the terms of this directive in all of the VHA health facilities within that VISN; and

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

c. **VA Medical Facility Director.** The VA medical facility Director, or designee is responsible for:

(1) Ensuring procedures regarding autopsies, death certificates, and unclaimed remains, are followed and documented appropriately.

(2) Ensuring administrative procedures for inpatient deaths and deaths of persons presumed to have been, but not constructively admitted to a VA health care facility are initiated and followed.

5. DEATHS DURING AUTHORIZED ADMISSION

When a death occurs in a VA health care facility or a non-VA health care facility under authorized admission at VA expense, the following actions must be taken by designated VA staff:

a. Notifying the next-of-kin or emergency designee of death.

b. Notifying the medical examiner of a patient's death according to state or local laws or when the death occurs:

- (1) Within 24 hours of admission;
- (2) On arrival;
- (3) As a result of unusual circumstances; or
- (4) In the operating room.

c. Assisting the next-of-kin and/or relatives in arranging a dignified funeral and burial.

NOTE: For a description of various funeral and burial benefits offered by VA see 38 CFR Part 3.1700-3.1709.

6. UNCLAIMED REMAINS

a. If a Veteran expires at a VA facility under authorized admission or at a non-VA facility under authorized admission at VA expense, and the Veteran's remains are unclaimed, the facility Director will request funeral and burial services to be procured through a contract. The cost of the funeral and burial services may not exceed \$700.00, as increased from time to time by VA under 38 U.S.C. 2303(c). The burial services may include the following:

- (1) Preparation of the body, to include embalming;
- (2) Clothing;
- (3) Securing all necessary permits; and
- (4) Ensuring that a U.S. flag accompanies the casket to the place of burial.

NOTE: The funeral home may request reimbursement directly from the National Cemetery Administration for caskets or urns for unclaimed remains of Veterans per 38 CFR 38.628.

b. If a Veteran is eligible for burial in a national cemetery under 38 U.S.C. 2402, but is buried instead in a cemetery owned by a state or by an agency or political subdivision of a state, VA may pay an amount up to \$700, as increased from time to time by VA under 38 U.S.C. 2303(c), for the cost of the plot. If a Veteran is eligible for burial in a national cemetery under 38 U.S.C. 2402, but is buried instead in a private cemetery, VA may pay an amount up to \$700, as increased from time to time by VA under 38 U.S.C. 2303(c), for the cost of the plot, except that, if a state, an agency or political subdivision of a state, or a former employer of the Veteran pays or assumes any part of the plot or interment costs of such a burial, VA may pay only the amount of the plot cost exceeding the total of such paid or assumed amounts.

NOTE: *If the cost of the burial exceeds the statutory amount, VA will pay the additional minimum amount necessary for the burial.*

c. If the Veteran expires in a state, VA will pay for the actual cost of transporting the body to the place of burial in a state, as provided in 38 U.S.C. 2303(a)(1)(B) and 38 CFR 3.1605(b). The cost of transporting the remains is in addition to the burial services allowance and the plot allowance. The transportation allowance covers:

(1) The transportation cost of the shipment of the body by common carrier or by hearse from the place of death to the funeral home and to the place of burial;

(2) Any charges for an outside shipping box; and

(3) The charges for securing all necessary permits for removal or shipment of the body.

NOTE: *If a Veteran expires in a VA facility under authorized admission or in a non-VA facility under authorized admission at VA expense and the body of such Veteran is claimed by the Veteran's next of kin or close friend, then a burial allowance and transport allowance may be paid by the Veterans Benefits Administration as stated in 38 CFR 3.1600 and 3.1605.*

NOTE: *The facility must make a reasonable effort to contact next of kin to determine disposition of remains, and follow state or local law on question of when to declare that the remains are unclaimed.*

7. DEATHS WHEN ADMISSION HAD NOT BEEN AUTHORIZED

a. **Dead on Arrival.** When a death occurs prior to arrival in an ED, the next-of-kin and coroner or equivalent must be notified immediately. Disposition of the remains must be made in accordance with the wishes of the next-of-kin, unless stipulated by the coroner. Burial benefits may not be authorized under these circumstances.

b. **Death in the Emergency Department (ED).** When a death occurs in an ED and an admission has not been authorized in writing, the Veteran is not to be admitted to the VA health care facility. Appropriate clinic disposition and death procedures for Veterans receiving care on an outpatient basis are to be utilized in such cases.

8. AUTOPSIES (POST MORTEM EXAMINATIONS)

a. **Request for an Autopsy on a Veteran Who Expired in a VA Health Care Facility, or in a Non-VA Health Care Facility Under Authorized Admission at VA Expense.**

(1) In all instances, the requirements of 38 CFR 17.170 and VHA Handbook 1106.01, Pathology and Laboratory Medicine Services (PALMS) Procedures, dated January 29, 2016, or subsequent policy, control whether an autopsy must be performed. When a patient expires while an inpatient at a VA health care facility or under the

immediate care of a VA health care facility (such as during an outpatient or emergency care visit, or during an ambulatory care procedure), the Director of that VA health care facility may order an autopsy on a decedent if the Director determines that an autopsy is required for VA purposes for the following reasons:

- (a) Completion of official records; or
- (b) Advancement of medical knowledge.

(2) VA must request consent from the spouse or next-of-kin to perform an autopsy. The laws of the State where the autopsy will be performed are to be used to identify the person who is authorized to give VA permission to perform the autopsy. **NOTE:** *The Director of a VA health care facility may need to consult with Regional Counsel as to whom under State law, according to 38 CFR 17.170(d), can consent to the autopsy.*

(3) VA may order an autopsy to be performed only if consent is first obtained under the circumstances defined in 38 CFR 17.170.

(4) The authority pursuant to 38 CFR 17.170(d) also includes transporting the body, at VA's expense, to the facility where the autopsy will be performed, and the return of the body.

b. **Recording Authorizations for an Autopsy.** Standard Form (SF) 523, Authorization for Autopsy, or a transcript of the recorded telephone conversation, must be used to document the verbal authorization for an autopsy and must include the original copy of the authorization in the deceased patient's electronic health record in CPRS. All parties must consent before the audio recording begins. **NOTE:** *For information on recording and filing the authorizations for autopsies, see VHA Handbook 1106.01. SF 523 can be found at: GSA Forms Library (<http://www.gsa.gov/portal/forms/download/116966>). This linked document is outside of VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*

c. **Autopsies on Deaths Resulting from a Crime.** In addition to following the previous procedures regarding autopsies, if it is suspected that death resulted from a crime (including a Federal crime) see VHA Handbook 1106.01.

9. DEATH CERTIFICATES

Death certificates, and any other local, city, or State forms required at time of death, need to be processed by a Decedent Affairs employee at the VA health care facility where the death occurred. The personal facts are to be obtained from the patient's records and/or by an interview with the NOK, nearest relative, or friend. The medical information necessary to complete the cause of death entries must be obtained from the physician in attendance. Before the remains of a patient can be released to a funeral home or other entity from a VA health care facility, a death certificate signed by a licensed medical doctor or the attending physician must be completed, either electronically or in paper form. The death certificate is necessary to validate the cause

of death and to identify the deceased. Local, city, or State laws and regulations must be followed with regards to the completion of documents required by those jurisdictions at time of death, unless such laws and regulations conflict with VA policy or Federal law.

NOTE: Consult with VA Regional Council, if a question arises regarding laws, regulations or jurisdictions. For detailed information on the completion of death certificates, see

http://vaww.va.gov/CBO/apps/policyguides/infomap.asp?address=VHA_PG_1601B.04.

4.1. NOTE: This is an internal VA Web site that is not available to the public.

10. DISINTERMENTS

Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization from the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. For detailed information regarding disinterment see 38 CFR 38.621.

11. REFERENCES

a. 38 U.S.C. Section 101.

b. 38 U.S.C. Section 1710.

c. 38 U.S.C. Section 1711.

d. 38 U.S.C. 2301.

e. 38 CFR 17.170.

f. 38 CFR 3.1700-1713.

g. 38 CFR 38.621.

h. VHA Handbook 1106.01 Pathology and Laboratory Medicine Service (PALMS) Procedures, dated January 29, 2016, or subsequent policy.

i. Standard Form (SF) 523.