

SAFEGUARDING BENEFITS OF INCOMPETENT VETERANS

JUNE 5, 1959.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

R E P O R T

[To accompany H.R. 6319]

The Committee on Finance, to whom was referred the bill (H.R. 6319) to amend chapter 55 of title 38, United States Code, to establish safeguards relative to the accumulation and final disposition of certain benefits in the case of incompetent veterans, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

This bill is designed to prevent gratuitous benefits for incompetent veterans receiving care at public expense from accumulating in excessive amounts and passing upon the death of the veteran to relatives having no claim against the Government on account of the veteran's military service.

GENERAL EXPLANATION

Section 1

Provides that upon the death of a mentally incompetent veteran all gratuitous benefits deposited by the Veterans' Administration before or after enactment of these amendments in the personal funds of patients' accounts held by VA hospital and regional office managers shall be payable only to the surviving spouse, or the children (without regard to age or marital status) if there is no spouse, or the dependent parents if there is neither a surviving spouse or child. Any balance would be deposited to the applicable current appropriation except for reimbursement to a person who bore the expense of the last sickness or burial of the veteran. At present these funds at the death of the incompetent institutionalized veteran are disposed of as a part of his estate and, in some instances, would therefore be paid to remote heirs.

Section 2

Establishes advance controls to prevent the accumulation of excessive amounts in the estates of incompetent veterans without dependents who are hospitalized in VA hospitals. Under existing law pay-

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ments of compensation, pensions, or emergency officers' retirement pay to such veterans are discontinued when his estate from any source equals or exceeds \$1,500 and are not resumed until his estate is reduced to \$500. Section 2 makes this limitation applicable where the incompetent veteran is being cared for in other Federal institutions or in State or similar public institutions. If charge is made by the institution for the care of the veteran, payments therefor are made out of the compensation or pension which would otherwise be discontinued because of the \$1,500 limitation. If the veteran regains competency, he will be paid the full amount of the unpaid benefits, and if he has a dependent parent, benefits otherwise not payable may be apportioned to the parent on the basis of need.

The Veterans' Administration and the Bureau of the Budget favor enactment of H.R. 6319. It is not possible to estimate what portion of the \$65 million in personal funds of patients will revert to the Treasury, but it is believed that the amount of savings will be substantial.

The following favorable departmental reports on this bill were received by the chairman:

VETERANS' ADMINISTRATION,
May 20, 1959.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: The following comments are furnished pursuant to your request for a report by the Veterans' Administration on H.R. 6319, 86th Congress.

The purpose of the bill is to establish additional statutory safeguards so that upon the death of a mentally incompetent veteran large amounts representing gratuitous benefits provided for the veteran will not be paid to persons having no equitable claim to such benefits.

To accomplish this general purpose, the bill would change the present law substantially as follows:

1. It provides that upon the death of a mentally incompetent veteran all gratuitous benefits deposited by the Veterans' Administration before or after enactment of these amendments in the personal funds of patients' accounts held by VA hospital and regional office managers shall be payable only to the surviving spouse, or the children (without regard to age or marital status) if there is no spouse, or the dependent parents if there is neither a surviving spouse or child. Any balance would be deposited to the applicable current appropriation except for reimbursement to a person who bore the expense of the last sickness or burial of the veteran. At present, these funds at the death of the incompetent institutionalized veteran are disposed of as a part of his estate and, in some instances, would therefore be paid to remote heirs.

2. The present law provides that where the Veterans' Administration is furnishing hospital treatment or domiciliary care to a mentally incompetent veteran without certain dependents' payments of compen-

sation, pension, or emergency officers' retirement pay will be discontinued when his estate from any source equals or exceeds \$1,500 and will not be resumed until it is reduced to \$500. The bill would make this limitation applicable where the incompetent veteran is being cared for in other Federal institutions or in State or similar public institutions. In recognition of the fact that many of the latter classes of institutions charge for the maintenance of the veteran, the bill generally permits payment out of the benefit which would otherwise be discontinued because of the \$1,500 limitation to cover the amount charged for the veteran's current care and maintenance.

In addition, the bill broadens the \$1,500 limitation with respect to family status of the veteran. At present, it applies only where the veteran being furnished care by the Veterans' Administration has no wife, child, or dependent parent. Under the bill, this limitation would apply where the incompetent veteran is being furnished care by the Federal Government, or any political subdivision of the United States, if he has no wife or child. This safeguard against large accumulations of benefits would thus apply where the institutionalized incompetent veteran has a dependent parent, but no wife or child. However, the bill contains specific authorization to the Administrator to apportion and pay to dependent parents, on the basis of need, all or any part of the benefit which would otherwise be discontinued pursuant to this limitation. Since the bill also contains limitations on disposition of personal funds of patients, this extension of the \$1,500 safeguard is of particular significance where the veteran has a guardian to whom payments are being made.

We believe that this bill will provide much more effective methods for achieving its basic purposes than does the present law. Some difficulties may be encountered with respect to the provisions limiting distribution of amounts in the personal funds of patients' accounts which have been paid into those accounts by the Veterans' Administration prior to enactment of the proposed amendments. However, we fully appreciate and endorse the objectives of these provisions of the bill.

Because the family status of veterans is so variable, it is not possible to determine the number of incompetent veterans who will die in the future under circumstances in which the bill would have a definite impact. However, it is believed that its enactment will result in material savings to the Government while at the same time serving the sound purpose of precluding distribution of benefits intended for the veteran to persons having no proper claim upon the Government for them. There is presently in the personal funds of patients' accounts an aggregate exceeding \$65 million, the major portion of which is probably composed of the proceeds of gratuitous benefits, out of which an indeterminate amount would revert to the applicable appropriation under this bill.

I recommend favorable action by the committee on H.R. 6319.

Advice was received from the Bureau of the Budget that there was no objection to the submission to the Committee on Veterans' Affairs of a similar favorable report on this bill.

Sincerely yours,

SUMNER G. WHITTIER, *Administrator.*

THE GENERAL COUNSEL OF THE TREASURY,
Washington, May 13, 1959.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
 U.S. Senate, Washington, D.C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter of May 7, 1959, asking this Department for its views on H.R. 6319, to amend chapter 55 of title 38, United States Code, to establish safeguards relative to the accumulation and final disposition of certain benefits in the case of incompetent veterans.

The proposed legislation is intended to prevent gratuitous benefits for incompetent veterans receiving care at public expense from accumulating in excessive amounts and passing upon the death of the veteran to relatives having no claim against the Government on account of the veteran's military service.

Since the proposed legislation relates to matters primarily within the jurisdiction of the Veterans' Administration, this Department has no recommendations to make on the merits of the bill.

Very truly yours,

NELSON P. ROSE,
General Counsel.

EXECUTIVE OFFICE OF THE PRESIDENT,
 BUREAU OF THE BUDGET,
Washington, D.C., May 21, 1959.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
 U.S. Senate, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This will acknowledge your letter of May 7, 1959, inviting the Bureau of the Budget to give its views on the provisions of H.R. 6319.

H.R. 6319 would provide that gratuitous benefit payments in the personal funds held by a Veterans' Administration hospital or office manager for an incompetent veteran may be paid at his death only to the surviving spouse, children, or dependent parents, or returned to the benefit appropriation. In addition, the present restrictions on benefit payments when an incompetent veteran's estate equals or exceeds \$1,500 while the veteran is being furnished hospital or domiciliary care by the Veterans' Administration would also apply where the veteran is being cared for in other Federal institutions or in State or similar public institutions. This estate limitation would also be revised with respect to the family status of the veteran by providing for its application where there are dependent parents who are not determined to be in need.

The Bureau of the Budget believes that the proposed restrictions on the disposition and accumulation of benefit estates constitutes a needed improvement in the veterans' benefits programs. Attention is also directed to further restrictions on benefit estate formation proposed by the Veterans' Administration, in H.R. 6432, which will complement the instant bill.

Accordingly, the Bureau of the Budget recommends that your committee give favorable consideration to H.R. 6319.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

§ 3202. Payments to and supervision of guardians

(a) Except as provided in section 1701(c) of this title, where any payment of benefits under any law administered by the Veterans' Administration is to be made to a minor, other than a person in the active military, naval, or air service, or to a person mentally incompetent, or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian, curator, or conservator by the laws of the State of residence of the claimant, or who is otherwise legally vested with the care of the claimant or his estate. Where in the opinion of the Administrator any guardian, curator, conservator, or other person is acting as fiduciary in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the wards, the Administrator may refuse to make future payments in such cases as he may deem proper. Before receipt of notice by the Veterans' Administration that any such person is under such other legal disability adjudged by some court of competent jurisdiction, payment may be made to such person direct. Where no guardian, curator, or conservator of the person under a legal disability has been appointed under the laws of the State of residence of the claimant, the Administrator shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(b) Whenever it appears that any guardian, curator, conservator, or other person, in the opinion of the Administrator, is not properly executing or has not properly executed the duties of his trust or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Administrator may appear, by his duly authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Administrator, in his discretion, may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the Administrator from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Administrator may appear or intervene by his duly authorized attorney in any court as an interested party in any litigation instituted by himself or otherwise, directly affecting money paid to such fiduciary under this section.

(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any guardian, curator, conservator, or other per-

son legally vested with the care of the claimant or his estate or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such estates by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Administrator.

(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Administrator, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is an inmate nor apportioned to his dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Administrator for the benefit of such beneficiary or his dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to him if he recovers and is found competent, or if a minor, attains majority, or otherwise to his guardian, curator, or conservator, or, in the event of his death, to his personal representative, except as otherwise provided by law; however, payment will not be made to his personal representative if, under the law of his last legal residence, his estate would escheat to the State. *In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Veterans' Administration deposited before or after the date of enactment of this sentence in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses.*

(e) Any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from benefits payable under laws administered by the Veterans' Administration, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans' Administration, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(f) In the case of any incompetent veteran having no guardian, payment of compensation, pension, or retirement pay may be made in the discretion of the Administrator to the wife of such veteran for the use of the veteran and his dependents.

(g) Payment of death benefits to a widow for herself and child or children, if any, may be made directly to such widow, notwithstanding she may be a minor.

§ 3203. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1) Where any veteran having neither wife, child, nor dependent parent is being furnished hospital treatment, institutional or domiciliary care by the Veterans' Administration any pension, compensation, or retirement pay otherwise payable shall continue without reduction until the first day of the seventh calendar month following the month of admission of such veteran for treatment or care. If treatment or care extends beyond that period, the pension, compensation, or retirement pay, if \$30 per month or less, shall continue without reduction, but if greater than \$30 per month, the pension, compensation, or retirement pay shall not exceed 50 per centum of the amount otherwise payable or \$30 per month, whichever is the greater. If such veteran is discharged from such treatment or care upon certification by the officer in charge of the hospital, institution, or home, that maximum benefits have been received or that release is approved, he shall be paid in a lump sum such additional amount as would equal the total sum by which his pension, compensation, or retirement pay has been reduced under this section. If treatment or care is terminated by the veteran against medical advice or as the result of disciplinary action the amount by which any pension, compensation, or retirement pay is reduced hereunder, shall be paid to him at the expiration of six months after such termination or, in the event of his prior death, as provided in paragraph (2) of this subsection; and the pension, compensation, or retirement pay of any veteran leaving against medical advice or as the result of disciplinary action shall, upon a succeeding readmission for treatment or care, be subject to reduction, as herein provided, from the date of such readmission, but if such subsequent treatment or care is continued until discharged therefrom upon certification, by the officer in charge of the hospital, institution, or home in which treatment or care was furnished, that maximum benefits have been received or that release is approved, the veteran shall be paid in a lump sum such additional amount as would equal the total sum by which his pension, compensation, or retirement pay has been reduced under this section after such readmission.

(2)(A) In the event of the death of any veteran subject to the provisions of this section, while receiving hospital treatment, institutional or domiciliary care, or before payment of any lump sum authorized herein, such lump sum shall be paid in the following order of precedence: First, to the spouse; second, if the decedent left no spouse, or if the spouse is dead at time of settlement, then to the children (without regard to their age or marital status) in equal parts; third, if no spouse or child, then to the father and mother in equal parts; fourth, if either the father or mother is dead, then to the one surviving; fifth, if there is no spouse, child, father, or mother at the time of settlement, then to the brothers and sisters in equal parts. If there are no persons in the classes named to whom payment may be made under this paragraph, no payment shall be made, except there may be paid only so much of the lump sum as may be necessary to reimburse a person who bore the expenses of last sickness or burial, but no part of the

lump sum shall be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of such veteran.

(B) No payment shall be made *under the last two sentences of section 3202(d) of this title or under this paragraph (2) unless claim therefor is filed with the Veterans' Administration within five years after the death of the veteran, except that, if any person so entitled under the last two sentences of section 3202(d) of this title or under this paragraph is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.*

(b) (1) Where any veteran having neither wife, child, nor dependent parent is being furnished hospital treatment, institutional or domiciliary care by the Veterans' Administration, and is rated by the Veterans' Administration in accordance with regulations as being incompetent by reason of mental illness, the pension, compensation, or retirement pay of such veteran shall be subject to the provisions of subsection (a) of this section; however, no payment of a lump sum herein authorized shall be made *to the veteran until after the expiration of six months following a finding of competency and in the event of the veteran's death before payment of such lump sum no part thereof shall be payable.*

[(2) In any case where the estate of such incompetent veteran derived from any source equals or exceeds \$1,500, further payments of such benefits (except retired pay, but including emergency officers' retirement pay) shall not be made until the estate is reduced to \$500. The amount which would be payable but for this subsection shall be paid to the veteran as provided for the lump sum in paragraph (1) of this subsection, but in the event of the veteran's death no part thereof shall be payable.]

(2) *In any case in which such an incompetent veteran having neither wife nor child is being furnished hospital treatment, institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, and his estate from any source equals or exceeds \$1,500, further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to \$500. The amount which would be payable but for this paragraph shall be paid to the veteran as provided for the lump sum in paragraph (1) of this subsection, but in the event of the veteran's death before payment of such lump sum no part thereof shall be payable.*

(3) *Where any benefit is discontinued by reason of paragraph (2) of this subsection the Administrator may nevertheless apportion and pay to the dependent parents of the veteran on the basis of need all or any part of the benefit which would otherwise be payable to or for such incompetent veteran. Paragraph (2) of this subsection shall not prevent the payment, out of any remaining amounts discontinued under that paragraph, on account of any veteran of so much of his pension, compensation, or retirement pay as equals the amount charged to the veteran for his current care and maintenance in the institution in which treatment or care is furnished him, but not more than the amount determined by the Administrator to be the proper charge as fixed by any applicable statute or valid administrative regulation.*

[(3)] (4) All or any part of the pension, compensation, or retirement pay payable on account of any incompetent veteran who is being

furnished hospital treatment, institutional or domiciliary care may, in the discretion of the Administrator, be paid to the chief officer of the institution wherein the veteran is being furnished such treatment or care, to be properly accounted for by such chief officer and to be used for the benefit of the veteran.

(c) Any veteran subject to the provisions of subsection (a) or (b) shall be deemed to be single and without dependents in the absence of satisfactory evidence to the contrary. In no event shall increased compensation, pension, or retirement pay of such veteran be granted for any period more than one year before receipt of satisfactory evidence showing such veteran has a wife, child, or dependent parent.

(d) Notwithstanding any other provision of this section or any other provision of law, no reduction shall be made in the pension, compensation, or retirement pay of any veteran for any part of the period during which he is furnished hospital treatment, or institutional or domiciliary care, for Hansen's disease, by the United States or any political subdivision thereof.

APPENDIX

For the information of Members of the Senate, section 3021 of title 38, United States Code, which is referred to on page 3 of this report, is set forth below:

(Sec. 3021 of title 38, United States Code)

§3021. Payment of certain accrued benefits upon death of a beneficiary

(a) Except as provided in section 3203(a)(2)(A) of this title and sections 123-128 of title 31, periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Veterans' Administration to which an individual was entitled at his death under existing ratings or decisions, or those based on evidence in the file at date of death (hereafter in this section and section 3022 of this title referred to as "accrued benefits") and due and unpaid for a period not to exceed one year, shall, upon the death of such individual be paid as follows:

(1) Upon the death of a person receiving an apportioned share of benefits payable to a veteran, all or any part of such benefits to the veteran or to any other dependent or dependents of the veteran, as may be determined by the Administrator;

(2) Upon the death of a veteran, to the living person first listed below:

(A) His spouse;

(B) His children (in equal shares);

(C) His dependent parents (in equal shares);

(3) Upon the death of a widow or remarried widow, to the children of the deceased veteran;

(4) Upon the death of a child, to the surviving children of the veteran who are entitled to death compensation, dependency and indemnity compensation, or death pension; and

(5) In all other cases, only so much of the accrued benefits may be paid as may be necessary to reimburse the person who bore the expense of last sickness and burial.

(b) No part of any accrued benefits shall be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary.

(c) Applications for accrued benefits must be filed within one year after the date of death. If a claimant's application is incomplete at the time it is originally submitted, the Administrator shall notify the claimant of the evidence necessary to complete the application. If such evidence is not received within one year from the date of such notification, no accrued benefits may be paid.