

H B

306

HB 306

SENATE JOURNAL - PAGE 964- 2 5/12/83

HOUSE BILL NO. 306 by Representatives Liska, Bussell, Ward and Uehling, entitled:

"An Act relating to burial allowances for veterans."

was read the first time and referred to the State Affairs Committee and the Finance Committee.

HB 306

SENATE JOURNAL - PAGE 1161- 1 6/ 1/83

The State Affairs Committee considered HOUSE BILL NO. 306 (burial allowances for veterans) and recommended do pass. The report was signed by Senator Vic Fischer, Chairman and concurred in by Senators Kelly, Sturgulewski, Rodey and Ray.

HOUSE BILL NO. 306 was referred to the Finance Committee.

HB 306

SENATE JOURNAL - PAGE 1254- 4 6/ 9/83

Senator Bennett, Co-Chairman, moved and asked unanimous consent that the Finance Committee referral on HOUSE BILL NO. 306 (burial allowances for veterans) be waived. Without objection, it was so ordered.

HOUSE BILL NO. 306 was referred to the Rules Committee.

HB 306 Veterans burial benefits

Linda Edgewater, aide to Representative Liska (prime sponsor) testified for the bill. She said the bill is designed to correct a situation where survivors are denied federal veterans benefits if they are eligible for a lesser state benefit.

Paul Arnoldt, Director of the Division of Business Loans and Veteran's Affairs, testified for the bill. He reiterated the testimony of the previous witness.

Senator Rodey moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

HB 406 National Guard reenlistment bonus

Richard Roundtree, Department of Military Affairs, testified for the bill. He said the bill merely clarifies the intent of the existing law.

Senator Fischer asked if the bill granted additional benefits. The witness said "no".

Senator Kelly moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

HCR 9 Veteran's memorial

Committee staff presented a committee substitute for consideration.

Senator Ray objected to the resolution on the grounds that the sculpture "Nimbus" belongs to the court system and is not under the control of the Legislature. He said that a constitutional separation of powers question may be involved. He further suggested an amendment which would clarify that the memorial would honor veterans of undeclared wars, such as Vietnam and Korea, as well as declared wars.

Senator Rodey moved and asked unanimous consent for the committee to adopt the committee substitute as amended. There was no objection. He then moved and asked unanimous consent for the committee substitute to move from committee. There was no objection.

The meeting adjourned at 3:30 p.m.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 306
 Title: Veterans Burial Allowance
 Sponsor: Liska, Busseil, Ward & Uehling
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Developm
 Program Category Affected: Development
 BRU, Program of Subprogram(s) Affected: Loans & Veterans' Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL		[21,300]	<i>Reduction</i>			
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak *D. A. Hostak* Phone: 465-2510
 Division: Loans & Veterans' Affairs Date: 4-5-83
 Approved by Commissioner: Richard A. Lyon *R. Lyon* Date: 4/6/83
 Department: Commerce & Economic Development

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
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 Copy to Sponsor
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3/8/83

Alaska State Legislature

COMMITTEES

Vice Chairman — Judiciary

Vice Chairman — Legislative
Regulations Review

Resources

Finance Sub Committee on Labor



While in Session

Pouch V

State Capitol

Juneau, Alaska 99811

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House of Representatives

John J. Liska

May 26, 1983

TO: Senate State Affairs Committee

FROM: John J. Liska, Representative - District 15

SUBJECT: Proposed Legislation Re: Veteran's Burial Allowances

Federal Statute 38 U.S.C.907 provides for an \$1,100 burial allowance to veterans who die of a service connected disability. At present, however, Alaskan veterans are denied the benefit of receiving the full amount, because this provision only applies if there is no State, Borough or City burial allowance available.

Because Alaska Statute provides for a \$750 burial allowance for these veterans, recipients in Alaska receive \$350 less than the Federal law allows.

To correct this unfairness I have submitted a proposed amendment to A.S.26.10.080 to restrict the State's funeral and burial allowance only to those veterans not eligible for the Federal Benefit.

There are two advantages: 1) Veterans will not lose their right to the full benefit provided by Federal Law because of the State's allowance, and 2) the number of benefit payments made by the State will be reduced as more veterans will be eligible under the Federal Program.

I will appreciate your support of this amendment.

TO: John J. Liska
Representative
House of Representatives

FROM: American Legion
Department of Alaska

SUBJECT: State Burial Allowance

Under our present system, there is a \$750.00 burial allowance for all honorably discharged veterans who were residents of the State of Alaska. Under federal regulations, there is a \$1,100.00 burial allowance for those veterans who died of a service connected disability, however, this benefit is not available if there is a State, Borough or City burial allowance available for the veteran.

In order to restore the \$1,100.00 burial allowance for those veterans who died of a service connected disability, it will require a change in our regulations.

Under Section 26.10.080, Burial Allowance(a) after time of death add except those veterans who died of a service connected disability.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

306

MEMORANDUM

March 24, 1983

SUBJECT: Veteran's burial allowances
(Work Order No. 13-1101)

TO: Representative John Liska

FROM: Thomas A. Sofka *TAS*
Legislative Counsel

The enclosed bill draft would deny those veterans that die as a result of a service connected disability the \$750 burial allowance available under AS 26.10.080. The rationale for such an amendment to the Alaska Statutes is contained in 38 U.S.C. 907, a copy of which is attached to this memo. That section already provides for a burial allowance of \$1,100 in the case of a veteran who dies of a service connected disability.

If you have any further questions regarding this subject, please do not hesitate to contact me.

TAS:ljb

Enclosures
12/007

HB 306 FISCAL NOTE ANALYSIS

It is estimated that there would be approximately a 10% reduction in the number of eligible applicants. The FY '84 budget request was for \$213,000, resulting in a reduction of \$21,300.

APPENDIX

CODE OF FEDERAL REGULATIONS

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

CHAPTER 1—VETERANS ADMINISTRATION

Part 3—Adjudication

As amended to March 17, 1982

SUBPART A—PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION

RATINGS AND EVALUATIONS: SERVICE CONNECTION

§ 3.307. Presumptive service connection for chronic, tropical or prisoner of war related disease; wartime and service on or after January 1, 1947

(a) General. A chronic, tropical or prisoner of war related disease listed in § 3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in § 3.309(a) will be considered chronic.

[See main volume for text of (1)]

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947 the date of separation will be the date of discharge or release from the period of service on which the claim is based.

[See main volume for text of (3) and (4)]

(5) Diseases specific as to former prisoners of war. The diseases listed in § 3.309(c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service. (38 U.S.C. 312)

(b) Evidentiary basis. The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in § 3.303(b) will be considered. The diseases listed in § 3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except (1) where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or (2) where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease.

[See main volume for text of (c) and (d)]

3. Disease subject to presumptive service connection

[See main volume for text of (a) and (b)]

Diseases specific as to former prisoners of war. If a veteran is (1) a former prisoner of war and (2) as such was interned or detained for not less than 30 days, the following diseases may be considered service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service.

- (1) Malaria.
- (2) Beriberi (including beriberi heart disease).
- (3) Dysentery.
- (4) Anthrax.
- (5) Malnutrition (including optic atrophy associated with malnutrition).
- (6) Pellagra.
- (7) Other nutritional deficiency.
- (8) Schistosomiasis.
- (9) The anxiety states.

SUBPART B—BURIAL BENEFITS

3.1600. Payment of burial expenses of deceased veterans

(a) For the purpose of payment of burial expenses the term "veteran" includes a person who died during a period deemed to be active military, naval or air service under § 3.8(b)(6). The period of active service upon which the claim is based must not have been terminated by discharge or release from active service under conditions other than dishonorable.

(1) Service-connected death burial allowance. If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed \$1,100 (or if entitlement is under § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$550) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement to this benefit is subject to the applicable further provisions of this section and §§ 3.1601 through 3.1610. Entitlement of the service-connected death burial allowance is in lieu of payment of any benefit authorized under paragraph (b), (c) or (f) of this section. (38 U.S.C. 907)

(2) Nonservice-connected death burial allowance. If a veteran's death is not service connected, an amount not to exceed \$300 (or if entitlement is under § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$150) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

- (1) At the time of death the veteran was in receipt of pension or compensation (or if not in receipt of military retirement pay would have been in receipt of compensation); or
- (2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran's death;
- (3) In the case of an original claim there is sufficient evidence of record on the date of the veteran's death to have supported an award of compensation or pension effective prior to the date of the veteran's death, or
- (4) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of the veteran's death to indicate that the deceased would have been entitled to compensation or pension prior to date of death. If the Veterans Administration determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Veterans Administration within 1 year from date of request, the burial allowance claim shall be denied; and
- (5) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(38 U.S.C. 502)

(c) Death while properly hospitalized. If a person dies from nonservice-connected causes while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed \$300 for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. (38 U.S.C. 903(a)). (If the hospitalized person's death is service connected, entitlement to burial benefits falls under paragraph (a) of this section instead of this paragraph.)

[See main volume for text of (d) and (e)]

(f) Plot or interment allowance. When a veteran dies from non-service-connected causes, \$150 (or where entitlement is based on § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$75) may be paid as a plot or interment allowance. The plot or interment allowance is payable to the person or entity who incurred the expenses. (For payment to a State or political subdivision thereof, see § 3.1604(c).) Entitlement is subject to the following conditions:

(1) The deceased veteran is eligible for the burial allowance under paragraph (b) or (c) of this section; or

(2) The veteran either served during a period of war or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty (or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Veterans Administration has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty); and

(3) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States; and

(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 903(b))

[See main volume for text of (g)]

TITLE 39

POSTAL SERVICE

CHAPTER 1—POSTAL POLICY AND DEFINITIONS

§ 101. Postal policy

Supplementary Index to Notes

Constitutionality 1/2
Preemption 1a

1/2 Constitutionality

The Postal Reorganization Act [see Tables volume], as applied to preempt municipal trespass ordinance that explicitly required United States postal letter carriers to obtain express consent from residents before crossing their lawns in the course of mail delivery, did not violate U.S.C.A. Const. Amend. 10. U. S. v.

City of Pittsburg, Cal., C.A. Cal. 1981, 661 F.2d 783.

1a. Preemption

Municipal trespass ordinance explicitly requiring United States postal letter carriers to obtain express consent from residents before crossing their lawns in course of mail delivery interfered with postal carriers' federal duty under the Postal Reorganization Act [see Tables volume] to deliver mail efficiently and was therefore unconstitutional under U.S.C.A. Const. Art. 6, cl. 2. U. S. v. City of Pittsburg, Cal., C.A. Cal. 1981, 661 F.2d 783.

§ 3.1600 etc

§ 3.1600

Chapter I—Veterans Administration

ions, Bonuses, and Veterans' Relief

se treatment or care was terminat-
against medical advice or as the
ult of disciplinary action. (38 U.S.C.
3).

FR 1609, Feb. 24, 1961, as amended at 27
5539, June 12, 1962; 27 FR 8177, Aug. 15,
27 FR 11893, Dec. 1, 1962; 19 FR
25, May 1, 1974]

302 Political subdivisions of United States.

part of any accrued benefits will
ed to reimburse any political sub-
sion of the United States for ex-
ses incurred in the last sickness or
al of any beneficiary. (See
301). (38 U.S.C. 3021(b) and
301)

FR 15126, May 1, 1974]

303 Returned and canceled checks.

the purposes of §§ 3.1000 and
3, where the payee of a check for
fits has died on or after the last
of the period covered by the
4, and the check is returned and
eled, the amount represented by
check which is payable as limited
3.500(g), or any amount recovered
improper negotiation of such a
will be payable to the living
n or persons in the order of pre-
ce listed. This does not apply to
s for lump sums representing
ts withheld under § 3.551(b) or
7 which will be subject to the
sions of § 3.1001 or § 3.1007, as
table. (38 U.S.C. 3022)

There is no time limit for the
of filing claim, or the retroactive
s covered by the award, or the
of receipt of evidence.

The fact that one or more per-
aving a higher order of prece-
survived the beneficiary will not
de payment to a claimant who is
ise entitled if it is shown that
time the claim is adjudicated
ersons are deceased.

1609, Feb. 24, 1961, as amended at 27
53, Dec. 1, 1962]

4—3.1006 [Reserved]

Hospitalized incompetent veter-

an award of disability pen-
an incompetent veteran with-

out dependents was reduced under
§ 3.551(b) because of hospitalization,
institutional or domiciliary care by the
Veterans Administration, or an award
of disability pension, compensation or
emergency officers' retirement pay
was discontinued under § 3.557(b) be-
cause the veteran was hospitalized by
the United States or a political subdivi-
sion and had an estate which
equaled or exceeded \$1,500, and the
veteran dies before payment of
amounts withheld or not paid by
reason of such care, no part of such
amount will be paid to any person.
The provisions of this section are ap-
plicable to amounts withheld for peri-
ods prior to as well as subsequent to
the rating of incompetency. The term
"dies before payment" includes cases
in which a check was issued and the
veteran died before negotiating the
check. (38 U.S.C. 3203(b))

[39 FR 30349, Aug. 22, 1974]

§ 3.1008 Accrued benefits payable to for-
eign beneficiaries.

In case of death of the payee of any
check in payment of periodic mone-
tary benefits (other than insurance
and servicemen's indemnity) accruing
under laws administered by the Veter-
ans Administration, while the amount
thereof remains in the special deposit
account established by Pub. L. 828,
76th Congress, such amount will be
payable under section 3 of that act.
(31 U.S.C. 125) However, the accrued
amount will be payable only if the
person on whose behalf checks were
issued and the person claiming the ac-
crued amount have not been guilty of
mutiny, treason, sabotage, or render-
ing assistance to an enemy of the
United States or of its allies.

[28 FR 1609, Feb. 24, 1961]

§ 3.1009 Personal funds of patients.

The provisions of this section are ap-
plicable to gratuitous benefits deposi-
ted by the Veterans Administration
either before, on, or after December 1,
1959, in a personal funds of patients
account for an incompetent veteran
who was incompetent at the date of
death. Where the veteran died after
November 30, 1959:

(a) *Eligible persons.* Gratuitous
benefits shall be paid to the living
person first listed as follows:

(1) His or her spouse, as defined in
§ 3.1000(d)(1);

(2) His or her children (in equal
shares), as defined in § 3.57 but with-
out regard to their age or marital
status;

(3) His or her dependent parents (in
equal shares) as defined in § 3.59 or
the surviving parent, provided that
the parent was dependent within the
meaning of § 3.250 at the date of the
veteran's death.

(4) In all other cases, only so much
may be paid as may be necessary to re-
imburse a person who bore the ex-
pense of last sickness or burial. (See
§ 3.1002.) (38 U.S.C. 3202(d))

(b) *Claim.* Application must be filed
with the Veterans Administration
within 5 years after the death of the
veteran. If, however, any person other-
wise entitled is under legal disability
at the time of the veteran's death, the
5-year period will run from the date of
termination or removal of the legal
disability.

(1) There is no time limit for the
submission of evidence.

(2) Failure to file timely claim, or a
waiver of rights, by a preferred de-
pendent will not serve to vest title in a
person in a lower class or a claimant
for reimbursement; neither will such
failure or waiver by a person or per-
sons in a joint class serve to increase
the amount payable to another or
others in the class.

[27 FR 5539, June 12, 1962, as amended at
28 FR 10487, Sept. 28, 1963; 39 FR 30349,
Aug. 22, 1974]

Subpart B—Burial Benefits ★

AUTHORITY: 72 Stat. 1114, 1169, as amend-
ed; 38 U.S.C. 210, 902-905.

§ 3.1600 Payment of burial expenses of de-
ceased veterans.

For the purpose of payment of
burial expenses the term "veteran" in-
cludes a person who died during a
period deemed to be active military,
naval or air service under § 3.6(b)(6).
The period of active service upon
which the claim is based must have

been terminated by discharge or release from active service under conditions other than dishonorable.

(a) *Service-connected death burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed \$1,100 (or if entitlement is under § 3.8 (c) or (d), a rate in Philippine pesos equivalent to \$550) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement to this benefit is subject to the applicable further provisions of this section and §§ 3.1601 through 3.1610. Payment of the service-connected death burial allowance is in lieu of payment of any benefit authorized under paragraph (b), (c) or (f) of this section. (38 U.S.C. 907)

(b) *Nonservice-connected death burial allowance.* If a veteran's death is not service connected, an amount not to exceed \$200 (or if entitlement is under § 3.8 (c) or (d), a rate in Philippine pesos equivalent to \$150) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

(1) At the time of death the veteran was in receipt of pension or compensation (or but for the receipt of military retirement pay would have been in receipt of compensation); or

(2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran's death, and

(i) In the case of an original claim there is sufficient evidence of record on the date of the veteran's death to have supported an award of compensation or pension effective prior to the date of the veteran's death, or

(ii) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of the veteran's death to indicate that the deceased would have been entitled to compensation or pension prior to date of death. If the Veterans Administration determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial

allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Veterans Administration within 1 year from date of request, the burial allowance claim shall be disallowed; and

(3) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 210(c), 902)

(c) *Death while properly hospitalized.* If a person dies from nonservice-connected causes while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed \$300 for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. (38 U.S.C. 903(a)). (If the hospitalized person's death is service connected, entitlement to burial benefits falls under paragraph (a) of this section instead of this paragraph.)

(d) *Determinations.* Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Veterans Administration will determine line of duty. The burden of proof will rest upon the claimant.

(e) *Persons not included.* Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:

(1) A discharged or rejected draftee or selectee.

(2) A member of the National Guard who reported to camp in answer to the President's call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.

(3) An alien who does not come within the purview of § 3.7(b).

(4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Pub. L. 190, 79th Congress.

(5) Temporary members of the Coast Guard Reserve.

(f) *Plot or interment allowance.* When a veteran dies from non-service-connected causes, \$150 (or where entitlement is based on § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$75) may be paid as a plot or inter-

ensions, Bonuses, and Veterans' Relief

allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Veterans Administration within 1 year from date of request, the burial allowance claim shall be disallowed; and

(3) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 210(c), 902)

(c) *Death while properly hospitalized.* If a person dies from non-service-connected causes while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed \$300 for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. (38 U.S.C. 903(a)). (If the hospitalized person's death is service connected, entitlement to burial benefits falls under paragraph (a) of this section instead of this paragraph.)

(d) *Determinations.* Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Veterans Administration will determine line of duty. The burden of proof will rest upon the claimant.

(e) *Persons not included.* Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:

- 1) A discharged or rejected draftee selectee.
- 2) A member of the National Guard who reported to camp in answer to the president's call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.
- 3) An alien who does not come within the purview of § 3.7(b).
- 4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Act No. 190, 79th Congress.
- 5) Temporary members of the Coast Guard Reserve.

Plot or interment allowance. When a veteran dies from non-service-connected causes, \$150 (or where entitlement is based on § 3.8(c) or (d), a sum in Philippine pesos equivalent to \$150) may be paid as a plot or inter-

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§ 3.1601

ment allowance. The plot or interment allowance is payable to the person or entity who incurred the expenses. (For payment to a State or political subdivision thereof, see § 3.1604(c).) Entitlement is subject to the following conditions:

(1) The deceased veteran is eligible for the burial allowance under paragraph (b) or (c) of this section; or

(2) The veteran either served during a period of war or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty (or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Veterans Administration has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty); and

(3) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States; and

(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 903(b))

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or non-service-connected disability pension would have been entitled to disability compensation at time of death) there is payable, in addition to the burial allowance (either \$300 or \$1,100 if cause of death was service connected), an additional amount for payment of the cost of transporting the body to a national cemetery for burial. This amount may not exceed the cost of transporting the body from the veteran's place of death to the national cemetery nearest the veteran's last place of residence in which burial space is available. The amounts pay-

able under this paragraph are subject to the limitations set forth in §§ 3.1604 and 3.1606.

[26 FR 1620, Feb. 24, 1961, as amended at 44 FR 22721, Apr. 17, 1979; 47 FR 11012, Mar. 15, 1982]

CROSS REFERENCES: Definitions; veterans See § 3.1(d). Protection; burial allowance. See § 3.954.

§ 3.1601 Claims and evidence.

(a) *Claims.* Claims for reimbursement or direct payment of burial and funeral expenses, transportation of the body, and plot or interment allowance, must be received by the Veterans' Administration within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. (38 U.S.C. 904).

(1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill is under \$300 only amount of unpaid balance will be payable to the funeral director); or

(ii) The individual whose personal funds were used to pay burial, funeral, and transportation expenses; or

(iii) The executor or administrator of the estate of the veteran or the estate of the person who paid the expenses of the veteran's burial or provided such services. If no executor or administrator has been appointed then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of interstate estates in the State of the decedent's personal domicile.

(2) Claims for the plot or interment allowance (except for claims filed by a State or an agency or political subdivision thereof, under § 3.1604(d)) may be executed by:

(i) The funeral director, if he (or she) provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if unpaid balance is less than \$150 only the amount of the unpaid balance thereof will be payable to the funeral director); or

(ii) The person(s) whose personal funds were used to defray the cost of the plot or interment expenses; or

(iii) The person or entity from whom the plot was purchased or who provided interment services if the bill for such is unpaid in whole or in part. An unpaid bill for a plot will take precedence in payment of the plot or interment allowance over an unpaid bill for other interment expenses or a claim for reimbursement for such expenses. Any remaining balance of the \$150 allowance may then be applied to interment expenses; or

(iv) The executor or administrator of the estate of the veteran or the estate of the person who bore the expense of the plot or interment expenses. If no executor or administrator has been appointed, claim for the plot or interment allowance may be filed as provided in paragraph (a)(1)(iii) of this section for the burial allowance.

(3) For the purposes of the plot and interment allowance "plot" or "burial plot" means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. Interment expenses are those costs associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of bodies for burial or interment.

(b) *Supporting evidence.* Evidence required to complete a claim for the burial allowance and the plot or interment allowance, when payable, (including a reopened claim filed within the 2-year period) must be submitted within 1 year from date of the Veterans Administration request for such evidence. In addition to the proper claim form the claimant other than a § 3.1604(d) claimant is required to submit:

(1) *Statement of account.* Preferably on funeral director's or cemetery

owner's billhead showing name of the deceased veteran, the plot or interment costs, and the nature and cost of services rendered, and unpaid balance.

(2) *Receipted bills.* Must show by whom payment was made and show receipt by a person acting for the funeral director or cemetery owner.

(3) *Proof of death.* In accordance with § 3.211.

(4) *Waivers from all other distributees.* Where expenses of a veteran's burial, funeral, plot, interment and transportation were paid from funds of the veteran's estate or some other deceased person's estate and the identity and right of all persons to share in that estate have been established, payment may be made to one heir upon unconditional written consent of all other heirs.

[38 FR 30106, Nov. 1, 1973, as amended at 41 FR 38771, Sept. 13, 1976; 44 FR 22722, Apr. 17, 1979; 44 FR 58710, Oct. 11, 1979]

§ 3.1602 Special conditions governing payments.

(a) *Two or more persons expended funds.* If two or more persons have paid from their personal funds toward the burial, funeral, plot, interment and transportation expenses, the burial and plot or interment allowance will be divided among such persons in accordance with the proportionate share paid by each, unless waiver is executed in favor of one of such persons by the other person or persons involved. The person in whose favor payment is waived will not be allowed a sum greater than that which was paid by such person. (See § 3.1601(a)(3).)

(b) *Person who performed services.* A person who performed burial, funeral, and transportation services or furnished the burial plot will have priority over claims of persons whose personal funds were expended.

(c) *Partial payment.* Where partial payment of the expenses of the burial, funeral and transportation of the body are made from funds of the veteran's estate and the balance from the personal funds of another person, the claim of the other person has priority.

(d) *Escheat.* No payment of burial allowance or plot or interment allow-

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will be made where it would es-
cheat.

42 FR 1621, Feb. 24, 1961, as amended at 38
FR 30107, Nov. 1, 1973; 41 FR 38771, Sept.
12, 1976)

§ 3.1603 Unclaimed bodies.

If the body of a deceased veteran is
unclaimed, there being no relatives or
friends to claim the body, the amount
provided for burial and plot or inter-
ment allowance will be available for
the burial upon receipt of a claim ac-
companied by a statement showing
that efforts were made to locate rela-
tives or friends. The question of es-
tate of any part of such deceased vet-
eran's estate is not a factor in such a
claim. Burial allowance may be au-
thorized for cost of disinterment and
burial of unclaimed remains origi-
nally accorded pauper burial but not
for initial expenses of a burial in a po-
pular's field. Burial in a prison cemetery
is not considered a pauper burial.

43 FR 30107, Nov. 1, 1973)

→ § 3.1604 Payments from non-Veterans Ad-
ministration sources.

(a) Contributions or payments by
public or private organizations. When
contributions or payments on the
burial expenses have been made by a
State, any agency or political subdivi-
sion of the United States or of a State,
or the employer of the deceased veter-
an only the difference between the
entire burial expenses and the amount
paid thereon by any of these agencies
or organizations, not to exceed \$300
if death was service connect-
ed will be authorized. Contributions
or payments by any other public or
private organization such as a lodge,
union, fraternal or beneficial organiza-
tion, society, burial association or in-
surance company, will bar payment of
the burial allowance if such allowance
would revert to the funds of such or-
ganization or would discharge such or-
ganization's obligation without pay-
ment.

(1) A contract or policy which pro-
vides for payment at death of a speci-
fied amount to a designated benefici-
ary other than the person rendering
burial and funeral services will not bar
payment of the burial allowance to

the beneficiary even though the orga-
nization issuing the contract or policy
retains an option to make payment
direct to the person rendering burial
and funeral services.

(2) The provisions of this paragraph
do not apply to contributions or pay-
ments on the burial and funeral ex-
penses which are made for humanitar-
ian reasons if the organization making
the contribution or payment is under
no legal obligation to do so.

(b) Payment by Federal agency. (1)
Where a veteran dies while in employ-
ment covered by the United States
Employees' Compensation Act, as
amended, or other similar laws specifi-
cally providing for payment of the ex-
penses of funeral, transportation, and
interment out of Federal funds, burial
allowance will not be authorized by
the Veterans Administration.

(2) A provision in any Federal law or
regulation permitting the application
of funds due or accrued to the credit
of the deceased toward the expenses
of funeral, transportation and inter-
ment (such as Social Security bene-
fits), as distinguished from a provision
specifically prescribing a definite al-
lowance for such purpose, will not bar
payment of the burial allowance. In
such cases only the difference between
the total burial expense and the
amount paid thereon under such pro-
vision, not to exceed \$300 will be au-
thorized.

(3) Burial allowance is not payable
for deaths in active service, or during
the duty periods set forth in § 3.6, or
for other deaths where the cost of
burial and transportation is paid by
the service department.

(c) Payment of plot or interment al-
lowance by public or private organiza-
tion except as provided for by para-
graph (d) of this section. Where any
part of the plot or interment expenses
have been paid or assumed by a State,
any agency or political subdivision of a
State, or the employer of the deceased
veteran, only the difference between
the total amount of such expenses and
the amount paid or assumed by any of
these agencies or organizations, not to
exceed \$150, will be authorized.

(d) Payment of the plot or interment
allowance to a State or political subdivi-
sion thereof—(1) Conditions war-

rating payment. All of the following conditions must be met:

(i) The plot or interment allowance is payable based on the service of the deceased veteran. See § 3.1600.

(ii) The deceased veteran is buried in a cemetery or a section thereof which is used solely for the interment of persons eligible for burial in a national cemetery.

(iii) The cemetery or the section thereof where the veteran is buried is owned by the State, or an agency or political subdivision of the State claiming the plot or interment allowance.

(iv) No charge is made by the State, or an agency or political subdivision of the State for the cost of the plot or interment.

(v) The veteran was buried on or after October 1, 1978.

(2) *Claims.* A claim for payment under this paragraph shall be executed by a State, or an agency or political subdivision of a State on a claim form prescribed by the Veterans Administration. Such claim must be received by the Veterans Administration within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from service, but after the veteran's death the veteran's discharge was corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from the date of correction of the discharge.

(3) *Amount of the allowance.* A State or an agency or political subdivision of a State entitled to payment under this paragraph shall be paid the sum of \$150 as a plot or interment allowance without regard to the actual cost of the plot or interment.

(4) *Priority of payment.* A claim filed under this paragraph shall take precedence in payment of the plot or interment allowance over any claim filed for the plot or interment allowance under § 3.1601(a)(2). (38 U.S.C. 903(b).

[26 FR 1621, Feb. 24, 1961, as amended at 29 FR 9537, July 14, 1964; 38 FR 30107, Nov. 1, 1973; 44 FR 22722, Apr. 17, 1979; 44 FR 58710, Oct. 11, 1979]

§ 3.1605 Death while traveling under prior authorization or while hospitalized by the Veterans Administration.

An amount may be paid not to exceed the amount payable under § 3.1600 for the funeral, burial, plot, or interment expenses of a person who dies while in a hospital, domiciliary, or nursing home to which he or she was properly admitted under authority of the Veterans' Administration. In addition, the cost of transporting the body to the place of burial may be authorized. The amount payable under this section is subject to the limitations set forth in paragraph (b) of this section, and §§ 3.1604 and 3.1606.

(a) *Death enroute.* When a veteran while traveling under proper prior authorization and at Veterans' Administration expense to or from a specified place for the purpose of:

- (1) Examination; or
- (2) Treatment; or
- (3) Care

dies enroute, burial, funeral, plot, interment, and transportation expenses will be allowed as though death occurred while properly hospitalized by the Veterans' Administration. Hospitalization in the Philippines under 38 U.S.C. 631, 632, and 633 does not meet the requirements of this section.

(b) *Transportation.* Except for retired persons hospitalized under section 5 of Executive Order 10122 (15 FR 2173; 3 CFR 1950 Supp.) issued pursuant to Pub. L. 351, 81st Congress, and not as Veterans' Administration beneficiaries, the cost of transportation of the body to the place of burial in addition to the burial and plot or interment allowance will be provided by the Veterans' Administration where death occurs:

(1) Within a State or the Canal Zone (38 U.S.C. 101 (20)) while the veteran is hospitalized by the Veterans' Administration and the body is buried in a State or the Canal Zone; or

(2) While hospitalized within but burial is to be outside of a State or the Canal Zone, except that cost of transportation of the body will be authorized only from place of death to port of embarkation, or to border limits of United States where burial is in Canada or Mexico.

burial in a national cemetery (but not for persons or classes of persons named in (6), of this title.

Confederate Armies of the Civil War.

When requested, an appropriate person shall, when requested, an appropriate person to commemorate any veteran who has been identified or were buried in a national cemetery area or in a national cemetery area, the provisions of section 1003 of this title.

When requested, an appropriate person to commemorate any veteran who has been identified or were buried in a national cemetery area or in a national cemetery area, the provisions of section 1003 of this title.

When requested, an appropriate person to commemorate any veteran who has been identified or were buried in a national cemetery area or in a national cemetery area, the provisions of section 1003 of this title.

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Section 907 of this title) and sections 6 [enacting provisions set out as a note under section 1004 of this title] and 7 [repealing sections 271 to 276, 278 to 279d, 291 to 292, 286 to 290, and 296 of Title 24, Hospitals and Asylums, and enacting provisions set out as notes under sections 271 to 276 of Title 24] of this Act shall take effect September 1, 1973, or on such earlier

date as the President may prescribe and publish in the Federal Register."

Legislative History. For legislative history and purpose of Pub.L. 93-43, see 1973 U.S.Code Cong. and Adm.News, p. 1401. See, also, Pub.L. 95-476, 1978 U.S. Code Cong. and Adm.News, p. 3347; Pub.L. 95-479, 1978 U.S.Code Cong. and Adm.News, p. 3483.

Code of Federal Regulations

Headstones, etc., see 38 CFR 1.630 et seq.

§ 907. Death from service-connected disability

In any case in which a veteran dies as the result of a service-connected disability or disabilities, the Administrator, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding the greater of (1) \$1,100, or (2) the amount authorized to be paid under section 8134(a) of title 5 in the case of a Federal employee whose death occurs as the result of an injury sustained in the performance of duty. Funeral and burial benefits provided under this section shall be in lieu of any benefits authorized under sections 902 and 903(a)(1) and (b) of this title.

Added Pub.L. 93-43, § 5(a)(2), June 18, 1973, 87 Stat. 80, and amended Pub.L. 95-479, Title III, § 303(c), Oct. 18, 1978, 92 Stat. 1565.

Historical Note

1978 Amendment. Pub.L. 95-479 added "the greater of (1) \$1,100, or (2)" following "not exceeding".

Effective Date of 1978 Amendment. Amendment by Pub.L. 95-479 effective Oct. 1, 1978, see section 401 of Pub.L. 95-479, set out as a note under section 314 of this title.

Effective Date. Section effective Sept. 1, 1973, or such earlier date as the Presi-

dent may prescribe and publish in the Federal Register, see section 10(c) of Pub.L. 93-43, set out as a note under section 906 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-43, see 1973 U.S.Code Cong. and Adm.News, p. 1401. See, also, Pub.L. 95-479, 1978 U.S. Code Cong. and Adm.News, p. 3405.

Code of Federal Regulations

Service-connected death, see 38 CFR 3.303 et seq.

§ 908. Transportation of deceased veteran to a national cemetery

Where a veteran dies as the result of a service-connected disability, or is in receipt of (but for the receipt of retirement pay or pension under this title would have been entitled to) disability compen-

1978, see section 401 of Pub.L. 95-479, set out as a note under section 314 of this title.

Amendment by Pub.L. 95-476 effective 1978, see section 205(a) of Pub.L. 95-476, set out as a note under section 1003 of this title.

Effective Date. Section 10(c) of Pub.L. 93-43 provided that: "Clause (2) of section 907, enacting this section and sec-