

**DATE:** 03-11-91

**CITATION:** VAOPGCPREC 28-91  
Vet. Aff. Op. Gen. Couns. Prec. 28-91

**TEXT:**

**SUBJECT:** Provision of Drugs and Medicines to Residents of State Veterans Home.

(This opinion, previously issued as Opinion of the General Counsel 14- 74, dated July 18, 1974, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

**To: Chief Medical Director**

**QUESTION PRESENTED:**

May an otherwise eligible veteran be furnished drugs and medicines by the VA while he is a resident of the State Veterans Home or should he or she look to that institution for the provision of these needed items?

**COMMENTS:**

There is for consideration a matter involving the furnishing of drugs and medications to veterans presently residing in the Minnesota Veterans Home. We understand that the State Home closed its pharmacy, with the avowed purposes of avoiding over-medication and to establish proper controls on the distribution of such medication, and now requests that the VAH pharmacy provide the medicines to the residents of the State Home. Apparently some veterans were obtaining medicines from the State Home pharmacy and were also eligible for, and obtaining, additional medications from the VAH pharmacy.

VA eligibility for outpatient care (including medicines) is normally derived from section 612 of title 38, United States Code. The pertinent subparagraphs are as follows:

"(a) Except as provided in subsection (b), the Administrator, within the limits of Veterans' Administration facilities, may furnish such medical services as he finds to be reasonably necessary to any veteran for a service-connected disability.

In the case of any veteran discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, such services may be so furnished for that disability, whether or not service-connected for the purposes of this chapter.

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"(f) The Administrator may also furnish medical services for any disability on an outpatient or ambulatory basis—

(1) to any veteran eligible for hospital care under section 610 of this title (A) where such services are reasonably necessary in preparation for, or to obviate the need of, hospital admission, or (B) where such a veteran has been granted hospital care and such medical services are reasonably necessary to complete treatment incident to such hospital care; and

(2) to any veteran who has a service-connected disability rated at 80 per centum or more.

"(g) Where any veteran is in receipt of increased pension or additional compensation or allowance based on the need of regular aid and attendance or by reason of being permanently housebound, or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance, the Administrator may furnish the veteran such medical services as he finds to be reasonably necessary.

"(h) The Administrator shall furnish to each veteran who is receiving additional compensation or allowance under chapter 11, or increased pension as a veteran of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, by reason of being permanently housebound or in need of regular aid and attendance, such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran. The Administrator shall continue to furnish such drugs and medicines so ordered to any such veteran in need of regular aid and attendance whose pension payments have been discontinued solely because his annual income is greater than the applicable maximum annual income limitation, but only so long as his annual income does not exceed such maximum annual income limitation by more than \$500."

The obligation of the VA to provide this form of outpatient treatment is one that has been considered by the Department of Medicine and Surgery and by this office in the past. For example, in a memorandum dated June 9, 1965, addressed to the Chief Medical Director, we discussed in some detail the entitlement of certain veterans to drugs or medicines under 38 U.S.C. § 612(h). As an aid to understanding, a copy of the 1965 opinion is incorporated as an addendum to this opinion. We believe, however, it is necessary to again review some of the points raised in that opinion, since informal discussion with members of DM & S staff indicates that the 1965 opinion is not clearly understood.

Paragraphs 6 and 7 thereof provided:

"6. It was concluded in OpSol 106-52 'that members of the State Home

possessing basic entitlement under VA Regulation 6060 are eligible for outpatient treatment only to the extent of non-duplication of treatment available in such Home, i.e., if satisfactory facilities are not available in the Home to afford the required treatment, such supplemental services as are necessary and applied for may be authorized as outpatient treatment. The question as to whether satisfactory facilities are available in the Home to provide the needed treatment is essentially an Administrative question.'

"7. The conclusion reached in Op Sol 106-52 appears to be equally applicable to your question relating to the veteran who is a patient in the Soldiers Home, Chelsea, Massachusetts. We understand that in determining Federal aid payments, the cost of medical supplies, including drugs or medicines, is included in computing the per capita cost to the State of maintaining the Home at Chelsea. Accordingly, it would be legally improper to furnish drugs or medicines, under 38 U.S.C. § 612(h), to a veteran who is a patient or member in such Home if the necessary drugs or medicines are generally available to patients or members through the medical facilities of the Home. With regard to nursing home care provided by a State home as a basis for the increased payment authorized by section 3 of Public Law 88-450, we note that this form of care is defined by our law (38 U.S.C. § 101(28)) to include 'related medical services' which would appear necessarily to encompass drugs and medicines."

It seems paragraph 6 has been applied as though there was no paragraph 7. It was, and is, our view that the latter was a refinement and limitation to the quotation from the 1952 opinion. The 1965 opinion stated it would be legally improper to furnish drugs or medicines to a veteran who is a patient in a Home where such drugs or medicines are generally available through the medical facilities of the Home. The 1952 opinion referred to in the 1965 opinion held that there should be no duplication of benefits and that if the State Home does not provide this benefit, the costs thereof may not be included in the per capita computation. These conclusions are still correct.

It might not be inappropriate to pause for a moment to reflect briefly on the underlying philosophy of State Homes and the Federal payments made on behalf of eligible veterans. Initially, those States providing State Homes have done so as one aspect of meeting their responsibilities to their citizens (in this case, veterans). Subsequently, by the Act of August 27, 1888, the Federal Government, recognizing that it also had an obligation to its veteran population, initiated a form of shared responsibility by providing financial contributions to State Homes furnishing care to eligible veterans. The present evolvement of the program reflects an awareness by the individual States and by the Federal Government that each has a responsibility and an obligation to the veteran. It also follows that, where a State attempts to meet its obligation in this regard, it should do so in a manner meeting at least minimum care standards, which necessarily include a provision for medical services.

The 1965 opinion by this office, referred to earlier, did point out that if "very unusual" or "expensive" drugs were not normally provided by the institution, they could be furnished by VA under 38 U.S.C. § 612(h). In view of the imprecise meaning of those terms, we can understand the lack of uniformity in the application of the opinion, since there were no guidelines provided. However, this lack of specificity would appear to be desirable from an administrative viewpoint, and allows use of sufficient latitude to revise the shared responsibility relationship with States in providing care to veterans, in a manner compatible with the ever-changing realities of providing health care. For example, as the cost of drugs or medications increases, the categories of drugs which could be considered "very unusual" or "expensive" would also increase. Whether inflation in this area has reached the stage so that the two "very unusual" or "expensive" categories would encompass any drug or medicine which, under State law, may be obtained only by prescription, is for determination by the Department of Medicine and Surgery. In making this determination, however, it must be kept in mind that some "related medical services" must be provided by a State Home furnishing nursing home care (as provided in the definition found in 38 U.S.C. § 101(28)), or hospitalization, or "incidental medical care" as an integral part of domiciliary care (as defined by the Comptroller General in B-125206, February 24, 1956).

**HELD:**

The VA may furnish "very unusual" or "expensive" drugs and medicines to or on behalf of any eligible veteran in a State Home, provided they are not within the scope of medical services normally required to be provided by the Home, and provided further that there is no duplication (i.e., costs incident to the provision of such drugs and medicines are not included in the computation of the per capita costs). The determination of what is "very unusual" or "expensive" drugs is for administrative resolution by the Department of Medicine and Surgery, keeping in mind the dual responsibilities of the States and the Federal Government.

We wish to stress that all that has been said herein is based on the premise that the veteran has VA eligibility for the benefit in question, since, under no circumstances, could the VA provide drugs and medicines to, or for, a veteran who has no entitlement thereto.

VETERANS ADMINISTRATION GENERAL COUNSEL  
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