DATE: 03-11-91

CITATION: VAOPGCPREC 30-91
Vet. Aff. Op. Gen. Couns. Prec. 30-91

TEXT:

SUBJECT: Applicability of Limitations of 38 U.S.C. § 601(4)(C)(iii) to Puerto Rico.

(This opinion, previously issued as Opinion of the General Counsel 4-75, dated October 30, 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:

Does the mathematical limitation contained in 38 U.S.C. § 601(4)(C)(iii) apply to the Commonwealth of Puerto Rico?

COMMENTS:

38 U.S.C. § 601(4)(C)(iii), which is contained as part of the definition of "Veterans' Administration facilities," insofar as the contracting for private facilities is concerned, restricts this contract authority in a noncontiguous State to the average patient load per thousand veteran population hospitalized by VA in the continguous States, but seems to imply that in this case the term "State" is different than commonwealth, territory,or possession, notwithstanding the language of 38 U.S.C. § 101(20).

Before addressing ourselves to the specific problem presented, it may be desirable to review briefly the history of the provision authorizing hospitalization of veterans in possessions and territories of the United States. Section 202(10) of the World War Veterans' Act, 1924, as amended by Public No. 628 of the 68th Congress, March 4, 1925, contains the following:

"In the insular possessions or Territories of the United States the director is further authorized to furnish hospitalization in other than Government hospitals."

Following the Economy Act, the President promulgated in the form of an Executive Order Veterans Regulation No. 10, March 31, 1933, which contained the following language as part of the definition of VA facilities:

"... and contract facilities generally in the territories and possessions which are

deemed reasonably necessary by the Administrator of Veterans' Affairs in order to provide hospital treatment for veterans suffering from injuries or diseases incurred or aggravated in line of duty in the active military or naval service."

Veterans Regulation No. 10(b), issued by the President on July 28, 1933, modified the above-quoted language so that it read: "for veterans of any war in the territories and possessions". This liberalization deleted the requirement that the treatment be for a service-connected condition. This was substantially the language contained in the codification of title 38, section 601(4)(C)(iii), which read as follows: "for veterans of any war in a Territory,Commonwealth, or possession of the United States." A major change to clause (iii) was made by P.L. 90-612 so that it read as follows:

"(iii) for veterans of any war in a State, Territory, Commonwealth, or possession of the United States not contiguous to the forty-eight contiguous States, except that the annually determined average hospital patient load per thousand veteran population hospitalized at Veterans' Administration expense in Government and private facilities in each such noncontiguous State may not exceed the average patient load per thousand veteran population hospitalized by the Veterans' Administration within the forty-eight contiguous States; but authority under this clause (iii) shall expire on December 31, 1978." (The underscoring reflects the new language added by this law.)

P.L. 93-82 deleted the "war" requirement, but made no changes that are material to the question at hand.

Prior to the statehood of Alaska and Hawaii, those areas came within the general contract authority heretofore mentioned. Following their admission to statehood, the Veterans Administration used beds allocated for VA beneficiaries in hospitals of the Department of Defense and the Department of Health, Education, and Welfare, since Alaska and Hawaii no longer had a status which enabled them to utilize the special exemption provided by law for possessions and territories of the United States. Congress was very much aware of the problems facing veterans living in those two areas, and many bills were introduced in Congress to remedy the situation. Finally, H.R. 3593 of the 90th Congress was approved on October 21, 1968, as P.L. 90-612, and contained the language heretofore quoted in paragraph 2, supra. However, by using the term "State," along with the term "Territory, Commonwealth, or possession" (which, according to the definition contained in 38 U.S.C. § 101(20), means the same as the term "State"), Congress created an ambiguous provision which makes it necessary to resort to legislative history to determine what meaning should be given to the language in question.

On October 16, 1968, this agency submitted to the Bureau of the Budget our comments (which are consistent with reports furnished by VA to Congress on

similar proposals) on the enrolled enactment of H.R. 3593, which became P.L. 90-612. We stated therein:

"Section 2 of the bill amends the definition of the term 'Veterans' Administration facilities' contained in section 601(4)(C) of title 38 to include private contract facilities for a veteran of any war when such veteran is in a State not contiguous to the 48 contiguous States. This would permit the use of private contract hospitals for the care of war veterans with non-service-connected disabilities in the States of Alaska and Hawaii. The bill provides that the authority under clause (iii) shall expire on December 31, 1978, and also makes that terminal date applicable to the existing permanent contract authority as to war veterans in a Territory, Commonwealth, or possession. The amount of hospitalization which may be furnished in Alaska and Hawaii is restricted proportionately to that furnished to veterans in the 48 contiguous States.

"While Alaska and Hawaii remained Territories, they were covered by the special provision in our law authorizing the Veterans Administration to provide hospital care in private contract facilities in a Territory, Commonwealth, or possession for war veterans with non-service-connected conditions. This is an exception to the general statutory limitation that hospitalization for non-service-connected disorders may only be furnished to the extent of available beds in Veterans Administration hospitals or other Federal Government facilities. When Alaska and Hawaii became States, their veteran population automatically became subject to the limitations governing the hospitalization of veterans in other States of the Union. For several years, therefore, we have been without authority to furnish hospital care for the non-service-connected conditions of war veterans residing in Alaska or Hawaii except in Federal facilities.

"There is no VA hospital in either Alaska or Hawaii, and there is the problem of distance in each State as well as the special problem of adverse weather in Alaska. With the limitations in the bill to assure that no greater percentage of veterans in either of these two States is furnished non-service-connected hospitalization than is furnished to veterans in the 48 contiguous States, we feel there is sound justification for reinstating for a ten-year period the authority to contract for private hospitalization for war veterans of these political subdivisions. The situation will be carefully reappraised at the end of the ten-year period in the light of additional experience and any pertinent developments. The cost of this section is difficult to predict. We estimate that the first year's cost would be approximately $500,000." (Emphasis added.)

In light of the above, we have reached the conclusion that the mathematical formula set forth in clause (iii) of section 601(4)(C) is not for application to the Commonwealth of Puerto Rico. Additionally, this determination can be extended to its logical limits, namely, that the subject formula has no application except in the noncontiguous States of Alaska and Hawaii. It is our further opinion,

however, that the expiration of clause (iii) on December 31, 1978, includes territories, possessions, and the Commonwealth.

The expiration authority first appeared as part of S. 562 of the 89th Congress, a bill introduced by Senator Bartlett. In a letter dated January 15, 1965, to the Administrator, the sponsor explained his intent as follows:

"This is a new bill although it is in some ways similar to a bill I introduced in previous years. My bill attempts to clarify the clause in law which provides for private facility hospitalization for non service- connected illnesses to American war veterans resident in the non contiguous territory of the U.S. By inadvertence, Alaska and Hawaii were cut off from this service when they became states. My bill also provides for an expiration of this clause in ten years time. I believe the whole question should be reviewed at that time, not only in reference to Alaska but to Puerto Rico and the Virgin Islands as well." (Emphasis added.)

It is, therefore, unmistakable that the expiration was to apply to the entire gamut of all noncontiguous lands which are a part of, or controlled by, the United States.

HELD:

The mathematical limitation on private hospital care of veterans residing in a State, Territory, Commonwealth or possession of the U.S. as provided under 38 U.S.C. § 601(4)(C)(iii) does not apply to Puerto Rico. This subsection applies only to the noncontiguous States, Alaska and Hawaii. The expiration date of clause (iii) applies to all noncontiguous lands (including territories and Puerto Rico) which are a part of, or controlled by, the U.S.

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