BY THE COMPTROLLER GENERAL

Report To The Chairman Committee On Veterans' Affairs House Of Representatives OF THE UNITED STATES

Legislation Needed To Prevent Loss Of Millions From Mentally Incompetent Veterans' Estates

An estimated $541 million accumulated from VA benefits for mentally incompetent veterans could be unprotected from claims by relatives other than spouses, children, and dependent parents. Although the Congress passed legislation in 1959 to prevent certain claims, the restrictions do not apply to most estates.

GAO recommends that legislation be enacted to prevent all other relatives from inheriting estates of mentally incompetent veterans and that VA's accounting procedures be revised.

HRD-82-1
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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-206073

The Honorable G. V. Montgomery
Chairman, Committee on Veterans'
Affairs
House of Representatives

Dear Mr. Chairman:

As requested in the September 17, 1980, letter from the former Chairman of the Committee on Veterans' Affairs, we reviewed the extent to which mentally incompetent veterans' estates consisting of Veterans Administration (VA) benefits have been and could be inherited by relatives other than the veterans' immediate families.

As requested, we did not obtain written agency comments on the report. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of the report. At that time we will send copies to the Chairman, Senate Committee on Veterans' Affairs; the Director, Office of Management and Budget; the Administrator of Veterans Affairs; and other interested parties and make copies available to others upon request.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CHAIRMAN, COMMITTEE ON VETERANS' AFFAIRS, HOUSE OF REPRESENTATIVES

LEGISLATION NEEDED TO PREVENT LOSS OF MILLIONS FROM MENTALLY INCOMPETENT VETERANS' ESTATES

D I G E S T

The Chairman of the House Committee on Veterans' Affairs expressed concern that Veterans Administration (VA) benefits paid to mentally incompetent veterans were being inherited by relatives other than immediate families. He requested that GAO determine the extent to which such situations have occurred and could occur in the future.

In 1959, the Congress expressed similar concerns and passed legislation with certain restrictions limiting the inheritance of incompetent veterans' estates to spouses, children, and dependent parents. The legislation provides that, in the absence of such relatives, VA benefits accumulated in these estates will revert to the Federal Government. However, because the restrictions do not apply to the estates of most mentally incompetent veterans, other relatives have made successful claims totaling millions. Further, many estates of living veterans are unprotected from future claims by such relatives. (See p. 5.)

GAO reviewed the extent to which incompetent veterans' estates in 4 of VA's 58 regional offices have been or could be inherited by relatives other than spouses, children, and dependent parents. It found that 251 estates closed during the 2 years ended December 1980 due to the deaths of incompetent veterans were, or will likely be, inherited by such relatives. These estates consisted of about $4.7 million accumulated from veterans' benefits. Also, responses to a GAO request to all 54 VA district counsels (4 VA regional offices are served by district counsels located at other offices) indicated that millions of dollars more in estates accumulated from veterans' benefits had been successfully claimed by relatives other than spouses, children, and dependent parents. (See pp. 7 and 8.)

GAO estimates that about 3,100 estates of living incompetent veterans comprising about $56 million in veterans' benefits in the four regions are unprotected from future claims by relatives other than spouses, children, and dependent parents.

VA program officials said the results of GAO's four-region sample could possibly represent nationwide experience, and they will extend the sample to determine if this is so. If the results are representative of the situation nationwide, an estimated 29,000 such estates comprised of $541 million accumulated from veterans' benefits are currently unprotected from claims by such relatives. Under current law, VA will be unable to recover this money. Legislation is needed to protect these estates. (See p. 11.)

GAO also reviewed VA's estate accounting procedures and found that many regional offices apply all veterans' expenses first to VA benefits rather than allocating the expenses to each revenue source in proportion to its contributions to the veterans' estates. This method understates VA's contribution to the estates. VA needs to revise its procedures to ensure that it is able to identify and recover all funds to which it is entitled from these estates. (See p. 15.)

RECOMMENDATION TO THE CONGRESS

The Congress should amend 38 U.S.C. 3202 by adding a new subsection (f) as follows:

"Any funds hereafter deposited in the hands of a fiduciary appointed by a State court or the Veterans Administration derived from benefits payable to mentally incompetent or insane veterans under laws administered by the Veterans Administration, which under the law of the State wherein the beneficiary had his last legal residence would descend and be distributed to persons other than the surviving spouse, children, or dependent parents of the beneficiary (there being no such survivors), shall not be paid to such persons but instead shall revert to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to

determine that a reverter is in order, to the Veterans Administration, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation." (See p. 13.)

MATTER FOR CONSIDERATION BY THE CONGRESS

Because of the substantial funds already unprotected from claims by relatives other than surviving spouses, children, or dependent parents, the Congress should consider adopting legislation which would provide for the recovery of payments previously made to guardians and fiduciaries.

Since the constitutionality of recovering such funds was an issue raised in the past but not resolved, the Congress may wish to obtain the views of the Department of Justice and VA on this matter. (See p. 14.)

RECOMMENDATION TO THE ADMINISTRATOR OF VETERANS AFFAIRS

The Administrator should direct the Chief Benefits Director to revise the estate accounting procedures to require that all expenses which cannot be matched directly with specific revenue sources be allocated to each source in proportion to its contributions to the mentally incompetent veteran's estate. (See p. 17.)

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As requested by the Committee, GAO did not obtain comments on this report.

Contents

ABBREVIATIONS

GAO	General Accounting Office
VA	Veterans Administration

CHAPTER 1

INTRODUCTION

In a letter dated September 17, 1980, the Chairman of the House Committee on Veterans' Affairs expressed concern that mentally incompetent veterans' estates accumulated from Veterans Administration (VA) benefits are being inherited by relatives other than the veterans' immediate families. He requested that we determine the extent and conditions under which such estates have been and will be inherited by other relatives, and propose preventive actions, if warranted.

VA AND ITS MISSION

VA was established in 1930 to administer laws providing benefits for veterans and to exercise leadership in veterans' affairs. Title 38 of the U.S. Code authorizes the compensation and pension benefit programs which provide financial assistance to veterans and their dependents and survivors. VA's Department of Veterans Benefits administers these programs--which comprised $12.6 billion of VA's $22.2 billion appropriation for fiscal year 1981--through VA's 58 regional offices.

Compensation benefits are available to disabled veterans whose earning capacity has been impaired due to military service, and to surviving spouses, children, or dependent parents of veterans who died from service-connected causes. Pension benefits are available to needy veterans who are permanently and totally disabled from non-service-connected causes, or who are age 65 or older, and to needy surviving spouses and children of veterans who died of non-service-related causes. Neither of the programs provides for benefits to family members other than spouses, children, and dependent parents.

THE GUARDIANSHIP PROGRAM

VA supervises the payment of compensation and pension benefits to mentally incompetent beneficiaries--veterans and their spouses, dependent or helpless children, and dependent parents considered to lack the mental capacity to manage their own financial affairs. The guardianship program is administered by the Department of Veterans Benefits. These beneficiaries have been rated incompetent by VA or adjudged incompetent by a court and receive their VA benefits through persons or legal entities, known as fiduciaries, that manage the beneficiaries' property. The beneficiaries can be cared for in a variety of ways--in private homes, foster care and nursing homes, public institutions, and VA facilities.

As of January 1981, VA was supervising the payments of benefits to over 137,000 incompetent beneficiaries under the guardianship program, of which 75,000 were veterans.

Based on December 1980 payments, compensation benefits alone to incompetent veterans are currently projected at about $400 million annually.

VA's supervision

The guardianship program is managed by the Veterans Assistance Service within the Department of Veterans Benefits and is administered through the regional offices. Program staff in the regions supervise the financial and care arrangements made for incompetent beneficiaries by (1) monitoring the distribution and use of funds to assure they are being used to benefit the veteran or other beneficiaries and (2) making scheduled personal contacts with the beneficiaries to inspect care facilities. Upon the death of a beneficiary, regional program staffs determine if VA funds remain in the estate and if the Federal Government may have a claim to the funds.

In addition to regional program personnel, VA district counsels also participate in guardianship matters. These offices, as field representatives of VA's General Counsel, take action on legal matters regarding incompetent beneficiaries and become directly involved in cases where estate funds may be claimed by the Federal Government.

Guardianship arrangements

Guardians under VA supervision include court-appointed and Federal (VA-appointed) fiduciaries. Court-appointed fiduciaries are either

- --legal entities (such as banks) appointed by State courts to manage the properties of incompetent beneficiaries or
- --persons appointed by State courts to manage the properties of incompetent beneficiaries.

Federal fiduciaries include

- --legal custodians, which are persons designated by VA to manage VA funds for incompetent beneficiaries;
- --chief officers of the health care institutions in which the incompetent veterans are receiving care, who manage the funds; and
- --spouses who administer the funds paid to the veteran.

LEGISLATION REGARDING INHERITANCE

Although State laws specify the distribution of estates to heirs, title 38 of the U.S. Code preempts such laws in certain circumstances involving estates accumulated from VA benefits for mentally incompetent beneficiaries. Because mentally incompetent veterans--as distinguished from competent veterans--are less likely to ultimately benefit fully from their estates accumulated from VA benefits, and in order to conserve such funds, the Code limits estate inheritance in certain instances to specific immediate family members: spouses, children, and dependent parents. The Code provides that, in the absence of such relatives, VA benefits accumulated in these estates will revert to the Federal Government.

While inheritance laws of the States and the District of Columbia vary as to the specific classes of relatives entitled to inherit estates, all include persons in addition to spouses, children, and dependent parents. However, 38 U.S.C. 3202(d) limits the inheritance of estates of mentally incompetent veterans to spouses, children, and dependent parents when VA funds are held in "Personal Funds of Patients" accounts, hereafter referred to as patients' accounts. Such accounts are only established for mentally incompetent veterans when there is a Federal fiduciary who is the chief officer of the health care institution where the individual is receiving care. Patients' accounts are not established for veterans with court-appointed fiduciaries or Federal fiduciaries who are legal custodians or spouses. Thus, because State inheritance laws rather than 38 U.S.C. 3202(d) will apply in instances when the fiduciaries are not the chief officers of health care institutions, estates of incompetent veterans under all other fiduciary arrangements are generally unprotected from claims by relatives other than spouses, children, and dependent parents.

Also, 38 U.S.C. 3202(e) provides that, in the absence of any heirs as defined by State laws, estates consisting of VA funds will revert to the Federal Government rather than the States.

OBJECTIVES, SCOPE, AND METHODOLOGY

We approached our review in three ways. We reviewed 966 cases closed in four VA regional offices due to the death of mentally incompetent veterans during the 2 years ended December 1980 to identify those having estates accumulated from VA benefits which had been claimed by relatives other than spouses, children, and dependent parents. We also sampled 533 active cases at the four VA regional offices to identify those living veterans having estates accumulated from VA benefits which are currently unprotected from future claims by such relatives. In order to obtain nationwide data on veterans' estates which had been claimed by

relatives other than spouses, children, or dependent parents, we sent letters to all VA district counsels requesting information on such cases. Finally, we sent a letter to VA's General Counsel requesting his views on potential changes to legislation pertaining to the inheritance of mentally incompetent veterans' estates. His response is included as appendix III.

We restricted our review of active and closed cases to veteran beneficiaries with court-appointed guardians, legal custodians, or institutional award arrangements because the estates accumulated from VA benefits under other arrangements are very small or the arrangements indicate there are close relatives. We did not review cases of incompetent beneficiaries other than veterans, that is spouses, children, or dependent parents. (See app. I for more detail on our worksteps, assumptions, sampling methodology, and limitations.)

We performed our review in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

CHAPTER 2

CERTAIN RELATIVES HAVE SUCCESSFULLY CLAIMED VA-FUNDED ESTATES

The Congress has passed legislation to limit relatives other than spouses, children, and dependent parents from inheriting certain mentally incompetent veterans' estates accumulated from VA benefits. However, during the 2-year period ended December 1980, relatives other than spouses, children, and dependent parents inherited, or are likely to inherit, about $4.7 million in estates accumulated from VA benefits of mentally incompetent veterans in the four VA regions we visited, and millions of dollars more have been successfully claimed by such relatives nationwide.

This situation contrasts with the legislation establishing VA's compensation and pension programs for which the benefits were originally awarded; that is, the awards are available for impaired earning capacity resulting from a service-connected disability or to needy veterans. The awards are made only to the veterans, their spouses, children, and dependent parents, and not to other relatives.

CURRENT LEGISLATION DOES NOT ALWAYS PREVENT CERTAIN RELATIVES FROM INHERITING VA-FUNDED ESTATES

Section 3202(e) of title 38 of the U.S. Code currently provides that, whenever a mentally incompetent veteran dies without heirs and the estate is held by a fiduciary, the portion of the funds accumulated from VA benefits will revert to the Federal Government if they would otherwise revert to the State of the incompetent's last place of residence. However, VA program officials told us that few such estates revert to the Government because most veterans have relatives that qualify under State laws as heirs.

In 1959, the Congress amended the U.S. Code (38 U.S.C. 3202(d)), to limit the heirs of certain incompetent veterans' estates accumulated from VA benefits to spouses, children, and dependent parents. The pertinent portion of section 3202(d), as amended, states:

> "* * * In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws, administered by the Veterans' Administration deposited * * * 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 veterans, in equal parts. * * *"

The provision also requires that, in the absence of such heirs, the portion of the estate consisting of VA benefits will revert to the Federal Government.

This provision, which preempts State inheritance laws, applies only when the veterans' benefits are deposited in patients' accounts maintained by VA from which the chief officers of the health care institutions housing the veterans can be reimbursed for the costs of the veterans' care. The law does not apply to court-appointed fiduciary arrangements--even when the veteran is hospitalized--or to Federal fiduciaries who are legal custodians or spouses.

Several proposed bills which preceded the 1959 amendment provided for the recapture of VA benefits paid to all types of fiduciaries when the beneficiaries died without spouses, children, or dependent parents. While VA agreed with the objective to prevent relatives other than those specified from inheriting veterans' estates, it expressed concern that legal difficulties may result by trying to recover funds which have left the immediate control of the Government; that is, VA benefits accumulated in estates held by court-appointed fiduciaries or Federal-appointed fiduciaries who are legal custodians or spouses. The House Committee on Veterans' Affairs also recognized that a constitutional question may be raised regarding the proposed legislation, but concluded that a sound interpretation of the law favored the constitutionality of applying the recovery provision to payments made to all guardians and fiduciaries.

The 1959 amendment to the Code, however, did not extend to all types of fiduciaries--which would have required resolution of the constitutional issue. Rather, consistent with VA's concerns, the Congress limited the recapture provision to incompetent veterans with patients' accounts maintained by the chief officers of the veterans' health care institutions and therefore still under the immediate control of the Government. The constitutional issue has not been resolved.

The arrangements that are not covered by the law (court-appointed fiduciaries and Federal fiduciaries who are legal custodians or spouses) comprise about 90 percent of all incompetent veterans with fiduciaries, and the accumulated VA benefits in the estates under such arrangements are not returned to the Federal Government when veterans die and leave relatives other than spouses, children, and dependent parents.

CLAIMS BY CERTAIN RELATIVES HAVE BEEN SUBSTANTIAL

Because of limitations in title 38 of the U.S. Code, millions of dollars accumulated from VA benefits have been distributed to State-determined heirs other than spouses, children, and dependent parents. During the 2 years ended December 1980, 966 cases were closed due to deaths of mentally incompetent veterans in the jurisdictional areas of the four VA regional offices we visited. Of these, 251 cases (26 percent) with a VA share of about $4.7 million were inherited or are likely to be inherited by relatives other than spouses, children, and dependent parents. In contrast, compensation and pension benefits (from which the VA share of these estates is accumulated) are originally awarded only to veterans, their spouses, children, and dependent parents, and not to other relatives.

Cases Closed due to Deaths of Mentally Incompetent Veterans
2-Year Period Ended December 1980

VA regional office	Number of cases closed by region	Number where heirs are not spouses, children, or dependent parents (note a)	Total estate value	VA benefits in estates
			(millions)	
St. Paul	345	64	$2.0	$1.6
Washington, D.C.	95	24	.7	.5
Los Angeles	274	75	1.5	1.2
Boston	252	88	2.2	1.4
Total	966	251	$6.4	$4.7

a/Includes claims awarded and claims in process where claimants are valid heirs according to State law. Does not include estates inherited by other relatives in accordance with veterans' wills.

The following are examples of incompetent veterans' estates which were inherited by relatives other than spouses, children, and dependent parents obtained from the guardianship records of the four regions included above.

--A World War II veteran was paid VA compensation for a 100-percent service-connected disability on his behalf from June 1951 to September 1969. A financial institution was appointed by a court as the fiduciary of the estate in 1955.

The veteran resided in a VA hospital until November 1965, when he disappeared from the hospital and was never heard from again. After he had been missing over 7 years, he was declared legally dead under California law. He left no spouse or children. VA's district counsel filed a petition for the estate in 1979 since there appeared to be no surviving relatives. However, because a local attorney found five maternal aunts living in Israel, Argentina, and Australia, the court denied VA's petition and awarded $38,956 accumulated from VA benefits in the estate to the aunts.

--A World War I veteran accrued permanent and total VA disability compensation benefits for mental deterioration from about 1925 until his death in December 1980, with the exception of periods when he was hospitalized in a VA facility. His court-appointed fiduciary conserved and invested all funds not required for the veteran's needs. The veteran's estate of $77,000 accumulated from VA benefits was distributed to brothers.

--A court-appointed fiduciary received VA disability compensation payments on behalf of a Korean Conflict veteran from 1954 until the veteran's death in December 1978. The veteran's estate of about $87,000--comprised primarily of VA benefits--was inherited by two brothers and one sister.

--A World War I veteran was awarded 100-percent service-connected disability benefits in 1921, and when he died in 1980 he was receiving compensation benefits of $1,104 per month. His estate, handled by a court-appointed fiduciary, was valued at $149,000--accumulated entirely from VA benefits--and was claimed by three nieces and two nephews.

Of 38 VA district counsels who provided 600 examples of estates of mentally incompetent veterans inherited by relatives other than spouses, children, and dependent parents during the 2 years ended December 1980, 27 identified a VA share totaling $9.9 million for 441 of the estates.

CONCLUSION

The Congress passed legislation to limit the heirs of estates of certain mentally incompetent veterans to spouses, children, and dependent parents. However, because the legislation does not apply to veterans under all types of fiduciary arrangements, many estates with millions of dollars accumulated from VA benefits have been successfully claimed by relatives other than spouses, children, and dependent parents. In four VA regions visited, 251 estates comprising about $4.7 million in veterans' benefits were inherited or are likely to be inherited by such relatives during the 2 years ended December 1980.

CHAPTER 3

VA-FUNDED ESTATES SHOULD BE PROTECTED FROM FUTURE CLAIMS BY CERTAIN RELATIVES

Many estates of mentally incompetent veterans under fiduciary arrangements are currently unprotected from claims by relatives other than spouses, children, and dependent parents. Based on our review of records in four VA regional offices, we estimate that in those regions about 3,100 estates of living veterans comprising about $56 million accumulated from VA benefits could be claimed by such relatives. If the results of our four-region sample are representative nationwide--and VA intends to determine if they are--an estimated $541 million accumulated from VA benefits in estates of mentally incompetent veterans could be claimed by such other relatives.

Legislation is needed to limit the inheritance of all incompetent veterans' estates to spouses, children, and dependent parents. Such legislation would enable VA to recover millions of dollars of benefits that would otherwise go to other relatives.

ESTATES OF MANY LIVING INCOMPETENT VETERANS ARE NOT PROTECTED FROM CLAIMS

As discussed in chapter 2, the Congress passed legislation in 1959 limiting the inheritance of mentally incompetent veterans' estates in certain circumstances to spouses, children, and dependent parents. However, because the restriction does not apply to the estates of veterans with court-appointed or VA-appointed fiduciaries other than chief officers of health care institutions, many estates are currently unprotected from claims by relatives other than spouses, children, and dependent parents.

As discussed on page 6, when the legislation was being considered VA expressed concern that questions may be raised regarding the legality of recovering funds already in the hands of guardians and fiduciaries. However, the House Committee on Veterans' Affairs expressed the opinion that--while a constitutional question may be raised--a sound interpretation of the law favored the constitutionality of applying a recovery provision to payments made to all guardians and fiduciaries. While the constitutional issue has not been resolved, the legislation enacted reflected VA's concerns by limiting the provision to incompetent veterans with patients' accounts maintained by the chief officers of the veterans' health care institutions.

In response to a May 11, 1981, letter from our Office of General Counsel, VA's General Counsel indicated that VA's prior concerns were still sound. However, he expressed the opinion that if a procedure to limit the distribution of estates were applied prospectively, the Government would be likely to prevail over legal challenges to the procedure. (See app. III.)

VA's General Counsel also indicated in its response that legislation to limit inheritance of mentally incompetent veterans' estates to spouses, children, and dependent parents would raise questions of equitable treatment of other classes of relatives who have looked after and often supported the veterans in their homes. In this regard, it should be noted that those who care for mentally incompetent veterans under fiduciary arrangements--including relatives--are entitled to reimbursement from VA for direct costs incurred in providing such care.

We reviewed a random sample of 533 cases from a total of 5,875 mentally incompetent veterans in four VA regional offices to identify those veterans having no spouses, children, or dependent parents, and whose estates are held by court-appointed and VA-appointed fiduciaries other than health care institution chief officers. Based on the sample results, we estimate that about 3,100 of the cases (52 percent) in these regions are unprotected from inheritance by relatives other than spouses, children, and dependent parents. As shown below, we estimate that these estates have accumulated VA benefits of about $56.3 million.

Regional office	Universe of cases	Estimated number of cases unprotected	Estimated percent of cases unprotected	Estimated amount of VA funds unprotected (note a)
				(millions)
St. Paul	1,560	875	56.1	$13.6
Washington, D.C.	593	265	44.7	5.8
Los Angeles	1,904	1,014	53.2	20.7
Boston	1,818	902	49.6	16.2
Total	5,875	3,056	52.0	$56.3

a/These estimates were obtained from a statistical sample and thus are subject to sampling errors. At the 95-percent confidence level, the estimated total amount of VA funds unprotected in the four regions is $56.3 million ± $9.4 million.

Because it was impractical to select a nationwide sample, our results cannot be statistically projected to all VA regional offices. However, VA program officials advised us that our sample results could possibly represent nationwide experience, and they will extend the sample using our review criteria to determine if this is so. If our sample results are, in fact, representative of all VA regional offices, an estimated 29,000 incompetent veterans' estates involving about $541 million in VA benefits could be unprotected from claims by relatives other than spouses, children, and dependent parents.

Following are examples of estates which are unprotected from claims by such relatives in the four regions we visited.

--A World War II veteran was awarded VA compensation benefits for a 100-percent service-connected disability in June 1950. The veteran has lived primarily in a board and care home from the time he was rated incompetent. The 1980 estate accounting of the current fiduciary, an attorney, showed an estate balance of almost $59,000 consisting solely of VA disability compensation benefits and accumulated interest. The estate increased by over $6,000 during the year and continues to grow. According to VA records, the veteran's only known relative is an aunt who will inherit the estate if she survives him.

--A World War II veteran has been receiving compensation benefits for a 100-percent service-connected disability. The veteran's only source of income is the $1,383 monthly disability payment which is invested by a court-appointed fiduciary. The veteran resides at a board and care home. The fiduciary's 1980 accounting showed an estate value of almost $120,000 accumulated solely from VA payments. The estate increased by over $15,000 during the year and continues to grow. VA records do not identify any spouse, children, or dependent parent, in which case the veteran's estate could be claimed by other relatives.

--A World War I veteran was hospitalized in a VA facility for a 100-percent service-connected disability from 1924 until he was discharged to a board and care home in 1958, where he still lives. The court-appointed fiduciary who handles his estate has informed VA that the veteran's only relatives are nieces and nephews. The veteran's estate is now over $116,000, all of which was accumulated from VA benefits.

--A World War II veteran was awarded compensation benefits in July 1947 for a 70-percent disability, which was upgraded to 100 percent when the veteran was hospitalized in 1949. A corporate fiduciary was court appointed in 1950

to protect the veteran's estate. The veteran is currently in a VA-contract nursing home and his estate is now valued at about $76,000. His next of kin--a brother--was contacted by VA in 1964 when plans were being made for the veteran to leave the hospital, but the brother did not respond to any of VA's letters soliciting his interest in helping the veteran. As a result, the veteran was placed in a foster care home.

MOST ESTATES HAVE POTENTIAL FOR CLAIMS BY RELATIVES

Most incompetent veterans' estates have potential to be claimed by relatives other than spouses, children, and dependent parents. Many of these veterans can be expected to live for many more years and sometimes outlive spouses, children, and dependent parents. Thus, estates which are currently protected may become subject to successful claims by other relatives in the future. For example, we found a case in which a 54-year-old incompetent veteran with no living spouse or child had a 76-year-old dependent mother, as well as an aunt and a niece. The VA field examiner noted that the mother had been in poor health. If she does not outlive the veteran, his current estate of about $21,800 accumulated from VA benefits could be claimed by the aunt and niece.

Also, the type of fiduciary arrangement can change an estate from one which is protected from claims by other relatives--a patient's account has been established from which the institution can be reimbursed directly for the cost of care--to one which is unprotected. That is, if the funds are transferred from the patient's account to the new fiduciary, the inheritance restrictions no longer apply. Such transfers can occur when an incompetent veteran is moved from a health care institution where the chief officer is the fiduciary to another type of care arrangement. For example, when a mentally incompetent veteran was discharged from such an institution, his $48,000 estate which had accumulated in a patient's account was released to a new court-appointed guardian. As a result, the estate is no longer subject to the statutory restriction on inheritance imposed by 38 U.S.C. 3202(d); it is now subject to State statutes which allow for inheritance by relatives other than spouses, children, and dependent parents.

CONCLUSIONS

Although current law protects accumulated VA benefits in certain incompetent veterans' estates from inheritance by relatives other than spouses, children, and dependent parents, the protections do not apply to veterans under all types of fiduciary arrangements. As a result, many estates comprised of millions of dollars of VA benefits are unprotected from claims by such relatives. In the four VA regional offices we visited, an estimated

3,100 estates with about $56.3 million accumulated from VA benefits are not protected from such claims.

Legislation is needed to prevent relatives other than spouses, children, and dependent parents from inheriting incompetent veterans' estates accumulated from VA benefits. Since the issue regarding potential legal questions involved with recovering VA benefits already in the hands of guardians and fiduciaries has not been resolved, we are limiting our recommendation to only those funds paid out by VA after a legislative change is enacted. However, because of the substantial funds involved, the Congress should consider adopting legislation which would provide for the recovery of payments previously made to guardians and fiduciaries.

With regard to the question raised by VA's General Counsel on the matter of equitable treatment of other relatives who care for incompetent veterans, as pointed out earlier, such relatives may be compensated for the costs involved in taking care of the veteran. Whether such other relatives ought to also receive any or all of the VA-funded portion of the veteran's estate when he dies is a matter that the Congress may wish to consider along with the other issues addressed below.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend 38 U.S.C. 3202 by adding a new subsection (f) as follows:

> "Any funds hereafter deposited in the hands of a fiduciary appointed by a State court or the Veterans Administration derived from benefits payable to mentally incompetent or insane veterans under laws administered by the Veterans Administration, which under the law of the State wherein the beneficiary had his last legal residence would descend and be distributed to persons other than the surviving spouse, children, or dependent parents of the beneficiary (there being no such survivors), shall not be paid to such persons but instead shall revert to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that a reverter is in order, to the Veterans Administration, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation."

MATTER FOR CONSIDERATION BY THE CONGRESS

Because of the substantial funds already unprotected from claims by relatives other than surviving spouses, children, or dependent parents, the Congress should consider adopting legislation which would provide for the recovery of payments previously made to guardians and fiduciaries. Since the constitutionality of recovering such funds was an issue raised in the past but not resolved, the Congress may wish to obtain the views of the Department of Justice and VA on the matter.

CHAPTER 4

VA'S ESTATE ACCOUNTING PROCEDURES NEED TO BE REVISED

VA's share of mentally incompetent veterans' estates is often understated because many VA regional offices apply veterans' expenses first to VA benefits, and not to other revenue sources unless the expenses exceed the VA benefits. In a sample of cases in two regions, VA understated benefits accumulated in 53 estates unprotected from claims by relatives other than spouses, children, and dependent parents by $276,300. To assure that VA accurately identifies all estate funds to which it may have a claim, it needs to revise its accounting procedures to allocate all expenses which cannot be matched with specific revenue sources proportionally to all such sources.

ACCOUNTING PROCEDURES ASSUME VA PORTION OF ESTATE REVENUES IS SPENT FIRST

While VA's estate accounting procedures state that expenses should be matched with revenue sources on the basis of fact, the procedures also provide that, in the absence of factual data, regional offices may assume that VA benefits are spent before other income for the care and maintenance of the mentally incompetent veterans. Of 33 district counsels who responded to the questions in our letters regarding regional office accounting procedures, 22 (67 percent) said they applied all expenses first to VA benefits--a procedure that contrasts with generally accepted accounting principles which provide that expenses which cannot be directly identified with specific revenues should be allocated on some reasonable basis. In this instance, we believe a reasonable basis is to allocate the expenses proportionally to all revenue sources on the basis of relative contributions.

As a result of applying expenses first to VA benefits, the VA benefits accumulated in many estates are understated and VA may not be recovering all the funds to which it is entitled upon the deaths of veterans. The following illustrates the impact of the procedure of applying all estate expenses to VA benefits by comparing that procedure with allocating expenses proportionally to all sources on the basis of relative revenue contributions. The example assumes annual VA benefits of $10,000, other revenues of $5,000, and expenses of $6,000.

	Total	Allocation of all expenses to VA: VA share	Allocation of all expenses to VA: Other share	Proportional allocation of expenses: VA share	Proportional allocation of expenses: Other share
Revenues	$15,000	$10,000	$5,000	$10,000	$5,000
Expenses	-6,000	-6,000	-	-4,000	-2,000
Estate balance	$ 9,000	$4,000	$5,000	$6,000	$3,000

Thus, in the example, application of all expenses to VA benefits results in a VA share of the estate which is $2,000 less than it would be if expenses are allocated proportionally to all revenue sources.

RECOVERIES COULD INCREASE BY ALLOCATING EXPENSES PROPORTIONALLY

While the procedure of applying all expenses to VA benefits understates VA's share, it has little effect under current law because estates seldom revert to the Federal Government. However, if our recommended amendment to restrict inheritance of incompetent veterans' estates to spouses, children, and dependent parents is enacted (see p. 13), such procedures could result in VA not recovering all funds to which it is entitled.

To demonstrate the increase in potential estate recoveries that could accrue to VA by amending its accounting procedures, we recomputed the VA benefits accumulated in 53 estates in two VA regional offices on a proportional basis and compared it to VA computations. We selected those estates from our sample of living veterans (see ch. 3) which were unprotected from future claims by relatives other than spouses, children, and dependent parents, and had income from sources in addition to VA.

We found that by allocating expenses proportionally to all revenue sources of the estates sampled in the two regions, VA's computation of its accumulated benefits would increase by about $276,300--$51,700 (13 percent) in one region and $224,600 (24 percent) in the other.

CONCLUSIONS

Because many VA regions apply all incompetent veterans' expenses to VA benefits before other revenue sources, VA's share of mentally incompetent veterans' estates is often understated. VA should revise its estate accounting procedures so that it can recover all funds to which it is entitled from estates left by mentally incompetent veterans.

RECOMMENDATION TO THE
ADMINISTRATOR OF VETERANS AFFAIRS

We recommend that the Administrator direct the Chief Benefits Director to revise the estate accounting procedures to require that all expenses which cannot be matched directly with specific revenue sources be allocated to each source in proportion to its contributions to the mentally incompetent veteran's estate.

OBJECTIVES, SCOPE, AND METHODOLOGY

We reviewed all cases closed, due to the deaths of mentally incompetent veterans, in four VA regional offices during the 2 years ended December 1980 to identify those cases having estates accumulated from VA benefits which had been claimed by relatives other than spouses, children, and dependent parents. Second, we sampled active cases of living veterans under fiduciary arrangements supervised through VA's guardianship program at the four VA regional offices to identify those having estates accumulated from VA benefits which are subject to future claims by relatives other than spouses, children, and dependent parents. In order to get an indication of the incidence of such relatives' claims for estates left by mentally incompetent veterans nationwide, we sent letters to VA's 54 district counsels requesting information on such claims (4 VA regional offices are served by district counsels located in other offices). Finally, we obtained the current views of VA's General Counsel on potential changes to legislation pertaining to the inheritance of mentally incompetent veterans' estates. (See app. III.)

We performed our review in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

CASE REVIEW METHODOLOGY

We included the VA Los Angeles, St. Paul, Boston, and Washington, D.C., regional offices in our review. We selected VA's Los Angeles region because our initial survey work showed that the VA district counsel in that region was aware of the situation and had identified instances where estates accumulated from VA benefits had been inherited by relatives other than spouses, children, and dependent parents. We selected the St. Paul, Boston, and Washington, D.C., VA regions to obtain a measure of geographic representation.

We restricted our review of active and closed cases to veteran beneficiaries with legal custodians, court-appointed guardians, or institutional award arrangements. We excluded certain types of beneficiaries and fiduciary arrangements from our review because the estates accumulated from VA funds for such beneficiaries are very small (widows and minors) or the arrangement, by definition, indicates there is a close relative (spouse is the fiduciary).

Closed cases

To identify veterans who had died leaving estates subject to claims by relatives other than spouses, children, and dependent parents, we reviewed 966 mentally incompetent veteran

cases closed--due to the death of the veteran--by the Washington, D.C., Boston, St. Paul, and Los Angeles VA regions during the 2 years ended December 1980. We limited our review to this 2-year period because the regions retain case files for only 2 years after they are closed.

We used the following criteria to identify closed cases with estates which we determined were subject to claims by relatives other than spouses, children, and dependent parents:

--The veterans had estates all or part of which were accumulated from VA benefit payments and which were held by fiduciaries rather than in patients' accounts.

--The files indicated that the veterans had no spouses, children, or dependent parents.

After we identified the cases at the four regions which we determined had estates which were subject to such claims, we searched available probate court records to identify actual heirs for the estates.

Active cases

We selected a random sample of 533 active cases (living veterans) out of a universe of 5,875 cases of veterans under designated fiduciary arrangements (see p. 18) at VA's Washington, D.C., Boston, St. Paul, and Los Angeles regional offices. Our objective was to identify cases subject to claims by relatives other than spouses, children, and dependent parents using the same criteria described above for closed cases.

Estate valuation

To determine total VA funds which have been or could potentially be inherited by other relatives, we initially intended to rely on VA's computation of its share of estates as shown in the case files. However, the four regions did not always identify the VA portion of an estate and, when it was identified, the method usually attributed a disproportionately low share of the funds to VA. (See ch. 4.)

Accordingly, we used the following formula to compute a more equitable estimate of the proportion of the estates accumulated from VA benefits:

$$\frac{\text{VA monthly benefits}}{\text{Total monthly income of the estate}} \times \text{Total estate} = \text{VA share of estate}$$

The reasonableness of this formula for estimation purposes was concurred in by VA program staff at the St. Paul region, and five VA district counsels indicated they use this method to identify VA funds for recovery under 38 U.S.C. 3202(e).

Statistical data cannot be projected for all VA regions

Because of the size of the guardianship program--over 56,000 mentally incompetent veterans were under designated fiduciary arrangements (see p. 18) on January 31, 1981--and the dispersion of incompetent veterans nationwide, we decided that an extensive statistical sample was impractical. Rather, we selected the regions in our review to obtain geographic representation and cannot statistically project our sample results to all of VA's 58 regional offices. However, our sample results were valid for each of the four regions and for the four regions taken as a whole. Further, VA program officials advised us that our results could possibly represent nationwide experience and said they would extend the sample using our review criteria to determine if this is so.

REQUEST TO VA'S DISTRICT COUNSELS

To obtain nationwide information on estates accumulated from VA benefits of mentally incompetent veterans which have been claimed by relatives other than spouses, children, and dependent parents, we sent a letter to each of VA's 54 district counsels requesting information on such claims handled by their offices during the 2 years ended December 1980. In addition to specific information on the relevant cases, we asked the district counsels for information on any State laws which would preclude such claims by other relatives and for any data or opinions they might have on future trends of such claims. (See app. II.)

VA DISTRICT COUNSEL RESPONSES

We requested VA's 54 district counsels to provide information on claims for estates left by mentally incompetent veterans. We asked them to identify (1) State laws or provisions that would preclude inheritance by relatives other than spouses, children, and dependent parents, (2) individuals or organizations in their area which locate relatives for inheritance purposes, and (3) the method used to determine the VA share of estates. We also asked the district counsels for their opinions of the future trends, or incidence rate, of claims by relatives other than spouses, children, and dependent parents for estates of mentally incompetent veterans. Finally, we asked them to provide information on specific cases where incompetent veterans' estates were distributed to such relatives. The responses we received are summarized below.

--District counsels in 43 States reported having no laws which prevent relatives other than spouses, children, and dependent parents from inheriting estates of mentally incompetent persons. Two district counsels reported having statutes which limit inheritance by other relatives. The district counsel in Reno, Nevada, said that State law prevents such relatives from inheriting in certain instances where the heirs are aliens residing abroad. The district counsel in Winston-Salem, North Carolina, said that North Carolina has a statute which was intended to prevent other relatives from inheriting, but noted that unlimited succession of such heirs is still possible under State case law in certain conditions. For five States where the VA district counsels did not respond to our question, we researched State statutes and found that none had laws which prevent relatives other than spouses, children, and dependent parents from inheriting mentally incompetent veterans' estates.

--Of the 39 district counsels who answered concerning heir-finding individuals or organizations, 12 knew of such persons or organizations in their areas.

--District counsels in 22 of 33 responses said VA funds are applied first for the care and maintenance of veterans. Five said expenses are accounted for separately by revenue source, one said expenses are applied first to non-VA revenue sources, and five indicated that expenses are allocated to revenue sources on the basis of relative contributions to identify VA funds for recovery under 38 U.S.C. 3202(e). (See ch. 4 for discussion of procedures used by VA to determine VA's share of estates of mentally incompetent veterans.)

APPENDIX II

--Twelve district counsels of the 33 who responded to the question concerning incidence rates expressed the opinion that the rate of other relatives inheriting the estates of incompetent veterans would increase. Only one said a decrease would occur, 10 said there would be no change, and 10 had no opinion.

Finally, 38 district counsels provided 600 examples of estates of mentally incompetent veterans inherited by relatives other than spouses, children, and dependent parents.

APPENDIX III

Office of General Counsel Washington, D.C. 20420

Veterans Administration

NOV 24 1981

Mr. Henry R. Wray
Assistant General Counsel
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Wray:

You recently sought our views on possible statutory changes to limit distribution of estates of mentally incompetent veterans in the hands of fiduciaries to spouses, children and dependent parents on either a retroactive or prospective basis. At the present time, such funds are returned to the United States if under State law they would otherwise escheat to the State, i.e., where there are no heirs. See 38 U.S.C. § 3202(e). However, when there are heirs, as specified in State inheritance laws, other than a spouse, child, or dependent parent, such heirs can claim veterans' VA-derived estates. You also asked for our views on extending to all estates of mentally incompetent veterans, the rule that benefit payments to an incompetent hospitalized veteran's estate will cease when the estate reaches $1500, regardless of whether such veterans are cared for at public expense, in order to prevent the future buildup of gratuitous funds in the estates of such veterans having no spouses, children, or dependent parents.

In your letter you drew our attention to VA testimony on H.R. 72, 85th Congress, in connection with a provision in that bill to limit the distribution of estates derived from VA benefit payments in the hands of guardians and fiduciaries, on a retrospective basis. At that time the Agency cautioned that once funds have passed beyond the control of the Federal Government attempts to implement a recapture provision would be fraught with legal and administrative difficulties, which are not resolved by the fact that the benefits may be considered as "gratuities", i.e., voluntary payments by the Government to a specific class of beneficiaries. In essence the VA position was that where prior payments of benefits have become fully vested and effectively a part of the estate of the incompetent beneficiary the validity of any recapture proposal would be highly questionable.

We believe that analysis is still sound. VA benefits are paid without any stipulation for their reverter to the Government under specified conditions, such as those

In Reply Refer To: 023

proposed in your question. Those benefits would appear to have assumed the same status, from the standpoint of beneficiary ownership and disposition upon death, as any other funds and properties in the hands of fiduciaries. Any attempt by the Government to impose new conditions materially qualifying these vested property rights would undoubtedly be challenged in the courts by those whose claims and interests are adversely affected, as well as by fiduciaries seeking to protect themselves from challenge.

You also noted in your letter the Agency's previously expressed concern that even if a proposed procedure to limit distribution of estates were applied prospectively, it would necessarily produce legal and administrative difficulties resulting from Federal intervention in an area generally reserved to the States. There could indeed be time consuming legal challenges to the implementation of such prospective legislation, even though it appears to us that the Government would be likely to prevail in such litigation.

As regards your second question, an extension of the $1500 rule would prevent the buildup of substantial estates which could conceivably pass to remote heirs. However, we would foresee considerable administrative problems in the implementation of such a rule. Illustrative of those difficulties are cases which require discontinuance of payments every two or three months, particularly where the veteran is one-hundred percent service connected. Resumption of payments in such cases would occur in one to two months after suspension of payments, and would create a tremendous accounting burden for the VA. The proposed extension would also require fiduciaries for incompetent veterans, even those without a spouse or child, to submit regular accountings, potentially on a monthly basis. This would cause a dramatic increase in the reporting burden on the public. [See GAO note.]

Both proposals, of course, raise questions of equitable treatment of relatives other than spouses, children or parents, who have looked after and often supported the veteran in their homes.

We trust that you will consider these points in your further study of this matter. Should your efforts

GAO note: Subsequent to our May 11, 1981, request for VA's views, we decided not to address potential changes to the $1,500 rule because they would not be needed to protect mentally incompetent veterans' estates if our recommended amendment to 38 U.S.C. 3202 is enacted. (See p. 13.)

APPENDIX III

result in the introduction of legislation, we would anticipate that, after Executive branch coordination, the VA would provide detailed comments on any such measure in response to formal requests from Congress.

Sincerely yours,

John P. Murphy

JOHN P. MURPHY
General Counsel

APPENDIX IV

NINETY-SIXTH CONGRESS

RAY ROBERTS
CHAIRMAN

U.S. House of Representatives
COMMITTEE ON VETERANS' AFFAIRS
335 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

September 17, 1980

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G. Street, N.W.
Washington, D. C. 20548

Dear Mr. Comptroller General:

I recently became aware of a situation where the estates of mentally incompetent veterans, consisting totally of VA compensation benefits, are being claimed by remote heirs. These estates are held by fiduciaries and involve veterans who have died intestate with no immediate family. Similar estates held in VA personal funds of patients' trust accounts are prohibited from reverting to remote heirs under 38 U.S.C. 3202.

In passing this prohibition, Congress intended that distant relatives should not be enriched through benefits intended for veterans or their immediate families. However, large estates consisting of VA benefits are evidently still enriching distant relatives who may have had very little to do with the veteran and were not affected by his service to the United States.

I would like your office to investigate the above situation and determine to what extent estates held by fiduciaries are reverting or will revert to remote heirs. In reporting back to the Committee, I would like your office to set out any administrative or legislative recommendations that would prevent this situation should your investigation establish that current regulations or statutes need to be changed.

Sincerely,

Ray Roberts

RAY ROBERTS
Chairman

cc: Mr. George Peck

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