



This document is scheduled to be published in the Federal Register on 10/23/2013 and available online at <http://federalregister.gov/a/2013-24625>, and on FDsys.gov

DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 12

RIN 2900-AO41

Designee for Patient Personal Property

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulation that governs a competent veteran's designation of a person to receive the veteran's funds and personal effects in the event that such veteran was to die while in a VA field facility. The proposed rule would eliminate reference to an obsolete VA form, clarify the role of a VA fiduciary for an incompetent veteran-patient, as well as restructure the current regulation for ease of readability.

DATES: Comments must be received by VA on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through www.regulations.gov; by mail or hand-delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AO41, Designee for Patient Personal Property." Copies of comments received will be available for public inspection in the Office of

Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; (202) 461-1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: If a competent veteran who is receiving VA medical care dies in a VA field facility, any funds and personal effects belonging to the veteran must be turned over to the person who had been designated by the veteran upon admission to such VA field facility. VA requests and encourages a competent veteran to designate an individual and provide the facility with the individual's information in order to facilitate the process of disposition of the veteran's funds and personal effects in the event of his or her death, and to help alleviate some of the burden on the deceased veteran's survivors.

Current § 12.1(a) states that a competent veteran who is admitted to receive VA care will be requested and encouraged to designate on the prescribed VA Form 10-P-10, Application for Hospital Treatment or Domiciliary Care, a person to whom VA would deliver the veteran's funds and effects in the event of such veteran's death. When this

regulation was originally written in 1948, VA Form 10-P-10 was the VA form used by veterans to apply for hospital or domiciliary care in the VA health care system. VA Form 10-P-10 contained a space for a veteran to designate a person who would receive the veteran's funds and effects in the event of the veteran's death in a VA field facility. The veteran provided the name and address of the designee, as well as an alternate designee, on the form. However, VA Form 10-P-10 is an obsolete form that is no longer used by VA. The current form that veterans use to apply for enrollment in the VA health care system is VA Form 10-10EZ, Application for Health Benefits. However, VA Form 10-10EZ does not include a space for a veteran to designate someone to receive his or her funds and effects.

VA currently requests a veteran to name a designee during the registration process when VA admits a veteran for care at a VA field facility. The designee information is recorded by VA personnel directly into the veteran's record in the Veterans Health Information Systems and Technology Architecture (VistA), VA's patient database. The veteran is requested to verify the designation each subsequent time the veteran is admitted, during the registration process. However, having a VA employee enter the designee into VistA without having a signed written designation by the veteran increases the risk for litigation against VA by the veteran's survivors. The veteran's survivors may claim the designee was not appointed by the veteran because the veteran did not sign a document to designate such individual to receive his or her personal funds and effects. In order to reduce the risk of litigation, we propose to create a new VA form. VA would encourage a competent veteran to complete and

sign this form upon admittance to receive VA medical care. On said form, the veteran would designate an individual to receive the veteran's funds and effects in the event that such veteran were to die while receiving VA medical care. Proposed paragraph (a)(1) would state: "Upon admission to a VA field facility, VA will request and encourage a competent veteran to designate in writing, on the relevant VA form, an individual to whom VA will deliver the veteran's funds and effects in the event of the veteran's death in such VA field facility." In proposed paragraph (a)(5), we would state that, to be effective, a completed form must be received by the facility head or facility designee prior to the veteran's death. We would not include the form number in proposed paragraph (a) in order to avoid future amendments in the event that such form should change.

Current paragraph (a) also states: "The veteran may in writing change or revoke such designation at any time." We propose to restate this requirement, reworded for clarity, as proposed paragraph (a)(2). Proposed paragraph (a)(2) would state: "The veteran may change or revoke a designation in writing, on the relevant VA form, at any time."

We also propose to restructure § 12.1 for ease of readability. Current § 12.1(a) is a long and very dense paragraph containing information on several key elements of the designation process. We propose to divide it into several smaller paragraphs to make the information easier to find.

Section 8502 of title 38, United States Code, does not restrict whom the veteran may designate to receive the veteran's funds or effects in the event that such veteran dies in a VA field facility. However, to ensure compliance with the rules regarding government ethics, current § 12.1(a) states that "[t]he person designated may not be an employee of the Department of Veterans Affairs unless such employee be the wife (or husband), child, grandchild, mother, father, grandmother, grandfather, brother, or sister of the veteran." In proposed § 12.1(a)(4), we would continue to disallow as a possible designee a VA employee who is not a member of the veteran's family simply to avoid any potential for impropriety or the appearance thereof.

However, we believe that the list of potential designees in the current rule should be broadened to accommodate other members of the veteran's family who are not on the list. The determination of the designee is an expression of preference by the veteran and restricting this determination to a limited pool of family members may prevent the veteran from designating a trusted individual in the veteran's extended family because they are employed by VA. Thus, we propose to eliminate this list and simply state, in proposed paragraph (a)(4), that the designee may not be a VA employee unless such employee is a member of the veteran's family. We would also define the term "family member" for purposes of this section to include "the spouse, parent, child, step family member, extended family member or an individual who lives with the veteran but is not a relative of the veteran."

Proposed paragraph (a)(3) would cross-reference § 12.5, Nondesignee cases, for instances in which the designee is unable or unwilling to accept the delivery of funds and effects. We would also cross-reference § 12.5 for instances in which the veteran does not provide a designee. Because § 12.5 provides a process for VA to follow when no designee exists or when a designee is unable or unwilling to accept the delivery of funds and effects, we propose to eliminate the need for the veteran to name an alternate designee, as stated in current paragraph (a). This will also ease any burden on the veteran to make an additional designation.

Proposed paragraph (b) would incorporate the language from current paragraph (a) that states that the delivery of the veteran's funds or effects does not affect the title to such funds or effects or the person ultimately entitled to receive them. Proposed paragraph (b) would restructure the language of paragraph (a) for ease of readability, without change in content.

Current paragraph (a) also states that if a veteran becomes incompetent while admitted to VA care, any designation that the veteran had previously made will become inoperative with respect to the funds deposited by VA in the Personal Funds of Patients account that are derived from gratuitous benefits under laws administered by VA. It further states that the veteran's guardian may change or revoke the existing designation with regards to the personal effects and funds derived from other sources. We propose to add a new paragraph to explain what happens to Personal Funds of Patients accounts when a veteran becomes incompetent. VA has authority, under 38 U.S.C.

5502(a)(1), to appoint an individual to manage a veteran's VA benefits after VA determines that the veteran is incompetent. The term that VA uses for this individual is "fiduciary."

Section 5506 of title 38, United States Code, defines the term "fiduciary," for purposes of chapters 55 and 61 of 38, United States Code, as "(1) a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or (2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary." The term "fiduciary" is different than the term "guardian" as the latter term is currently used in paragraph (a). The term "guardian" in current paragraph (a) refers to a guardian or conservator appointed by a state court after such court makes a determination that a veteran is incompetent.

VA may, pursuant to 38 U.S.C. 5502(a) and 38 CFR 13.55, conclude that a veteran is incompetent to manage his or her VA-derived funds based on medical evidence without the need of a court determination and, as a result, appoint a fiduciary, who may or may not be the guardian appointed by the state court. The VA-appointed fiduciary is authorized by VA to manage the veteran's monetary VA benefits, while a court-appointed guardian or conservator may be authorized to manage all of the veteran's affairs. We would state in proposed paragraph (c) that if an order of a state

court determines that a veteran is incompetent or if a VA clinician determines that the veteran is unable to manage monetary VA benefits after such veteran is admitted in a VA field facility, then “[t]he VA field facility staff will contact the Veterans Benefits Administration for the application of 38 CFR 3.353, regarding an incompetency rating as to whether the veteran is able to manage monetary VA benefits, and, if appropriate, 38 CFR 13.55, regarding VA fiduciary appointments.” We would also state that the Veterans Benefits Administration’s determination of a veteran being incompetent to manage VA benefits would negate any designation under paragraph (a) of this section with regards to VA benefits deposited by VA into the Personal Funds of Patients. However, the Veterans Benefits Administration’s determination of a veteran being incompetent to manage VA benefits will not change the veteran’s designation regarding “disposition of funds and personal effects derived from non-VA sources, unless a court-appointed guardian or conservator changes or revokes the existing designation.”

Proposed paragraph (c) would also not include the term “gratuitous benefits under laws administered by the Department of Veterans Affairs,” which appears in the current regulation. This is an archaic term that is no longer used in VA, and we believe that the public will find it confusing. The modern convention of this term is “VA benefits.” For this same reason, we propose to remove the phrase “funds derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” from § 12.0 and replace it with “funds derived from VA benefits.” For this same reason, we would also make similar changes to §§ 12.2(a), 12.3(a)(1), 12.4(a), 12.4(d), 12.5(c), 12.5(d).

We would move the content of current § 12.1(b) to proposed § 12.1(d), and would add that VA will encourage a veteran to place articles of little or no use to the veteran during the period of care in the custody of either a family member or a friend, whereas the current rule refers only to the veteran's "relatives."

We also propose to amend the authority citation for 38 CFR part 12. The current authority citation for part 12 is "72 Stat. 1114, 1259, as amended; 38 U.S.C. 501, 8510." We propose to delete the reference to "72 Stat. 1114, 1259, as amended," because it is an outdated method of referencing VA statutory authority. The current method of citation is to title 38 of the United States Code. We also propose to correct the citation because 38 U.S.C. 8510 is not the sole authority for 38 CFR part 12. Chapter 85 of title 38, United States Code, applies to all the sections within 38 CFR part 12. We, therefore, propose to amend the authority citation for 38 CFR part 12 to state "Authority: 38 U.S.C. 501, 8501-8528."

Effect of rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule includes a provision constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that requires approval by the Office of Management and Budget (OMB). Specifically, proposed § 12.1 contains a collection of information under the Paperwork Reduction Act of 1995. Accordingly, under section 3507(d), VA has submitted a copy of this rulemaking action to OMB for review. OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to: Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or through www.Regulations.gov. Comments should indicate that they are submitted in response to “2900-AO41-Designee for Patient Personal Property.”

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed amendments to 38 CFR 12.1 contain a collection of information under the Paperwork Reduction Act of 1995 for which we are requesting approval by OMB. This collection of information is described immediately following this paragraph.

Title: Designee for Patient Personal Property.

Summary of collection of information: The information required in § 12.1 would allow the veteran, upon admission to a VA field facility, to designate a person to receive the veteran's funds or effects in the event that the veteran dies while admitted to such VA field facility. The information required in § 12.1 would also allow the veteran to change or revoke such designee.

Description of the need for information and proposed use of information: If the veteran dies in a VA field facility, any funds or personal effects belonging to the veteran must be turned over to a person designated by the veteran. VA requests and encourages a veteran to name a person as a designee in order to facilitate the process of disposition of the veteran's funds and effects. VA also allows the veteran the opportunity to change or revoke such designee at any time. The information obtained through this collection eliminates some of the burden on the deceased veteran's survivors in the event of the veteran's death in a VA field facility.

Description of likely respondents: Veterans admitted to a VA field facility.

Estimated number of respondents per year: 165,844

Estimated frequency of responses per year: 1

Estimated average burden per response: 3 minutes

Estimated total annual reporting and recordkeeping burden: 8,292 hours per year

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This proposed rule would directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by OMB as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user

fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this proposed rule are as follows: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.019, Veterans Rehabilitation-Alcohol and Drug Dependence.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on September 30, 2013, for publication.

List of Subjects in 38 CFR Part 12

Estates; Veterans.

Dated: October 17, 2013

William F. Russo, Deputy Director,
Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 12 as follows:

PART 12 -- DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS

1. The authority citation for part 12 is revised to read as follows:

Authority: 38 U.S.C. 501, 8501-8528.

2. Amend § 12.0 paragraph (b) by removing the phrase “funds derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds derived from VA benefits”.

3. Revise § 12.1 to read as follows:

§ 12.1 Designee cases; competent veterans.

(a) Designees-general. (1) Upon admission to a VA field facility, VA will request and encourage a competent veteran to designate in writing, on the relevant VA form, an individual to whom VA will deliver the veteran’s funds and effects in the event of the veteran’s death in such VA field facility. The individual named by the veteran is referred to in this part as the designee.

(2) The veteran may change or revoke a designation in writing, on the relevant VA form, at any time.

(3) If the veteran does not name a designee or if a designee is unable or unwilling to accept delivery of funds or effects, § 12.5 Nondesignee cases, applies.

(4) The designee may not be a VA employee unless such employee is a member of the veteran's family. For purposes of this section, a family member includes the spouse, parent, child, step family member, extended family member or an individual who lives with the veteran but is not a member of the veteran's family.

(5) To be effective, a completed form must be received by the facility head or facility designee prior to the veteran's death.

(b) Delivery of funds and effects. The delivery of the veteran's funds or effects to the designee is only a delivery of possession. Such delivery of possession does not affect in any manner:

- (1) The title to such funds or effects; or
- (2) The person legally entitled to ownership of such funds or effects.

(c) Veteran becomes incompetent. If a veteran is determined to be incompetent pursuant to an order of a state court or is determined to be unable to manage monetary VA benefits by a VA clinician after the veteran is admitted to a VA field facility, the VA field facility staff will contact the Veterans Benefits Administration for the application of 38 CFR 3.353, regarding an incompetency rating as to whether the veteran is able to manage monetary VA benefits, and, if appropriate, 38 CFR 13.55, regarding VA fiduciary appointments. If the Veterans Benefits Administration determines that a veteran is incompetent to manage monetary VA benefits, any designation by the veteran under paragraph (a) of this section will cease with respect to VA benefits that are deposited by VA into the Personal Funds of Patients. The veteran's designation will

not change with respect to disposition of funds and personal effects derived from non-VA sources, unless a court-appointed guardian or conservator changes or revokes the existing designation.

(d) Retention of funds and effects by a veteran. Upon admission to a VA field facility, VA will encourage a competent veteran to:

(1) Place articles of little or no use to the veteran during the period of care in the custody of a family member or friend; and

(2) Retain only such funds and effects that are actually required and necessary for the veteran's immediate convenience.

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900-XXXX.)

(Authority: 38 U.S.C. 8502)

4. In § 12.2 amend paragraph (a) by removing the phrase “funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

5. In § 12.3 amend paragraph (a)(1) by removing the phrase “funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits,” and by removing the word “gratuitous” and adding, in its place “VA”.

6. Amend § 12.4 by:

a. In paragraph (a), removing the phrase “funds on deposit in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs and deposited by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

b. In paragraph (d), removing the phrase “funds deposited by the Department of Veterans Affairs in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

7. Amend § 12.5 by:

a. In paragraph (c), removing the phrase “gratuitous benefits deposited by the Department of Veterans Affairs in Personal Funds of Patients under laws administered

by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

b. In paragraph (d), removing the phrase “gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “VA benefits”; and removing “funds derived from gratuitous” and adding, in its place, “funds derived from VA”.

[FR Doc. 2013-24625 Filed 10/22/2013 at 8:45 am; Publication Date: 10/23/2013]