

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

§ 5501A. Beneficiaries' rights in mental competence determinations

The Secretary may not make an adverse determination concerning the mental capacity of a beneficiary to manage monetary benefits paid to or for the beneficiary by the Secretary under this title unless such beneficiary has been provided all of the following, subject to the procedures and timelines prescribed by the Secretary for determinations of incompetency:

(1) Notice of the proposed adverse determination and the supporting evidence.

(2) An opportunity to request a hearing.

(3) An opportunity to present evidence, including an opinion from a medical professional or other person, on the capacity of the beneficiary to manage monetary benefits paid to or for the beneficiary by the Secretary under this title.

(4) An opportunity to be represented at no expense to the Government (including by counsel) at any such hearing and to bring a medical professional or other person to provide relevant testimony at any such hearing.

(Added Pub. L. 114-255, div. B, title XIV, §14017(a), Dec. 13, 2016, 130 Stat. 1307.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 114-255, div. B, title XIV, §14017(c), Dec. 13, 2016, 130 Stat. 1307, provided that: "Section 5501A of title 38, United States Code, as added by subsection (a), shall apply to determinations made by the Secretary of Veterans Affairs on or after the date of the enactment of this Act [Dec. 13, 2016]."

§ 5502. Payments to and supervision of fiduciaries

(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

(b) Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or

otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, 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 veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

(e) Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat 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 an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1232, §3202; Pub. L. 86-146, §1(a), Aug. 7, 1959, 73 Stat. 297; Pub. L. 92-328, title I, §105(a), June 30, 1972, 86 Stat. 395; Pub. L. 93-295, title III, §301, May 31, 1974, 88 Stat. 183; Pub. L. 97-295, §4(77), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 98-223, title II, §207(a), (b)(1), Mar. 2, 1984, 98 Stat. 43; Pub. L. 99-576, title V, §505, title VII, §701(76), Oct. 28, 1986, 100 Stat. 3287, 3297; renumbered §5502 and amended Pub. L. 102-40, title III, §305(a), title IV, §402(b)(1), May 7, 1991, 105 Stat. 210, 238; Pub. L. 102-83, §4(a)(1), (2)(A)(ix), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 108-454, title V, §501(b), Dec. 10, 2004, 118 Stat. 3617.)

Editorial Notes

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-454, §501(b)(1)(A), substituted "other fiduciary" for "other person".

Subsec. (a)(2). Pub. L. 108-454, §501(b)(1)(B), inserted "for benefits under this title" after "in connection with rendering fiduciary services" in second sentence.

Subsec. (b). Pub. L. 108-454, §501(b)(2), substituted "appears that any fiduciary" for "appears that any guardian, curator, conservator, or other person", "trust of such fiduciary" for "trust of such guardian, curator, conservator, or other person", and "payments to any such fiduciary" for "payments to any such guardian, curator, conservator, or other person".

Subsec. (d). Pub. L. 108-454, §501(b)(3), substituted "fiduciary" for "guardian, curator, or conservator".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3202 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in four places.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (a)(2). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" before "to obtain".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's" wherever appearing.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (d). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" before "within".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-40, §305(a), substituted "a patient" for "an inmate" before "such veteran is".

Subsec. (e). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" after "to the".

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" after "or the".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1986—Subsec. (a)(1). Pub. L. 99-576, §701(76)(A), substituted "the Administrator" for "he" before "may deem proper".

Subsec. (b). Pub. L. 99-576, §§505, 701(76)(B), substituted "the trust of such guardian, curator, conservator, or other person" for "his trust" in first sentence, substituted "the Administrator's" for "his duly" in first sentence, substituted "the Administrator's" for "his" in second and third sentences, substituted "the Administrator" for "himself" in third sentence, and inserted after second sentence "The Administrator may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary)."

Subsec. (d). Pub. L. 99-576, §701(76)(C), substituted "the veteran's" for "his" in second sentence, substituted "the beneficiary's" for "his" in third sentence, and in fourth sentence substituted "the beneficiary" for "him", "the beneficiary" for "he", and "the beneficiary's" for "his" in six places.

Subsec. (e). Pub. L. 99-576, §701(76)(D), struck out "his" before "last legal residence".

1984—Pub. L. 98-223, §207(b)(1), substituted “fiduciaries” for “guardians” in section catchline.

Subsec. (a). Pub. L. 98-223, §207(a), designated existing provisions as par. (1) and added par. (2).

1982—Subsec. (d). Pub. L. 97-295 substituted “August 7, 1959,” for “the date of enactment of this sentence”.

1974—Subsec. (a). Pub. L. 93-295, §301(a), among other changes, substituted provisions authorizing the Administrator, where it appears to him that the interests of the beneficiary would be served thereby, to pay benefits directly to the beneficiary or to a relative or some other person for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary, for provisions which authorized payments to the guardians, curators, conservators, or persons otherwise legally vested with the care or estate of the minor or of a person mentally incompetent or under other legal disability, and eliminated provisions which permitted payment of benefits direct to the person entitled thereto prior to receipt of notice that such person is under a legal disability adjudged by a court, and which permitted the Administrator to determine the person legally vested with the care of the claimant or his estate where no guardian, curator or conservator has been appointed.

Subsec. (c). Pub. L. 93-295, §301(b), substituted “fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Veterans' Administration” for “guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate”, and “such benefits” for “such estates”.

Subsec. (e). Pub. L. 93-295, §301(c), substituted “hands of a fiduciary appointed by a State court or the Veterans' Administration derived from” for “hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from”, and “such fiduciary” for “such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate”.

Subsecs. (f), (g). Pub. L. 93-295, §301(d), repealed subsec. (f) which permitted the Administrator, in the case of any incompetent veteran having no guardian, to pay compensation, pension or retirement pay to the wife of such veteran for the use of the veteran and his dependents, and subsec. (g) which permitted payment of death benefits to a widow for herself and child or children, if any, notwithstanding that she may be a minor.

1972—Subsec. (d). Pub. L. 92-328 inserted provisions relating to filing for death benefit payments.

1959—Subsec. (d). Pub. L. 86-146 provided for payment, upon death of an incompetent veteran, of gratuitous benefits deposited in the personal funds of patients trust fund to surviving spouse, children or parents, for deposit of balance to credit of applicable current appropriation and for reimbursement of expenses of last sickness and burial.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-454 effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as a note under section 5312 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-295 effective first day of second calendar month following May 31, 1974, see section 401 of Pub. L. 93-295, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective first day of second calendar month which begins after June 30, 1972, see section 301(a) of Pub. L. 92-328, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-146, §3, Aug. 7, 1959, 73 Stat. 298, provided that: “The amendments made by this Act [amending

this section and section 3203 [now 5503] of this title] shall take effect as of the first day of the first calendar month which begins more than ninety days after the date of enactment of this Act [Aug. 7, 1959].”

§ 5503. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1)(A) Where any veteran having neither spouse nor child is being furnished domiciliary care by the Department, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(B) Except as provided in subparagraph (D) of this paragraph, where any veteran having neither spouse nor child is being furnished nursing home care by the Department, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. Any amount in excess of \$90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.

(C) No pension in excess of \$90 per month shall be paid to or for a veteran having neither spouse nor child for any period after the month in which such veteran is readmitted for care described in subparagraph (A) or (B) of this paragraph and furnished by the Department if such veteran is readmitted within six months of a period of care in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph.

(D) In the case of a veteran being furnished nursing home care by the Department and with respect to whom subparagraph (B) of this paragraph requires a reduction in pension, such reduction shall not be made for a period of up to three additional calendar months after the last day of the third month referred to in such subparagraph if the Secretary determines that the primary purpose for the furnishing of such care during such additional period is for the Department to provide such veteran with a prescribed program of rehabilitation services, under chapter 17 of this title, designed to restore such veteran's ability to function within such veteran's family and community. If the Secretary determines that it is necessary, after such period, for the veteran to continue such program of rehabilitation services in order to achieve the purposes of such program and that the primary purpose of furnishing nursing home care to the veteran continues to be the provision of such program to the veteran, the reduction in pension required by subparagraph (B) of this paragraph shall not be made for the number of calendar months that the Secretary determines is necessary for the veteran to achieve the purposes of such program.

(2) The provisions of paragraph (1) shall also apply to a veteran being furnished such care who has a spouse but whose pension is payable under section 1521(b) of this title. In such a case, the