

DATE: 12-26-91

CITATION: VAOPGCPREC 74-91
Vet. Aff. Op. Gen. Couns. Prec. 74-91

TEXT:

Subj: Insurance Coverage Information

QUESTIONS PRESENTED:

A. Whether VA has authority to disclose information concerning veterans and their spouses to their employers in order to obtain health insurance benefit coverage information on those individuals?

B. Whether a patient's refusal to provide health insurance information at the time of admission may have any effect on the patient's entitlement to the medical care?

COMMENTS:

1. During intake at a VA medical facility, veterans and their spouses are asked to supply information related to their employment and possible health insurance coverage. Some of these individuals are Federal employees, including VA employees such as employees of the treating medical centers. This information is recorded in the patient's records, which are retrieved by the patient's name or claim number. The facility requests health insurance information from the employer(s) either by telephone or by correspondence. On occasion, individuals refuse to give this information.

2. Since the information to be disclosed to employers is retrieved by the veterans' names, the Privacy Act (PA), 5 U.S.C. § 552a, applies to the information and, as a result, the information may be disclosed outside the VA only with the subject's consent or where the PA expressly authorizes the disclosure. Also, veterans' names and addresses are protected by 38 U.S.C. § 5701 (formerly section 3301), and they may be disclosed only as authorized by that statute.

3. If the individual executes a valid written consent for disclosure to his or her employer, then the medical facility legally may disclose information to the employer in order to obtain insurance coverage information. As a policy matter it is clear that Congress much prefers that disclosures of personal information be made pursuant to prior written consent. If the individual does not consent, then the medical facility may disclose information to the employer only under the following circumstances:

a. As to patients who are not Federal employees, the disclosure without their

consent generally would be authorized by routine uses 14 and 21 for the system of records 24VA136, entitled "Patient Medical Records." Subsection 5701(b)(6) would provide authority under the veterans' records confidentiality statute, 38 U.S.C. § 5701, for the release.

b. If the individual also is an employee of another Federal agency, routine uses 14 and 21 and subsection 5701(b)(6) would authorize disclosure to that Federal agency in order to obtain the requisite information. However, the responding Federal agency would have to ascertain whether it has the authority to provide the information requested if that information was contained in a PA- protected system of records.

c. In disclosing information pursuant to routine uses 14 and 21, the disclosure should be limited to the fact of admission to or treatment by the VA Medical Care System and the inquiry necessary to learn how to contact the insurer. The details of the admission, such as the condition being treated or the circumstances leading to the admission, should not be discussed. If employers will not provide the information needed without further information from VA, further guidance should be requested from this office as to the scope of disclosures which can be made under those circumstances.

d. If the individual patients are VA employees, either under title 5 or title 38, the facility may have access to that portion of their personnel files containing insurance coverage information in order to obtain the necessary information under the authority of subsection (b)(1) of the PA. Section 5701 of title 38 would not apply to access to any insurance information which might be maintained in a personnel file.

4. We note that, if the data exchange concerning Federal employees, including VA employees, involves an automated comparison of at least two automated systems of records, the comparison may be a computer match covered by the computer matching provisions of the PA, in which case VA must satisfy the computer matching provisions before conducting the computer match. If this issue should arise in the future, our assistance should be requested at that time.

5. The authority of VA to recover the cost of medical care and treatment from the veteran's "health-plan contract," or health insurance, is contained in 38 U.S.C. § 1729 (formerly section 629). Subsection (e) of section 1729 provides that a veteran who is otherwise eligible for health care "may not be denied such care or services by reason of this section." Thus, a veteran's eligibility for health care is to be determined separately from the entire issue of cost recovery from third parties, including health insurance companies.

6. The statutes that address veterans' eligibility for health care similarly do not contain any requirement that the veteran must provide health insurance information as a prerequisite to receipt of VA health care. VA is required by law

to provide health care, at no cost to the veteran, to certain classes of veterans. 38 U.S.C. § 1710(a)(1)-(2)(A) (formerly section 610). For those veterans not described in section 1710(a)(1)-(2)(A), Federal law provides that VA has discretion in providing them with health care. *Id.*, section 1710(a)(2)(B). Section (f) of 38 U.S.C. § 1710 provides that " t he Administrator may not furnish hospital care or nursing home care ... to a veteran who is eligible for such care by reason of subsection (a)(2)(B) of this section unless the veteran agrees to pay to the United States the applicable amount...." Thus, as a prerequisite to the receipt of hospital care, certain veterans must agree to be personally liable for the applicable amount of such care. The statute is silent with regard to any mention of the veteran's health insurance information, and there are no other provisions whereby VA can deny health care.

7. With virtually identical language, a different Federal statute provides that the "Administrator may not furnish medical services" to an otherwise eligible veteran "unless the veteran agrees to pay to the United States" the applicable amount. 38 U.S.C. § 1712(f)(1) (formerly section 612). The major difference between sections 1710 and 1712 is that one applies to "hospital, nursing home and domiciliary care" and the other applies to "medical treatment"; i.e., outpatient care (section 1712). Neither statute provides that VA can deny health care except as specifically mentioned above; i.e., for failure of the veteran to agree to pay the costs of his or her care. 8. Both of the eligibility statutes cited above expressly provide that certain veterans must agree to be personally liable for certain costs of their treatment. Since neither of the statutes addresses health insurance, the only express prerequisite that affects eligibility is whether these veterans have agreed to pay for his or her portion of the medical bill. Whether the veteran or his or her health insurance coverage ultimately pays for the services provided is a matter that is beyond the basic issue of eligibility for health care.

9. There does not appear to be any regulatory guidance on this issue although 38 C.F.R. § 17.48(1) provides that the veteran "shall furnish such information and evidence as the Secretary may require to establish eligibility." The eligibility regulation, like the statutes identified above, does not contain any requirement that health insurance information must be provided by the veteran in order to be eligible for health care from VA.

10. Accordingly, a veteran who is otherwise eligible for health care from VA is not rendered ineligible by virtue of his refusal to provide VA with his or her health insurance information.

HELD:

A. Information to be disclosed to employers which is retrieved by the veterans' names is protected by the Privacy Act (PA), 5 U.S.C. § 552a and, as a result, the information may be disclosed outside the VA only with the subject's consent or

where the PA expressly authorizes the disclosure. Also, veterans' names and addresses are protected by 38 U.S.C. § 5701 (formerly section 3301), and may be disclosed only as authorized by that statute.

B. A veteran who is otherwise eligible for health care from VA is not rendered ineligible by virtue of his or her refusal to provide VA with health insurance information.

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