



January 17, 2014

Via Email: <http://www.regulations.gov>

Director, Regulations Management (02REG),
Department of Veterans Affairs,
810 Vermont Avenue NW, Room 1068,
Washington, DC 20420

Re: Public Comment on RIN 2900-A082, Burial Benefits

Dear Director:

The International Cemetery, Cremation and Funeral Association (ICCFA) appreciates this opportunity to provide these comments in response to the Request for Public Comments on Proposed Rule at 38 CFR Part 3, as published in the Federal Register at 78 FR 76574 (December 18, 2013). The ICCFA was founded in 1887 and is the only funeral services trade association in the death care industry that represents all segments of the profession including funeral homes, cemeteries – nonprofit, for profit, religious and municipal – crematories, monument builders, and related professionals such as attorneys, architects, engineers, and certified public accountants. The ICCFA currently has over 7200 members, representing over 15,000 employees serving hundreds of thousands of families each year. The businesses represented by the ICCFA range from small “mom and pop” entities to large publicly-traded corporations.

Overall, the ICCFA believes that the proposed rule will provide an effective overhaul to the current system of administering VA burial benefits. The defects and limitations of the existing system are stated in the Federal Register notice and do not require repeating here. However, one provision is of concern to us:

3.1702 Persons Who May Receive Burial Benefits; Priority of Payments

Apart from claims submitted by a State, or by an agency or political subdivision of a State, for the plot or interment allowance in section 2303(b)(1), the burial laws in chapter 23 do not specify who may receive burial benefits. *See* [38 U.S.C. 2302](#) (providing that VA "may pay a sum not exceeding \$ 300 to such person as the Secretary prescribes");

See also [38 U.S.C. 2307](#) (providing that VA "shall pay the burial and funeral expenses incurred" "upon the request of the survivors" without specifying which survivors VA shall pay). The law provides VA with discretion to prescribe who may be properly paid burial benefits.... The current claimant-payment framework authorizes funeral directors to sign claims and prioritizes payment to funeral directors and other service providers before survivors. This system does not best reflect legislative intent and conflicts with VA's plan to automate and prioritize payment of burial benefits to surviving spouses. We therefore propose significant changes to VA's burial benefit claimant and payment regulations consistent with our authority to pay burial benefits. Significantly, we propose to establish a payment structure that authorizes VA to automatically pay surviving spouses when eligibility for burial benefits can be determined from the evidence of record....

VA would no longer prioritize payment to funeral directors or other service providers, but would pay survivors first with the expectation that survivors, particularly surviving spouses, would receive payments more quickly and thus be able to more expeditiously pay funeral directors and other service providers. The proposed rule would reinforce VA's proposed policy to pay a surviving spouse or family member first, and clarifies that VA will not divide or apportion payment of burial benefits among multiple claimants.

The ICCFA respectfully suggests that while this proposed priority of payment appears both reasonable and practical, the experience in actual practice may prove otherwise. Typically, funeral homes and cemeteries are seeking reimbursement for services and goods already provided. The proposed payment to individuals other than the service provider would only delay reimbursement, perhaps indefinitely.

We note that burial benefit payments made directly to states, or an agency or political subdivision of a state, would continue per the current practice. The ICCFA contends that the reasoning behind making payments directly to these government entities, and not to an individual family member, applies with equal relevance to funeral homes and cemeteries.

The ICCFA recognizes that burial benefits are provided in recognition of the veteran's service to his or her country, therefore the idea of making payment to a family member rather than to a service provider is understandable. However, we strongly recommend that an alternate approach be established that would account for services rendered or for those contracted to be provided.

For example, claims payments by insurance companies for property or automobile damage are typically made jointly to the insured and to the service provider. Thus, the funds are under the control of the individual payee while also earmarked to the provider who has rendered the services. We suggest some alternative to the proposed rule section be made in recognition of the funeral home or cemetery involved.

The ICCFA takes this opportunity to offer another comment although we realize that this is beyond the scope of the proposed rule in question. We refer to an issue that has affected millions of veterans and their families since 1990. At that time, Congress amended the National Cemeteries Act of 1973 that provided, among other things, that veterans who served during wartime were eligible to receive the plot allowance and also the marker allowance. Additional qualifications such as receiving disability compensation or a pension did not apply up through 1990. The plot and marker allowances were established in recognition of veterans and their families who preferred interment in private or religious cemeteries due to family members already buried at these locations or due to personal or ethnic considerations.

The ICCFA has estimated that when the plot and marker allowances were curtailed in 1990, about 70 percent of the veterans who were eligible to receive these benefits were summarily disqualified. We also noted that this curtailment would produce a forced reliance on the national cemeteries by many veterans and their families who preferred for personal, religious or ethnic

reasons to be buried in a non-governmental cemetery. The one-time payment enabled many beneficiaries to select their preferred burial site while saving the federal government millions, perhaps billions of dollars, in future national cemetery maintenance expenses that never end. The pre-1990 plot and marker allowances were a win/win benefit that should be restored for the reasons stated above.

Please contact me if the ICCFA can provide assistance with these issues or should you have any questions. Thank you

Respectfully submitted,

Robert M. Fells
Executive Director and General Counsel
International Cemetery, Cremation and Funeral Association
107 Carpenter Drive, Suite 100
Sterling, Virginia 20164
1-800-645-7700