

# CHAPTER 10

## STUDY PLAN

# BURIAL BENEFITS

## OBJECTIVE

To learn what benefits are available for the funeral, transportation, and interment of a deceased veteran, and what the requirements are to receive such benefits.

## REFERENCES

- Title 38, U.S. Code, Chapters 23 and 24
- 38 Code of Federal Regulations Part 1, § 1.10; Part 3, §§ 3.1700-3.1713; Part 38
- Adjudication Procedures Manual M21-1 (Live Manual), Part 7
- *Federal Benefits for Veterans, Dependents and Survivors*, 2014 edition, Chapter 8
- Veterans Benefits Manual, § 11.1
- VA Forms:
  - 21P-530, *Application for Burial Benefits*, June 2014
  - 27-2008, *Application for United States Flag for Burial Purposes*, July 2012
  - 40-0247, *Presidential Memorial Certificate*, August 2014
  - 40-1330, *Claim for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery*, February 2014
  - 40-1331M, *Claim for Government Medallion for Placement in a Private Cemetery*, January 2015
  - 40-10088, *Request for Reimbursement of Casket or Urn*, April 2015

## INTRODUCTION

Veterans discharged from active duty under conditions other than dishonorable may be eligible for VA burial and memorial benefits.

## BURIAL ALLOWANCE (38 U.S.C. § 2302)

The Department of Veterans Affairs (VA) will pay a burial allowance on behalf of any deceased veteran who dies as the result of a **service-related disability**. (38 U.S.C. § 2307.) If the veteran's death is not related to service or a service-connected disability, VA will pay a lesser amount for a veteran who meets any of the following requirements (38 U.S.C. § 2302):

- The veteran was in receipt of **compensation** or **pension**, or would have been entitled to receive compensation or pension but for receipt of military retired pay; **or**
- At the time of death, the veteran had a claim pending for compensation or pension which would have entitled him or her to payment but for his or her death; **or**
- The veteran served during a **wartime** period and the body is unclaimed; or
- The veteran died while hospitalized by VA or while receiving care at a non-VA facility under VA contract; **or**
- The veteran died while traveling under VA authorization and expense to or from a specified place for examination, treatment, or care; **or**
- The veteran died while a patient at an approved state nursing home.



If eligibility is based on a claim pending at the time of death, then the same rule applies as for claims for accrued benefits based on a claim pending at the time of death, namely that all of the evidence necessary for a favorable decision must have been in file (as defined) on the date of the veteran's death. There is also one other requirement: entitlement to the pending benefit must be from a month earlier than the month of death—otherwise, the veteran would not be "entitled to receive" compensation or pension for the month of death.

If the death is not service-connected, veterans who first entered service after September 1980 (enlisted) or October 1981 (officers) are subject to the minimum active duty service requirement mentioned above.

## **PLOT OR INTERMENT ALLOWANCE**

A plot or interment allowance may also be payable for a veteran whose death is not service-connected and who

- Served during a wartime period and the body is unclaimed; or
- Was in receipt of compensation or pension; or
- Would have been entitled to receive compensation or pension but for receipt of military retired pay; or
- Was discharged from service because of a disability incurred or aggravated in line of duty (whether or not service connection was ever established by VA for that condition); or
- Was properly hospitalized by VA or at VA expense; and who is not buried in a National Cemetery.

(38 U.S.C. § 2303)

If the veteran died on or after September 11, 2001, and the death is service-connected, the burial allowance payable is the total cost of the funeral, burial and transportation, or **\$2,000**, whichever is less. In either case, if the veteran is buried in a **national cemetery**, an additional separate amount is payable for the cost of transporting the veteran's body from the place of death to the nearest national cemetery having space.

If the death is not service-connected, and occurred after October 1, 2014, VA will pay a burial and funeral allowance of up to **\$747** when the veteran's death occurs in a VA facility, a VA-contracted nursing home, or a state veterans' nursing home.

VA will pay a plot allowance of up to **\$747** when a veteran is buried in a cemetery not under U.S. government jurisdiction if (1) the veteran was discharged from active duty because of a disability incurred or aggravated in the line of duty, (1) the veteran was

receiving compensation or pension or would have been if the veteran was not receiving military retired pay, or (3) the veteran died in a VA facility.



## COST OF TRANSPORTING THE VETERAN'S BODY

When the veteran's death is not service-connected, under certain conditions VA will also pay for the costs of **transporting** the veteran's body from the place of death to the place of burial or interment. If the veteran is to be buried in a national cemetery and either was in receipt of compensation, or would have been entitled to receive compensation but for receipt of military retired pay or disability pension (as a greater benefit), the cost of transporting the veteran's body to the nearest national cemetery having space is payable. (38 C.F.R. § 3.1709.) If the veteran dies while (1) hospitalized by VA or at VA's expense, (2) while traveling under VA's authorization, or, (3) dies in an approved state nursing home, the cost of transporting the veteran's body from the place of death to the place of burial or interment may also be paid. (38 C.F.R. § 3.1706(d)(1)).

## TIME LIMIT FOR FILING A CLAIM

There is **no time limit** for filing a **service-connected burial** claim, or for claiming the allowance for transporting a veteran's body from a VA (or VA-contracted) hospital to the place of burial or interment, or for claiming the allowance for transporting the veteran's body to a national cemetery for burial. For deaths which are **not service-connected**, the time limit for submitting a claim for the burial and/or plot allowance is **two years** after the

date of final permanent burial or interment. If the burial allowance could not be paid at the time of the veteran's death because of the character of the veteran's discharge, and the discharge is subsequently corrected or upgraded so that benefits would now be payable, the claim for burial allowance must be filed within two years from the date of correction of the veteran's discharge.

## APPLICATION AND EVIDENTIARY REQUIREMENTS FOR BURIAL ALLOWANCE CLAIMS

For burial benefit claims **prior** to July 7, 2014, the application and evidentiary requirements for burial allowance were:

- A completed VA Form 21-530, *Application for Burial Benefits*, signed by the proper claimant and by the person who authorized the services (if not the same person);
- An invoice of the funeral director or cemetery owner, showing the deceased veteran's name, the plot or interment costs, the nature and costs of the services rendered, and the remaining unpaid balance (if any);
- Receipted bills showing by whom payment was made and by whom it was received on behalf of the funeral director and/or cemetery owner;
- A death certificate or other acceptable proof of death;
- And proof of the veteran's service, if not already of record.
- If the veteran was indigent or the body is unclaimed, there must also be a written certification, signed by a responsible official (usually the Public Guardian/Public Administrator) of the state or subdivision where the body is held, that the veteran had no next of kin or other person to claim the body and that the veteran's estate does not have sufficient funds to cover the expenses of funeral and burial.

There was also an order of precedence of claimant(s) for the burial, plot and transportation allowances (38 C.F.R. § 3.1702).

In July 2014, the VA issued Fast Letter 14-06, *Automating and Simplifying Burial Benefit Payments*. VA rewrote the regulations in 38 C.F.R. § 3.1700-3.1713 to allow for a quicker

and more efficient method of delivering benefits to the survivors and/or other individuals who incur the cost of a veteran's burial and funeral.

Under new regulations established **July 7, 2014**, the veteran's surviving spouse of record – *means the spouse is listed as a dependent in the veteran's award* – will receive an automatic payment of burial allowances. The automatic payment to a surviving spouse will be based upon the first notice of the veteran's death and evidence of record regarding the surviving spouse and the veteran's entitlement to compensation or pension at the time of death.

After the automated burial has been sent out, there may still be additional benefits for plot, or interment allowance or transportation reimbursement, and the surviving spouse only needs to file a VA Form 21P-530.

If the veteran did not have total service-connected disability rating at the time of death or have a total disability rating based upon unemployability for periods prescribed in 38 U.S.C. § 1318, VA may still pay additional burial benefits. For such cases, the surviving spouse only need to submit a VA Form 21P-530 and a death certificate showing that the SC disability was a contributing cause of the veteran's death.

If VA does not pay an automated burial allowance, **it will pay the first person to file a VA Form 21P-530**, certifying that he or she incurred the cost of the Veteran's burial, and a death certificate.

When VA determines that a veteran's remains are unclaimed, VA will pay the **person or entity** that provided burial services for the remains of an unclaimed Veteran. A funeral home would qualify as an eligible "entity" if it provided burial services for the Veteran's unclaimed remains.

Note: VA will continue to separately pay the State cemetery plot allowance.

## NATIONAL CEMETERIES

The Department of Veterans Affairs has administered the national cemetery system (now called the National Cemetery Administration) since 1973. Persons eligible for burial in a National Cemetery include service members who die on active duty and veterans who meet

applicable active duty requirements (veterans who first entered service after September 1980 [enlisted] or October 1981 [officers] are subject to the minimum active duty service provision), and who were discharged under honorable conditions. (38 C.F.R. § 38.620.)



Other persons eligible for burial in a national cemetery include Reservists who are entitled to retired pay based on 20 or more years of creditable service with a Reserve component; Reservists and members of the National Guard who die as the result of disease or injury incurred or

aggravated in line of duty during active duty for training or inactive duty training, or who die while being treated for such a disease or injury, or who die while traveling to or from authorized training; and commissioned. World War II Merchant Mariners and U.S. citizens who served honorably in the Armed Forces of an Allied country during a wartime period are also eligible for burial in a national cemetery, as well as any other persons or classes of persons designated by either the Secretary of Veterans Affairs or the Secretary of the Air Force. (38 C.F.R. § 38.620.)

Finally, the spouse or surviving spouse of an eligible person may be buried in a national cemetery, even if the eligible person is not buried or memorialized in the national cemetery. The dependent minor children, the unmarried adult children (up to age 23) who are attending an approved school, and the unmarried adult disabled (helpless) children of an eligible person are also eligible for burial in a national cemetery. Beginning December 16, 2003, remarriage no longer disqualifies a surviving spouse from eligibility for burial in a national cemetery (previously, the surviving spouse's eligibility could be restored if the remarriage was subsequently terminated by death or divorce). (38 C.F.R. § 38.620.)

Persons convicted of a **capital crime** under either federal or state laws may not be buried or memorialized in a national cemetery. Additionally, for deaths which occur on or after

December 6, 2002, such persons also may not be furnished an American flag to drape the veteran's coffin, a Presidential Memorial Certificate, or a memorial headstone or marker for the veteran's grave. (38 C.F.R. § 38.617.)

Burial in a national cemetery includes the gravesite, a headstone or marker, opening and closing of the grave and **perpetual care**. Gravesites in a national cemetery cannot be reserved, although arrangements that were made before VA assumed jurisdiction of the national cemetery system will continue to be honored. Funeral directors or others making burial arrangements must apply at the time of the eligible person's death. Depending on the cemetery, national cemeteries may have columbaria or special gravesite sections for cremated remains. Burial services are not conducted on weekends except under the most unusual circumstances.

National cemeteries do not provide military honors, but will assist with referrals to military units or volunteer groups. If requested by the veteran's family, the Department of Defense will provide a funeral honor guard detail of not less than two members, at least one of whom will be from the veteran's branch of service. The Honors Ceremony will include, at a minimum, the folding and presentation of the American flag to the family plus the playing of "Taps," either by a bugler or a recording. Military funeral honors are not restricted to services in national cemeteries.

## HEADSTONES

VA will provide a headstone or grave marker for veterans buried anywhere in the world, and for eligible dependents of veterans buried in national cemeteries, state veterans' cemeteries, or military post cemeteries (but not private cemeteries). The style and type of marker furnished will depend on the rules of the particular cemetery. Niche markers are also available for identifying cremated remains in a columbarium. The headstone or marker will contain the name of the deceased, the years of birth and death, and (for the veteran) the branch of service. Optionally, the headstone or marker may also be inscribed with the deceased veteran's military grade, rank or rate, complete dates of birth and death, an appropriate religious emblem, and a listing of any awards for valor. 38 C.F.R. § 38.632.

If the burial is in a national cemetery, a state veterans' cemetery, or a military post cemetery, the headstone or marker is ordered through the cemetery, which will place it on the gravesite. If the burial is in any other cemetery, the headstone or marker must be ordered from VA by completing VA Form 40-1330, *Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery*.

The headstone or marker will be shipped at government expense; however, VA will not pay the cost of placing it. There is no time limit for ordering a headstone or marker. For veterans who die after December 27, 2001 and who are buried in a private cemetery, VA will furnish an appropriate grave marker even if the grave is already marked with a non-government marker. (38 C.F.R. § 38.632.)

## AMERICAN FLAG



VA will provide an American flag to cover the casket of a veteran or eligible Reservist (only). This may be requested by the funeral director or by the next of kin or next friend of the deceased. VA Form 21-2008, *Application for United States Flag for Burial Purposes*, may be submitted to a VA regional office, to the national cemetery office, or to designated post offices.

## PRESIDENTIAL MEMORIAL CERTIFICATE

A Presidential Memorial Certificate, signed by the President and stating the country's gratitude for the veteran's service, may be issued to the families or other loved ones of any honorably discharged deceased veteran. This may be obtained by applying to any VA regional office.

An eligible recipient can apply for the Presidential Memorial Certificate by submitting a completed VA Form 40-0247, Presidential Memorial Certificate Request Form



## STUDY QUESTIONS

Using the assigned references and reading materials, answer the following questions:

1. When a death is service-connected, the full amount of the service-connected burial allowance is always payable regardless of the actual cost of the funeral, plot and transportation to the place of burial? (T/F)

38 U.S.C. § 2307; 38 C.F.R. § 3.1704(a)

2. If a veteran dies in a VA hospital from non-service-connected causes and is buried in a national cemetery, what, if any, transportation costs are payable?
  - a. Transportation from the place of death to the funeral home, only.
  - b. Transportation from the funeral home to the national cemetery, only.
  - c. Transportation from the place of death to the national cemetery.
  - d. None of the above.

38 C.F.R. § 3.1706(d)(1)

3. Assuming other requirements are met, may a veteran whose body is unclaimed be interred in a national cemetery? (Y/N)

38 C.F.R. § 3.1708

4. May the plot allowance be authorized if the veteran is buried in a state veteran's cemetery? (Y/N)

38 C.F.R. §§ 3.704(2); 3.107(a)

5. The burial allowance must always be paid to the funeral director, even if all of the costs of the funeral and burial have been paid in full? (T/F)

38 C.F.R. § 3.1702(c)

6. If a veteran's family wishes a headstone or marker different from the type supplied by the VA, will the VA reimburse the cost of the headstone or marker? (Y/N)

38 C.F.R. § 38.630(c)

7. What is the time limit for filing a claim for service-connected burial benefits?
- a. 2 years from the date of final interment or permanent burial
  - b. 2 years from the date of death
  - c. 1 year from the date of a rating decision granting service-connection for cause of death
  - d. No time limitation

38 C.F.R. §1.10(b)