

## Department of Veterans Affairs

## § 3.1604

(d) *Escheat*. No payment of burial allowance or plot or interment allowance will be made where it would escheat.

[26 FR 1621, Feb. 24, 1961, as amended at 38 FR 30107, Nov. 1, 1973; 41 FR 38771, Sept. 13, 1976]

### § 3.1603 Authority for burial of certain unclaimed bodies.

If the body of a deceased veteran is unclaimed, there being no relatives or friends to claim the body, and there is burial allowance entitlement which is not based on § 3.1600(b)(3), the amount provided for burial and plot or interment allowance will be available for the burial upon receipt of a claim accompanied by a statement showing what efforts were made to locate relatives or friends. The question of escheat of any part of such deceased veteran's estate is not a factor in such a claim. Burial allowance may be authorized for cost of disinterment and reburial of unclaimed remains originally accorded pauper burial but not for initial expenses of a burial in a potter's field. Burial in a prison cemetery is not considered a pauper burial.

[48 FR 41162, Sept. 14, 1983]

### § 3.1604 Payments from non-Department of Veterans Affairs sources.

(a) *Contributions or payments by public or private organizations*. When contributions or payments on the burial expenses have been made by a state, any agency or political subdivision of the United States or of a State or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed the applicable statutory burial allowance, will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment.

(Authority: 38 U.S.C. 2302; 2307)

(1) A contract or policy which provides for payment at death of a specified amount to a designated beneficiary other than the person rendering burial and funeral services will not bar payment of the burial allowance to the beneficiary even though the organization issuing the contract or policy retains an option to make payment direct to the person rendering burial and funeral services.

(2) The provisions of this paragraph do not apply to contributions or payments on the burial and funeral expenses which are made for humanitarian reasons if the organization making the contribution or payment is under no legal obligation to do so.

(b) *Payment by Federal agency*. (1) Where a veteran dies while in employment covered by the United States Employees' Compensation Act, as amended, or other similar laws specifically providing for payment of the expenses of funeral, transportation, and interment out of Federal funds, burial allowance will not be authorized by the Department of Veterans Affairs.

(2) A provision in any Federal law or regulation permitting the application of funds due or accrued to the credit of the deceased toward the expenses of funeral, transportation and interment (such as Social Security benefits), as distinguished from a provision specifically prescribing a definite allowance for such purpose, will not bar payment of the burial allowance. In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed the amount specified in 38 U.S.C. 2302, will be authorized.

(Authority: 38 U.S.C. 2302(b))

(3) Burial allowance is not payable for deaths in active service, or during the duty periods set forth in § 3.6, or for other deaths where the cost of burial and transportation is paid by the service department.

(c) *Payment of plot or interment allowance by public or private organization except as provided for by § 3.1604(d)*. Where any part of the plot or interment expenses has been paid or assumed by a state, any agency or political subdivision of a State, or the employer of the deceased veteran, only the difference

### § 3.1605

### 38 CFR Ch. I (7-1-04 Edition)

between the total amount of such expenses and the amount paid or assumed by any of these agencies or organizations, not to exceed the statutory plot or interment allowance, will be authorized.

(Authority: 38 U.S.C. 2303(b))

(d) *Payment of the plot or interment allowance to a State or political subdivision thereof*—(1) *Conditions warranting payment.* All of the following conditions must be met:

(i) The plot or interment allowance is payable based on the service of the deceased veteran. See § 3.1600.

(ii) The deceased veteran is buried in a cemetery or a section thereof which is used solely for the interment of persons who are eligible for burial in a national cemetery or who, with respect to persons dying on or after November 1, 2000, were at the time of death members of a reserve component of the Armed Forces not otherwise eligible for such burial or were former members of such a reserve component not otherwise eligible for such burial who were discharged or released from service under conditions other than dishonorable.

(iii) The cemetery or the section thereof where the veteran is buried is owned by the State, or an agency or political subdivision of the State claiming the plot or interment allowance.

(iv) No charge is made by the State, or an agency or political subdivision of the State for the cost of the plot or interment.

(v) The veteran was buried on or after October 1, 1978.

(2) *Claims.* A claim for payment under this paragraph shall be executed by a State, or an agency or political subdivision of a state on a claim form prescribed by the Department of Veterans Affairs. Such claim must be received by the Department of Veterans Affairs within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from service, but after the veteran's death the veteran's discharge was corrected by competent authority so as to reflect a discharge under conditions other

than dishonorable, claim may be filed within 2 years from the date of correction of the discharge.

(3) *Amount of the allowance.* A State or an agency or political subdivision of a state entitled to payment under this paragraph shall be paid the maximum statutory amount as a plot or interment allowance without regard to the actual cost of the plot or interment.

(Authority: 38 U.S.C. 2303(b))

(4) *Priority of payment.* A claim filed under this paragraph shall take precedence in payment of the plot or interment allowance over any claim filed for the plot or interment allowance under § 3.1601(a)(2).

(Authority: 38 U.S.C. 2303(b))

[26 FR 1621, Feb. 24, 1961, as amended at 29 FR 9537, July 14, 1964; 38 FR 30107, Nov. 1, 1973; 44 FR 22722, Apr. 17, 1979; 44 FR 58710, Oct. 11, 1979; 52 FR 34909, Sept. 16, 1987; 66 FR 48561, Sept. 21, 2001]

### § 3.1605 Death while traveling under prior authorization or while hospitalized by the Department of Veterans Affairs.

An amount may be paid not to exceed the amount payable under § 3.1600 for the funeral, burial, plot, or interment expenses of a person who dies while in a hospital, domiciliary, or nursing home to which he or she was properly admitted under authority of the Department of Veterans Affairs. (See § 3.1600(c)). In addition, the cost of transporting the body to the place of burial may be authorized. The amount payable under this section is subject to the limitations set forth in paragraph (b) of this section, and §§ 3.1604 and 3.1606.

(a) *Death enroute.* When a veteran while traveling under proper prior authorization and at Department of Veterans Affairs expense to or from a specified place for the purpose of:

- (1) Examination; or
- (2) Treatment; or
- (3) Care

dies enroute, burial, funeral, plot, interment, and transportation expenses will be allowed as though death occurred while properly hospitalized by the Department of Veterans Affairs. Hospitalization in the Philippines under 38 U.S.C. 631, 632, and 633 does