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The Honorable John R. Kasich
Chairman, Committee on the Budget
House of Representatives

The Honorable Tim Hutchinson
United States Senate

Subject: VA Aid and Attendance Benefits: Effects of Revised HCFA Policy on Veterans' Use of Benefits

The Department of Veterans Affairs (VA) provides aid and attendance (A&A) benefits to more than 130,000 disabled veterans and surviving spouses who need help with everyday living activities. These benefits supplement other VA disability benefits and have often been used by veterans to help pay for the costs of nursing home care. In 1994, the Health Care Financing Administration (HCFA), reacting to federal court rulings,[1] revised its policy concerning the use of VA A&A benefits by Medicaid-eligible veterans who reside in nursing homes. Before the 1994 policy change, HCFA had considered A&A benefits to be income that could be used to pay part of the costs of care in Medicaid-approved nursing homes, which include some state veterans' nursing homes.[2] However,

[1]In a 1991 case, Sherman v. Griepentrog, 775 F. Supp. 1383 (D. Nev. 1991), a federal district court ruled that HCFA's treatment of VA pension payments for "unusual medical expenses" was not in compliance with Medicaid statutory requirements for determining whether such benefits could be considered as income. In a 1992 case, Ginley v. White, No. 91-3290 (D. Pa. Jan. 28, 1992), a federal district court, applying the rationale in Sherman, ruled that HCFA's treatment of VA A&A benefits as income was inconsistent with Medicaid law.

[2]State veterans nursing homes are state-operated facilities that provide care primarily to disabled veterans incapable of earning a living. These homes receive financial assistance from VA under its State Home Per Diem Grant Program and State Home Construction Grant Program. State veterans nursing

under its revised policy, HCFA stated that A&A benefits could no longer be treated as income and therefore could be retained by Medicaid-eligible veterans rather than being collected by nursing homes to pay part of the cost of care. Some states and members of Congress have expressed concern that HCFA's current A&A policy will result in greater state and federal Medicaid payments to make up for costs that are no longer paid through collection of veterans' A&A benefits.

In light of these concerns, you asked us to (1) describe the historical purpose of A&A benefits and the policies affecting the use of these benefits; (2) provide information on the medical, demographic, and economic characteristics of veterans who receive these benefits; and (3) examine the impact of HCFA's 1994 A&A policy decision on state veterans nursing homes, including federal and state expenditures for the care of veterans in these homes.

In summary, A&A benefits have historically been a means of providing additional disability benefits to veterans requiring assistance with activities of everyday living. Veterans receiving these benefits are generally among the oldest, poorest, and most disabled veterans. HCFA's current A&A policy has increased state and federal Medicaid payments for the care of veterans in state veterans nursing homes. While the increases potentially could be as much as $30 million annually, we estimated that the current financial impact is significantly less because of such factors as the relatively small number of Medicaid-eligible veterans residing in state nursing homes and the fact that many states have not yet implemented the current HCFA policy. HCFA's policy may also create an inequity by allowing Medicaid-eligible veterans in state homes to keep their A&A benefits, while non-Medicaid-eligible veterans in these homes are required to use these benefits to pay for the cost of care.

As requested by your offices, we focused our review on veterans and surviving spouses who receive A&A benefits under VA's "Improved Pension" program (P.L. 95-588), because they are the primary recipients of A&A benefits and would be most affected by HCFA's policy. To obtain information on the purpose and use of VA A&A benefits and on the characteristics of veterans receiving them, we interviewed officials from VA's Compensation and Pension Service; reviewed statutory and regulatory provisions and VA internal policies regarding A&A benefits; and analyzed VA demographic, economic, and medical data on A&A recipients. To assess the impact of HCFA's A&A policy, we

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homes represent one of VA's principal means of providing or supporting nursing home care for veterans.

interviewed officials from state veterans nursing homes, HCFA, and VA's state home grant programs; examined correspondence, analyses, and policy guidance concerning HCFA's revised A&A policy; and collected information from each of the state veterans nursing homes affected by HCFA's policy on the number of Medicaid-eligible veterans receiving A&A benefits and the amount of A&A benefits received by these veterans. We did not independently verify the data received from VA or the state veterans nursing homes. We conducted our review between December 1996 and February 1997 in accordance with generally accepted government auditing standards.

HISTORICAL PURPOSE OF A&A BENEFITS AND POLICIES AFFECTING THEIR USE

The federal government has provided A&A benefits to disabled veterans since the late 19th century and to their surviving spouses since 1967.[3] Historically, A&A benefits have been a means of providing additional disability benefits to veterans who are so helpless that they require the regular aid and attendance of another person to perform basic activities of everyday living (for example, dressing and eating). In 1967, legislation was enacted adding residence in a nursing home as a condition entitling veterans to A&A benefits (P.L. 90-77).

Most veterans who are entitled to A&A benefits receive them in the form of an increased VA disability pension payment.[4] As of 1996, these veterans could receive an additional benefit of up to $412 per month for A&A. Although entitlement to A&A benefits must be based on an actual need for nursing home care or personal assistance from others, there has never been a statutory requirement that these benefits be used solely for the payment of A&A expenses. In an April 1996 letter to a member of the House Veterans' Affairs Committee, the Secretary of Veterans Affairs expressed VA's position that it "has no authority to direct the way that a competent beneficiary uses his or her A&A benefits."

Over the past decade, several legislative and policy changes have affected the use of A&A benefits with respect to care provided under Medicaid. Prior to

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[3]Unless otherwise indicated, we will use the term "veteran" to refer both to the veteran and his or her surviving spouse.

[4]Veterans or surviving spouses who receive VA disability compensation or dependency and indemnity compensation (DIC) benefits, respectively, may also be eligible for A&A benefits and would receive these benefits through additional compensation or DIC payments.

1990, Medicaid-eligible veterans in nursing homes received their full A&A and pension benefits but were required to apply them, along with other income, toward the cost of care, with Medicaid covering any remaining costs. In 1990, legislation was enacted limiting pension benefits to $90 a month for Medicaid-eligible veterans without dependents who receive nursing home care (P.L. 101-508). This benefit limitation applies to the total pension amount, including any A&A payments that a veteran may be entitled to. Veterans subject to the pension limitation can use their $90 benefit as they wish, and nursing homes providing care to these veterans are prohibited from collecting any part of it.

In 1991, legislation was enacted granting an exemption from the $90 pension limitation to Medicaid-eligible veterans residing in state veterans nursing homes (P.L. 102-40). This exemption allowed these veterans to receive their full pension award, including any A&A amounts. Until HCFA's 1994 policy revision, Medicaid-eligible veterans in state homes were required to use these benefits–aside from a monthly personal allowance–to help pay for the costs of their nursing home care, with the balance of costs being paid through federal and state Medicaid payments.

CHARACTERISTICS OF VETERANS ENTITLED TO A&A BENEFITS

Veterans entitled to A&A benefits are generally among the oldest, poorest, and most disabled veterans. As with all veterans who receive VA pension benefits, veterans entitled to A&A benefits under VA's pension program must be determined by VA to be permanently and totally disabled and financially needy. But an even higher level of disability is required to qualify for A&A benefits: VA must additionally determine that a veteran's disabilities make him or her unable to perform basic functions such as bathing, dressing, and eating, without the assistance of another person.

As of February 1997, about 85,200 veterans and 49,000 surviving spouses were entitled to A&A benefits under VA's pension program.[5] Table 1 provides data concerning the economic and demographic characteristics of these veterans and survivors.

[5]An additional 21,000 veterans and surviving spouses are entitled to A&A benefits under VA's disability compensation and DIC programs.

Table 1: Characteristics of Veterans and Survivors Entitled to A&A Benefits Under VA's Pension Program

	Veterans	Survivors
Average age	72	83
Average annual income	$5,143	$2,218
Average monthly VA pension benefit	$570	$225
Percentage with dependents	32%	1%
Percentage male/female	97%/3%	0.1%/99.9%

Note: VA data do not identify veterans in terms of Medicaid eligibility. Thus, the data include both Medicaid-eligible and non-Medicaid-eligible veterans and survivors.

IMPACT OF HCFA'S A&A POLICY

HCFA's current policy, which allows Medicaid-eligible veterans to retain the A&A portion of their pension benefits, has resulted in additional Medicaid expenses in some states. As of December 1996, 33 veterans nursing homes in 17 states were certified for participation in the Medicaid program and could therefore be affected by the HCFA policy.[6] These homes contain 6,162 beds that can be occupied by VA pensioners on Medicaid. If all of these beds were occupied by Medicaid-eligible pensioners and none of these pensioners' A&A benefits were used to pay for nursing home care, the HCFA policy could potentially reduce veterans' contributions for care by as much as $30 million annually. This amount would then need to be recovered by the homes through increased state and federal Medicaid payments. On the basis of the fiscal year 1996 Medicaid sharing ratio, states would pay about 41 percent of this amount, while the federal government would pay 59 percent.

[6]An additional 51 veterans nursing homes in 22 states were not certified for participation in the Medicaid program at that time.

However, the financial impact of HCFA's policy could be significantly less than $30 million because of the following factors:

- Many of the Medicaid-certified beds in state homes are not occupied by Medicaid-eligible VA pensioners. For example, state home administrators reported that, as of December 1996, only 1,515 (about 25 percent) of the 6,162 Medicaid-certified beds were actually occupied by Medicaid-eligible veterans. On the basis of this Medicaid participation rate, the financial impact of HCFA's policy would be reduced to about $7.5 million annually.

- Some VA pensioners affected by the HCFA policy may become ineligible for Medicaid benefits. Under current regulations, Medicaid generally allows patients to retain only $2,000 in personal assets. Although veterans may spend or give away their A&A benefits, nursing home administrators report that some veterans allow their benefits to accrue until they have surpassed the $2,000 Medicaid limit. Once they become ineligible for Medicaid, these veterans are required to use their A&A benefits to pay for nursing home care, thereby eliminating (at least temporarily) the need for additional Medicaid payments. Only after the patient's assets are drawn down can the veteran be returned to the Medicaid rolls. Several state nursing home administrators have noted the increased administrative burden resulting from the need to repeatedly remove and reinstate some veterans to the Medicaid rolls.

- Many states have not implemented the HCFA policy. Of the 17 states and 33 nursing homes certified for the Medicaid program, only 7 states–19 veterans homes–have actually stopped collecting veterans' A&A benefits to pay for the cost of care. The remaining states were either unaware of the policy change or have elected not to implement the policy.

Although state nursing home officials acknowledged that relatively few veterans are affected, they did express concern regarding the equity of HCFA's policy. They noted that while the policy allows Medicaid-eligible veterans in state homes to retain their A&A benefits (up to the Medicaid resource limit), similarly disabled veterans who are not receiving Medicaid are required to use their A&A benefits to help pay for their nursing home care.

Several state home officials have voiced support for legislation that would overturn the HCFA policy, allowing A&A benefits to once again be used to help offset the cost of nursing home care of Medicaid-eligible veterans. These

officials believe that this change would result in more equitable treatment of veterans in need of nursing home care who are not eligible for Medicaid and would also prevent the states from incurring additional costs under the Medicaid program. Legislation to make such a change was introduced in the 104th Congress but was not enacted (S. 2099). State home officials told us that they expect this legislation to be reintroduced in the current Congress.

According to the Chief of VA's State Home Per Diem Grant Program, which provides federal assistance for the operation of state veterans nursing homes, there has been no significant impact on this program as a result of HCFA's current A&A policy. The only potential impact on the program would occur if states decided to stop building or operating veterans nursing homes. There is no indication that such actions are imminent, however, as state applications for new construction of veterans nursing homes exceed VA's available construction funds. This indicates that states remain interested in building and operating state homes despite HCFA's A&A policy. However, state home officials told us that some states with pending applications for construction of veterans nursing homes are currently unaware of the HCFA policy. If these states became aware of the policy and its potential for increasing Medicaid expenditures, they would likely be less inclined to build veterans nursing homes, according to the officials.

We discussed this letter with officials from VA, HCFA, and state veterans nursing homes, and they generally agreed with its contents. We have incorporated their comments where appropriate.

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As agreed with your offices, we will make copies of this correspondence available to interested parties on request.

This correspondence was prepared under the direction of Irene Chu, Assistant Director. Other major contributors to this correspondence were Mark Trapani,

Jon Chasson, and Steve Morris. Please contact Ms. Chu at (202) 512-7102 or me at (202) 512-7111 if you have any questions.

Stephen P. Backhus
Director, Veterans' Affairs and
Military Health Care Issues

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