

DATE: 03-11-91

CITATION: VAOPGCPREC 21-91
Vet. Aff. Op. Gen. Couns. Prec. 21-91

TEXT:

SUBJECT: Dental Services Under 38 U.S.C. § 612.

(This opinion, previously issued as Opinion of the General Counsel 11-71, dated May 3, 1971, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Chief Medical Director

QUESTION PRESENTED:

The extent to which the Administrator's authority to furnish outpatient dental services and treatment is limited by provisions of subsection (b) of section 612, title 38, United States Code.

COMMENTS:

Subsection (b) of section 612 provides, in pertinent part, as follows:

"Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability--(1) which is service-connected and compensable in degree; (2) which is service-connected, but not compensable in degree, but only (A) if it is shown to have been in existence at time of discharge or release from active military, naval, or air service and (B) if application for treatment is made within one year after such discharge or release ...; (3) which is a service-connected dental condition or disability due to combat wounds or other service trauma, or of a former prisoner of war; (4) which is associated with and is aggravating a disability resulting from some other disease or injury which was incurred in or aggravated by active military, naval, or air service; or (5) from which a veteran of the Spanish-American War or Indian Wars is suffering."
(Underscoring added.)

Apart from the Administrator's separate and special authority under 38 U.S.C. § 1506 to furnish medical care to certain veterans receiving vocational rehabilitation, section 612 constitutes the basic authority for furnishing medical services, including dental services, other than those rendered in the course of hospitalization, i.e., on an outpatient basis. It seems clear, in view of the

language of subsection (b) of section 612, underscored in paragraph 2 above, particularly in the light of the exception noted at the beginning of subsection (a) of section 612, that outpatient dental services and treatment may be furnished only for the conditions and under the circumstances delineated in subsection (b).

There is nothing in the legislative history of section 612 or of corresponding provisions of prior law that would suggest that the use of the word "section" in subsection (b) resulted from an inadvertence or was unintended. On the contrary, that legislative history, which is outlined below, reflects that the subject of outpatient dental treatment has been given very careful consideration by the Congress over the past twenty years and that the limitations imposed on such treatment have been based on a critical analysis of the Government's obligations in its dental program for veterans.

Outpatient dental benefits stem from Veterans Regulation Numbered 7(a), effective July 28, 1933, which authorized the Administrator "to furnish ... such medical, surgical, and dental services as may be found to be reasonably necessary" for service-connected disabilities. Prior to World War II and the Korean conflict, the basic authority was liberally interpreted to provide for recurrent and progressive treatment of service-connected noncompensable dental conditions. Subsequently, however, the Second Independent Offices Appropriation Act, 1954; the Independent Offices Appropriation Act, 1955; and certain VA directives established limitations substantially the same as those now contained in 38 U.S.C. s 612(b) and (c).

Public Law 83, 84th Congress, approved June 16, 1955, enacted these limitations on dental treatment into permanent law. Such limitations have remained basically unchanged since then, despite several legislative proposals to liberalize the dental program and the enactment of a number of liberalizing extensions of the outpatient program generally. The legislative history of such proposals indicates that the Veterans Administration has adhered to the position that the current program for outpatient dental treatment represents a sound and proper evaluation of the Government's dental program for veterans.

The reference to "outpatient dental services provided under the authority of other subsections of Section 612" is not clear to us since it is our opinion that subsections other than subsection (b) do not provide such authority. Subsections (c) and (d) relate to dental services and appliances but do not constitute authority to furnish such services and, in the case of subsection (c), actually prescribe further limitations on dental services authorized for certain dental conditions described in subsection (b).

The legislative history of Public Law 91-102 which recently amended subsection (f) of section 612 to authorize outpatient medical services for a non-service-connected disability to any war veteran who has a total and permanent service-connected disability, clearly indicates that the medical services so authorized do

not include dental care. VA Regulation 6060(H) expressly excludes outpatient dental treatment from the medical services authorized under subsection (f) of section 612. In view of the priorities traditionally accorded service-connected veterans, it would be anomalous to assume, without any substantiating evidence, that Congress intended to authorize outpatient dental care for veterans contemplated by other subsections of section 612 who are also within the purview of subsection (b).

HELD:

The use of the word "section" in the text of subsection (b) of section 612 limits authorized outpatient dental services and treatment to those dental conditions or disabilities specifically enumerated in that subsection. In view of the long and well documented legislative history of the VA dental program, such use of the word "section" and the construction placed thereon by current regulations were intended by the Congress.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 21-91