

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
STATE OF CALIFORNIA
AND THE
OFFICE OF INSPECTOR GENERAL
U. S. VETERANS ADMINISTRATION
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE
CALIFORNIA LEGISLATURE
AND THE
U. S. VETERANS ADMINISTRATION

847.2

THE VETERANS' HOME OF CALIFORNIA
DEPARTMENT OF VETERANS AFFAIRS

APRIL 1979



California Legislature

Joint Legislative Audit Committee

GOVERNMENT CODE SECTION 10500 et al

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RICHARD ROBINSON
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May 2, 1979

847.2

The Honorable Speaker of the Assembly
 The Honorable President pro Tempore of the Senate
 The Honorable Members of the Senate and the
 Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the joint review of the Veterans' Home of California by the Office of the Auditor General and the Office of Inspector General, Veterans Administration. This joint review was undertaken to achieve more efficient use of audit resources and to improve coordination between audit agencies.

The Auditor General found a state statute conflicted with federal regulations regarding the interest income earned on certain member's trust funds. The Auditor General also found weaknesses in the administration of the members' trust funds by the Veterans' Home. The Inspector General found the Veterans' Home is entitled to an additional \$87,900 in reimbursements for the cost of care provided to members. They also found that the Veterans Administration Medical Center, San Francisco has inadequately monitored the quality of care at the Veterans' Home and did not independently verify patient days claimed by the Veterans' Home.

The report makes specific recommendations to correct these deficiencies.

The Auditor General's staff is Harold L. Turner, Audit Manager; Dore C. Tanner, CPA; and Allison G. Sprader. The Inspector General's staff is A. Amiola and Les Saffil.

Respectfully submitted,

RICHARD ROBINSON
 Assemblyman, 72nd District
 Chairman, Joint Legislative
 Audit Committee

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SUMMARY

The Veterans' Home of California provides long-term care to approximately 1,400 aged and disabled persons who have served in the armed forces of the United States. The Veterans' Home provides comprehensive medical care including acute hospital care, skilled nursing care, intermediate care, residential and domiciliary care.

This was a joint audit of the Veterans' Home conducted by the Office of the Auditor General, State of California and the Office of Inspector General, U. S. Veterans Administration (VA). The Auditor General found that:

- State statute and federal regulations conflict regarding the deposit of interest income on trust funds of certain members under representative payee provisions of the Social Security Administration and the Veterans Administration
- Administrative control of members' assets is inadequate. Twenty members' funds have not been restricted although restrictions are necessary, and 36 members' funds have been restricted without proper documentation to support these restrictions.

The Inspector General found that:

- The Veterans' Home underestimated the retroactive charges for the cost of member care in the amount of \$87,900
- The Veterans Administration Medical Center, San Francisco did not fulfill its responsibility to ensure that the Veterans' Home was maintaining appropriate standards to qualify for VA funding for state home programs
- The Veterans Administration Medical Center, San Francisco was unable to verify the accuracy of the Veterans' Home reimbursement claim
- The Veterans' Home is not entitled to reimbursement for members living in Sections A and L at the Veterans' Home.

The Office of the Auditor General and the VA Inspector General recommend these problem areas be corrected.

INTRODUCTION

We have reviewed the operations of the Veterans' Home of California, Department of Veterans Affairs and the Veterans Administration Medical Center, San Francisco. This review was conducted by the Auditor General, State of California and the Inspector General, U. S. Veterans Administration (VA), under the authority vested in the Auditor General by Section 10527 of the California Government Code and under the authority vested in the Inspector General by Public Law 95-452, dated October 12, 1978.

This joint audit was undertaken to maximize audit resources and to improve coordination between audit agencies in accordance with the policies of the Office of Management and Budget and the National Intergovernmental Audit Forum.

The Veterans' Home, located in Yountville, Napa County, California, provides long-term care to aged and disabled persons who served in the armed forces of the United States during certain wartime periods and who were discharged or released under honorable conditions. The Home is managed by the Home Administrator, who is responsible to the Director of the Department of Veterans Affairs.

The Veterans Administration Medical Center (VAMC), San Francisco is the administrative agent for the State Nursing Home Program for the Veterans Administration. Its responsibilities

include making per diem payments to the Veterans' Home for eligible members, reviewing the accuracy of per diem charges and ensuring that the quality of care adequately serves the needs of Veterans' Home members.

Our review included an examination of various operations of the Veterans' Home including:

- The management of trust funds of Veterans' Home members
- The Veterans Administration's reimbursements for cost of care for the period July 1975 through June 1978
- The role of the Veterans Administration Medical Center, San Francisco in monitoring the operations of the Veterans' Home.

Background

The Veterans' Home is one of the largest geriatric facilities in the nation. Its purpose and goal as stated in a publication on the Veterans' Home is:

To provide a community of services for qualified California veterans to improve overall health, reduce the frequency of illness, lessen the severity of disability, and promote new friendships in an environment that protects the dignity of the individual and contributes to greater self-reliance and self-worth.

Levels of Care

The Veterans' Home provides comprehensive medical care for approximately 1,400 members. Five levels of care are provided to members as follows:

Table 1

Census of Members by Level of Care
January 7, 1979

<u>Level of Care</u>	<u>Description of Care</u>	<u>Members Receiving Care</u>
Acute Hospital	Intensive 24 hour in-patient care, including medical, nursing, surgical, anesthesia, laboratory, radiology, pharmaceutical and dietary services.	48
Skilled Nursing	Nursing supportive care to patients on a long-term basis, including medical, nursing, dietary, pharmaceutical services and an activity program.	232
Intermediate	Nursing and supportive care on less than a continuous basis.	430
Residential	Self-sufficient residents who with minimal assistance are able to perform daily living activities adequately	70
Domiciliary	Self-sufficient residents who are able to perform daily living activities adequately.	<u>616</u>
	Total Membership	<u>1,396</u>

Budgetary Information

The operating budget of the Veterans' Home for fiscal year 1978-79 is \$17,782,000. Funding is provided by California's General Fund, federal reimbursements and other reimbursements. Salaries and wages represent \$13,959,000 or 78.5 percent of the total budget. The remaining \$3,823,000 or 21.5 percent cover operating expenses and equipment.

AUDIT RESULTS OF THE
OFFICE OF THE AUDITOR GENERAL

A STATE STATUTE AND FEDERAL REGULATIONS
CONFLICT REGARDING INTEREST INCOME
EARNED ON CERTAIN MEMBERS' TRUST FUNDS

In complying with the Military and Veterans Code Section 1042, the Veterans' Home did not pay to members \$28,000 in interest earned during fiscal year 1977-78 on trust funds of members under the representative payee provisions of the Social Security Administration and the Veterans Administration. Instead, the \$28,000 interest was deposited in the Post Fund for the general welfare of all Veterans' Home members.

The Social Security Administration and the Veterans Administration appointed the Veterans' Home as representative payee to receive and manage cash benefits on behalf of beneficiaries who are incapable of managing their own funds. Evidence of a beneficiary's inability to manage funds may be based upon a legal finding declaring the person incompetent, or a medical finding, approved by the appropriate agencies, declaring the person unable to manage funds. The inability may be caused by old age, weakness of the mind or other factors.

As of June 30, 1978, the Veterans' Home was responsible for managing \$390,000 for 75 beneficiaries. These funds are maintained in the members' trust accounts at the Veterans' Home. Funds are invested in certificates of deposit and bonds to earn interest income.

Section 1042 of the California Military and Veterans Code requires interest earnings on members' trust funds to be deposited in the Veterans' Home Post Fund. Federal regulations, however, require that interest income of members in representative payee status be applied to the individual member's fund. The Legislative Counsel stated (See Appendix A):

We think . . . that the home's procedure . . . to deposit any interest earned on the money of a member held by the home in the post fund, to be expended for the general welfare of all members of the home (see Sec. 1047, M.& V.C.), would not be consistent with the provisions of the federal regulations . . . , and that social security funds in excess of the home's applicable fees must be conserved or invested on the member's behalf.

We conclude, therefore, that the home is required to invest and credit interest to a member on social security funds received in its capacity as representative payee, with respect to such of the funds which are not used for the member's current maintenance.

Section 3.5 to Article III of the State Constitution precludes administrative agencies from declaring a statute to be unenforceable or refusing to enforce a statute because federal law or regulation prohibits enforcement, unless an appellate

court has made such a determination. Without an appellate court ruling, the director lacks the authority to refuse to enforce a state statute on the basis of conflicting federal regulations.

The Social Security Administration Regional Office in San Francisco stated:

Since a payee has responsibilities like those of a fiduciary or trustee, a payee should follow the usual rules applicable to investment of trust estates by trustees. Thus, any funds not needed for a beneficiary's current or foreseeable needs should be invested in a manner producing interest; such interest should be considered as belonging to the beneficiary. When a payee is a facility acting on behalf of many beneficiaries, individual direct-deposit savings accounts or a collective savings account may be employed. In the case of a collective account, the portion owned by each beneficiary should be clearly identified on facility records, and the interest from this account should be prorated among the beneficiaries in proportion to the amount deposited on behalf of each of such beneficiaries.

Based upon the Legislative Counsel's opinion and the position of the Social Security Administration, interest income earned on the trust funds of members under the representative payee provisions should be credited to these members' funds; it should not be used for the general welfare of all members. However, the Veterans' Home is unable to credit interest income to individual members under representative payee provisions until an appellate court has determined that a conflict exists between state law and federal regulations.

CONCLUSION

The Veterans' Home is required by federal regulations to deposit interest income earned on members' trust funds under representative payee provisions of the Social Security Administration and the Veterans Administration into these members' individual accounts. However, California statutes require that the Veterans' Home deposit the \$28,000 in interest income in the Post Fund to be used for the general welfare of all Home members. Thus, the State Constitution prevents the Veterans' Home from depositing the interest income into individual members' accounts.

RECOMMENDATION

We recommend that the Legislature consider legislation requiring the Veterans' Home to deposit interest earnings, net of handling fees, to the members' individual trust accounts for members under representative payee provisions of the Social Security Administration and the Veterans Administration. This interest would be for the members' use and benefit as required by federal regulations.

ADMINISTRATIVE CONTROLS OF
MEMBERS' ASSETS NEED IMPROVEMENT

Financial restrictions have been placed on certain members' funds without proper documentation to support and establish the restrictions. Conversely, no written restrictions have been placed on trust accounts of certain members when financial restrictions are necessary.

Financial restrictions are placed on members' funds to protect their assets. These restrictions should be based upon a legal finding of incompetence in guardianship or conservatorship cases or upon a medical finding of a member's inability to manage the funds and approved by an appropriate agency, such as Social Security Administration or Veterans Administration. At the Veterans' Home, the Reimbursement Officer establishes financial restrictions on members' funds by notifying the Cashier's Office. The cashier then identifies the member's account as restricted. When a member requests a withdrawal and a restriction exists, the cashier follows the restriction and/or refers the request to the Reimbursement Officer. If no restriction exists, the cashier authorizes the withdrawal.

We found no written record of financial restrictions on the accounts of 4 members under guardianship and 16 members under representative payee provisions to the Veterans' Home. Since these 20 members have been designated as unable to manage their own funds, financial restrictions should have been placed on

their accounts to prevent the unauthorized withdrawals of a portion or all of their funds. The administration of the Veterans' Home, however, stated the cashier's office knows all the members under financial restrictions and would not authorize withdrawals from their accounts.

While a review of these 20 members' accounts disclosed no abuses, we believe written financial restrictions on these members' accounts are necessary. Since the cashier's office maintains approximately 975 trust accounts, including many restricted accounts, errors will occur more frequently if written financial restrictions are not placed on the members' accounts.

We also found 36 members' assets were restricted without documented authority to support the restrictions. These financial restrictions limit the amount of money that a member may withdraw from his account. Typical restrictions are:

- No withdrawals without approval of the Reimbursement Office
- Withdrawals up to \$4 per week
- Withdrawals up to \$10 per week
- Withdrawals of \$5 per day except on Friday.

CONCLUSION

The Veterans' Home did not place written restrictions on 20 members' accounts when restrictions were necessary but restricted 36 members' accounts without properly documenting these limitations before imposing them.

RECOMMENDATION

We recommend the Veterans' Home establish the appropriate written financial controls on the accounts of the members under guardianship, conservatorship and representative payee provisions.

We further recommend that the Veterans' Home either obtain the proper documentation to support financial restrictions on members' accounts or remove the restrictions completely.

OTHER PERTINENT INFORMATION

PROGRESS IN MEETING QUALITY OF CARE
STANDARDS AT THE VETERANS' HOME

The medical sections of the Veterans' Home are periodically inspected to determine compliance with health and safety standards. Since November 1976, 18 surveys or inspections have been conducted by various agencies, including the Department of Health and the Veterans Administration.

The Administrator of the Veterans' Home stated:

The Veterans' Home of California is supported through five separate funding sources: (1) General Fund (50%); (2) VA per diem subsidy (22%); (3) Medicare reimbursement (5%); (4) VA Aid & Attendance payments (9%); (5) Fee payments by members (9%).

Three of the funding sources impose standards as to services and facilities which are frequently in contradiction with one another. Licensing standards of Title 22, California Health and Safety Code often conflict with VA Standards and both are, in certain instances, inconsistent with HEW Standards for medicare reimbursement. In addition, the Joint Commission on Accreditation of Hospitals has still more standards that must be followed. Other state regulatory agencies such as the State Fire Marshal also exercises standards control sometimes in conflict with other standards.

In November 1977 the Department of Health cited 222 deficiencies in acute, skilled nursing and intermediate care. These deficiencies included physical environment (plant), nursing, dietetic services, pharmacy and utilization reviews,

medical records and occupational therapy. Because of these problem areas, the Veterans' Home failed to meet 6 of 18 conditions for participation in Medicare funding.

In May 1978 the Department of Health, Education, and Welfare (HEW) notified the Veterans' Home of its "intent to terminate the Acute Hospital certification" if the Home did not achieve compliance for Medicare participation. Without Medicare certification, the Veterans' Home would lose approximately \$800,000 annually from HEW. To correct problem areas and ensure receipt of Medicare funding, the Veterans' Home augmented its overall plan and authorized an additional 99.5 positions, mostly in the medical area. Furthermore, it is developing a long-range construction and remodeling plan to correct life/safety and fire deficiencies and for improved physical environment.

In September 1978, HEW notified the Veterans' Home that the hospital was in compliance with Medicare standards because "of the effort made in correcting numerous deficiencies."

In November 1978 the Veterans Administration reported "a marked improvement since the last annual inspection" of the Veterans' Home. However, the report also identified "deficiencies which prevent the Home from meeting the prescribed standards of care." The report stated, "If standards are not complied with, the home is subject to withholding of funds or [V.A.] recognition." The Veterans Administration's reimbursement

which may be jeopardized is estimated at \$4,100,000 for fiscal year 1978-79. Responding to the inspection, the administrator of the Veterans' Home stated:

The standards applied by the Veterans Administration and which formed a basis for the conclusions and recommendations in the final report were known to the Veterans' Home only about 30 days prior to the date of inspection. As of this date, the standards have not yet been published in final form.

AUDIT RESULTS OF THE OFFICE OF
INSPECTOR GENERAL, VETERANS ADMINISTRATION

CALCULATION OF
PER DIEM COSTS

The Veterans' Home did not correctly calculate the increase in per diem rates provided by Public Law 94-417, effective October 1, 1976. This law provided for retroactive increases from January 1, 1976 in the rates for domiciliary care from \$4.50 to \$5.50, nursing care from \$6.00 to \$10.50 and hospital care from \$10.00 to \$11.00. Due to the inadequacies in the method of allocating costs to the nursing level of care, the Veterans' Home did not meet the eligibility criteria for the increased nursing rate for the retroactive period January 1, 1976 through September 30, 1976.

The Veterans' Home submits to several agencies reports which require a variety of cost data. In an attempt to incorporate all reporting requirements into a single system, the Veterans' Home did not take full advantage of all VA allowable costs. In addition, the method for allocating direct costs had not been reviewed for several years. As changes in patient load and physical plant occur, the basis for distributing costs should be reevaluated.

As indicated in Appendix B, the Veterans' Home calculated costs of care for nursing as \$19.28 for the retroactive period. This calculation resulted in a reimbursement rate of \$9.64 per patient day. Our audit, however, determined that the cost of care was \$34.79. Thus the maximum reimbursement of \$10.50 should have been allowed. The \$.86 difference in the reimbursement rate resulted in an underpayment for the Veterans' Home of \$87,884 ($$.86 \times 102,191$ patient days of care).

Recently, the Department of Veterans Affairs received \$100,000 from the Public Works Employment Act (Title II) to improve its accounting system. This allocation should improve the cost reporting problem in the Veterans' Home.

CONCLUSION

Because of the method used to gather cost data for multiple reporting, the Veterans' Home did not correctly calculate retroactive increases and did not claim the maximum reimbursement allowed for the cost of care to Veterans' Home members. This oversight resulted in an underpayment of \$87,884.

RECOMMENDATION

We recommend that the Veterans' Home submit an amended claim for \$87,884 to recover allowable reimbursements for nursing costs from January 1976 through September 1976. In light of deficiencies in the physical plant and other inadequacies which affect the delivery of care to the veteran members previously noted, it is suggested that the California Legislature consider allocating the \$87,884 as the State's portion of a VA remodeling grant should such grants be available.

THE VA MEDICAL CENTER, SAN FRANCISCO HAS
INADEQUATELY MONITORED THE QUALITY OF CARE

The Veterans Administration Medical Center in San Francisco (VAMC) is responsible for annually inspecting the Veterans' Home to determine if veterans are receiving the best care available and if the Veterans Administration is receiving the expected value for the funds expended.

We reviewed the reports on annual inspections conducted by VAMC personnel for the period 1976 through 1978 and found the 1976 and 1977 reports inadequate. Each year the report commented that the Veterans' Home "was in violation of almost every major provision of the National Fire Protection Association," yet the reports recommended no solutions to Veterans' Home management. Moreover, the VAMC continued to accredit the facilities as adequate for care. In a November 1977 survey, the California Department of Health listed 222 health and safety deficiencies in the hospital and nursing levels of care, including problems in dietetic services, medical records and pharmaceutical services. A follow-up survey in April 1978 revealed that most of these weaknesses were either conditionally corrected or uncorrected, yet the VAMC took no aggressive corrective action.

The August 1978 VAMC inspection report was a vast improvement over prior reports. This report noted problems by building and level of care. As a result of the inspection, the

VAMC denied a request for additional bed capacity and disapproved residences that were safety hazards even though the VAMC had approved them in the past.

Although the VA in general and the VAMC specifically should not use inspections as a punitive measure, neither should they tacitly approve conditions that do not meet standards.

CONCLUSION

The VAMC did not fulfill its responsibility to ensure that Veterans' Home members received the best care available for the federal funds expended.

RECOMMENDATION

We recommend that a comprehensive annual inspection program be implemented by the VAMC, San Francisco, to determine the adequacy of care provided the veterans and to ensure the Veterans' Home qualification for combined participation in the VA State Home Program.

THE VAMC DID NOT INDEPENDENTLY
VERIFY PATIENT DAYS
CLAIMED BY THE VETERANS' HOME

The VAMC does not independently verify the patient days of care claimed for reimbursement by the Veterans' Home. Neither does it maintain an accurate list of Veterans' Home members.

Accounting controls require the VAMC to independently verify patient days of care claimed by the Veterans' Home. Claims submitted should be verified as correct for payment, and differences should be reconciled with an accurate listing of Veterans' Home members.

We verified the patient days of care claimed by the registrar of the Veterans' Home for the period July 1, 1975 through June 30, 1978. We also reviewed the absences during this period to determine whether members absent from the Veterans' Home for more than 96 hours had been dropped from the count for reimbursement. We found no discrepancies in the patient days of care claimed by the Veterans' Home for the period covered.

We also conducted a positive accounting of 100 percent of the members of the California Veterans' Home on whom per diem payments were based. Of the 1,394 members, 663 resided in the domiciliary, 344 resided in the nursing annexes and 387 members were hospital patients.

Our review disclosed that the VAMC is unable to verify patient days of care claimed for reimbursement. The registrar of the Veterans' Home submits to the VAMC Chief of Medical Administration Service a daily "morning report" of all admissions and discharges. The medical administration uses these reports to note changes in members' level of care, but patient days of care are not recorded.

The VAMC's listing of Veterans' Home members had several discrepancies. Eight members who were listed by the VAMC as current members had either been discharged or had died between the period of July 1977 and September 1978; three died while patients of the VAMC. An additional 23 members' names were not included on the list. These discrepancies show that the VAMC lacks accurate data for effective control of patient days of care.

CONCLUSION

Without independent verification of patient days of care and an accurate listing of Veterans' Home members, the VAMC is unable to determine the accuracy of reimbursement claims even though there is evidence that the claims presented by the Veterans' Home are correct.

RECOMMENDATION

We recommend that the VAMC Chief of Medical Administration Service independently verify the accuracy of patient days of care claimed by the Veterans' Home.

We further recommend that the VAMC maintain a current list of Veterans' Home members.

THE VETERANS' HOME IS NOT ENTITLED
TO REIMBURSEMENT FOR MEMBER CARE
IN SECTIONS A AND L

In August 1978 the VAMC denied the Veterans' Home's request for additional beds. The reason for the denial was noncompliance with fire and safety regulations in both Sections A and L, and in Cal-Vet Hall.

During our review, 11 members were residing in Section A and 9 members in Section L. The 11 members residing in Section A were listed as residing in Section B, an approved residence for VAMC reimbursement purposes. No claim for reimbursements were requested by the Veterans' Home for members residing in Cal-Vet Hall.

Since these residences do not meet fire and safety regulations, the Veterans' Home is not entitled to reimbursements after August 1978 for the cost of care provided to members residing in Sections A and L.

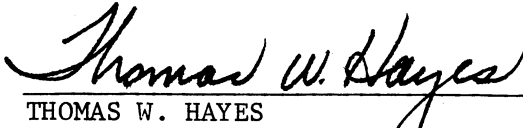
CONCLUSION

The claim of the Veterans' Home for cost reimbursements for the 20 members residing in Sections A and L after August 1978 is not allowable.

RECOMMENDATION

We recommend that the VAMC Chief of Medical Administration Services disapprove claims for members residing in Sections A and L.

Respectfully submitted,


THOMAS W. HAYES
Acting Auditor General

Date: April 26, 1979

Auditor General Staff: Harold L. Turner, Audit Manager
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MEMORANDUM

To : Thomas Hayes
Assistant Auditor General

Date: April 12, 1979

From : Department of Veterans Affairs
Telephone: (916) 445-3111
Subject: Report of the Auditor General

While we agree with many of the conclusions and recommendations presented in the report of the Office of the Auditor General, State of California, and the Office of the Inspector General, U. S. Veterans Administration, dated April 1979, there are some major portions of the report with which we disagree.

First of all, we disagree with the recommendation for a legislative change based on a conclusion that the state statute and federal regulations are in conflict. The report states that this recommendation is based on a Legislative Counsel's opinion and the position of the Social Security Administration. However, the department's position as stated by its Chief Attorney, Howell Y. Jackson, is as follows:

"The analysis cites in detail certain parts of Title 20, Code of Federal Regulations, and makes a brief reference to the Home's procedure pursuant to Chapter 1 of Division 5 of the Military and Veterans Code but seems to conclude, without analysis and as a matter of course, that a law enacted by the Legislature of the State of California must yield to a regulation adopted by the Social Security Administration. Further, the analysis seems to conclude without detailed discussion, that there is an actual conflict between the federal regulation and the state law, and that the federal regulation must therefore prevail. Neither of these conclusions is necessarily correct as a matter of course.

"While it is generally clear that in cases of conflict between a federal statute and a state statute, the state statute must yield, the result is much less clear in cases of conflict between a federal regulation (as opposed to a statute) and a state statute. A discussion of whether the Social Security Administration's regulation must prevail over the California statutes in this instance would require extensive research into and detailed analysis of the law

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on relations between the States and the Federal Government, and times does not permit that right now. However, in my opinion, such research and analysis is not necessary here, for I do not believe that we have a substantial conflict between the federal regulation and the state law in this case.

"The Social Security Administration's regulations provide in pertinent part that when it appears to the Administration that the interest of a beneficiary...would be served thereby, certification of payment may be made...either for direct payment to such beneficiary, or for his use and benefit to a relative or some other person as the 'representative payee' of the beneficiary...20 CFR §404.1601.

"The regulations provide further that such payments shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance..., and that where a beneficiary is receiving care in an institution..., current maintenance shall include the customary charges made by the institution to individuals it provides with care and services like those it provides the beneficiary... 20 CFR §404.1604.

"The regulations also provide that such payments as are not needed for the current maintenance of the beneficiary... shall be conserved or invested on the beneficiary's behalf ... 20 CFR §404.1605.

"Chapter 1 of Division 5 of the California Military and Veterans Code, which contains the laws enacted by the California Legislature for the administration and operation of the Veterans Home of California, includes several provisions concerning the disposition and use of moneys received by the Home.

"The code provides, among other things, that...all moneys received by the home, or by any officer of the home, including pension and other moneys belonging to veterans and other trust moneys, shall be immediately paid to the executive officer of the home, and that on or before the tenth day of each month the executive officer shall forward to the State Treasurer all moneys in his possession, except pension and other moneys belonging to veterans, trust moneys, the post funds, and the emergency fund... Mil. & Vet. C. §1034.

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"The code provides further that all accrued interest or money turned over to the executive officer and retained by him under this chapter shall be accounted for by him and deposited to the credit of the post fund and used for the common benefit of the veterans. Mil. & Vet. C. §1042.

"The code also provides that the commandant shall maintain a post fund which shall be used...to provide for the general welfare of the home and its members to include but not limited to providing for the operation of the Veterans Home Exchange, motion picture theater, library, band, and to pay for newspapers, chapel expenses, welfare and entertainment expenses, sport activities, celebrations,...or any other activity for the benefit of the home or its members. Mil. and Vet. C. §1047.

"Thus, the Social Security regulations require that payments to a representative payee be applied for the use and benefit of the beneficiary, including the beneficiary's current maintenance; provide that where the beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution; and require that such payments as are not needed for current maintenance shall be conserved or invested on behalf of the beneficiary. (Emphasis added.)

"On the other hand, the California statutes governing the Veterans Home require that all moneys received by the home, including pension and other moneys belonging to veterans and trust moneys, be paid to the executive officer; require the executive officer to forward all such moneys, except pension and other moneys belonging to veterans and trust moneys, to the State Treasurer; and require that all accrued interest on such moneys so retained by the executive officer shall be deposited to the credit of the Post Fund, which in turn is required to be used for the common benefit and general welfare of the members. (Emphasis added.)

"The activities of the Post Fund are clearly a part of the care and services provided by the Home to its members, these services clearly redound to the use and benefit of the members, and in a very real sense the use of accrued interest on members' funds to pay for some of these services constitutes a part of the customary charges by the Home for such services. The Legislature clearly intended that these services be provided, and that they be paid for in part by the members themselves from the accrued interest on their funds on deposit with the Home. Therefore, the use of this

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interest for that purpose can be regarded as a use for the current maintenance of the veteran.

"In addition, the Social Security Administration's regulations provide that the representative payee shall, in the alternative, conserve or invest on the beneficiary's behalf such funds as are not needed for the beneficiary's current maintenance. There is no assertion that the Home does not conserve these funds - the principal balance is always available for withdrawal or use by or on behalf of the veteran beneficiary. Mil. & Vet. C. §1037. Therefore, the Home can also be regarded as being in compliance with the regulations in that it conserves the funds on the beneficiary's behalf.

"In summary, I do not believe that there is any real conflict here, and I believe that any apparent conflict can be reconciled by showing that the use of accrued interest on Social Security payments for Post Fund activities is for the benefit and current maintenance of the veteran beneficiary and that the Home actually conserves the principal of such payments not used for any other current maintenance purpose."

Therefore, it is our recommendation that the statute and the procedure presently used by the Veterans Home continue without modification. If, however, the conclusion stated in the report is correct your recommendation is a proper one.

Second, we agree with the recommendation for appropriate written financial controls and proper documentations to support financial restrictions on members' account. These controls were instituted in early March 1979. Before any restrictions are instituted on accounts it must be documented in writing from the person making the deposit. The documentations must be on something other than the check itself. With regard to the conclusions on which the recommendations were based, there is a difference of opinion. In these cases the controls were documented on the old cards but when a new account card was started the restrictions were inadvertently not carried forward to the new card. A correction has been made on 20 cases. With regard to the 36 accounts in making our corrections we discovered that in four cases there were no restrictions on the accounts, in two cases the Veterans Home was the documented payee, and in five cases there were documented outside guardians. The situation with the remaining 25 cases was corrected in March 1979.

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Third, while we agree with the information regarding "Progress in Meeting Quality of Care Standards at the Veterans Home" we wish to emphasize a major difficulty achieving necessary corrections is that the standards are multiple, conflicting, and ever changing. The physical environment deficiencies (fire and life safety) identified by the Department of Health in 1976 were already known to the Veterans Home and had been funded for correction since 1973. The construction plans had to be reviewed and approved by several state and federal agencies, each with their own regulations and requirements. Changes to the plans requested by these agencies were often conflicting. After many revisions to the project plans, the VA approved the final plan of correction on September 26, 1978. The HEW approval was given on October 5, 1978. It is clear that some intergovernmental cooperative effort is required if we are to substantially reduce the delays and the cost in meeting reasonable standards of care.

Fourth, we agree that the antiquated accounting system has created difficulties in making the necessary reports to the various agencies. Development and acceptance of a single uniform cost report for use by all agencies would eliminate many of our difficulties in preparing cost reports for the several different agencies requiring them. The recommendation to utilize the additional \$87,000 as the state match for construction funds to correct physical deficiencies may not be possible. The VA in Washington has recently advised me that, based on present funding levels for the construction grant program, no new applications can be considered until October 1982. In addition, the Military and Veterans Code Section 1031 provides that federal funds received for the use of the Home are to augment the current appropriation for support of the Home. Budget Act control language prohibits the use of support funds for capital outlay purposes. In addition to the grant to improve our accounting system, the Department of Veterans Affairs and the Veterans Home have developed a Financial Management Information System (FMIS) feasibility study and implementation plan to automate the Veterans Home financial system. This computer system would enable the Home to meet all the state and federal cost reporting requirements. In the event it is not possible to utilize the \$87,884 reimbursement for the recommended remodeling, we suggest that the department be allowed to utilize the sum as a portion of the Home's share in the cost of the FMIS implementation.

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Fifth, we believe that the VA Medical Center in San Francisco and the Veterans Home are being unfairly judged by comparing previous inspection results against standards not yet published nor considered official. It is hard enough to comply with published standards that change more quickly than remodeling plans can be reviewed.

Sixth, we agree that the Veterans Home should not be reimbursed for the 11 members who resided in Section A after November 1978. This situation was corrected by the relocation of those 11 members as of March 27, 1979. However, the noncompliance in Section L is only related to an unused portion of the building and is scheduled for correction in the department's 1979-80 capital improvements budget. The Home's Administrator Mr. Paul O. Battisti has been advised by VAMC that the claim for the nine members in the portion of Section L which is in compliance is allowable. Mr. Battisti reports:

"With respect to page 25 of the report entitled 'The Veterans Home Is Not Entitled to Reimbursement for Member Care in Sections A and L' the following inaccuracies are reported:

"Following the inspection by the Veterans Administration in July 1978 the Veterans Home requested clarification of the deficiencies reported in Cal-Vet Hall and Section L. We requested a return visit by the Veterans Administration Fire Protection Inspector Mr. Thomas W. Engler. We invited Mr. Robert F. Mason from the State Fire Marshal's Office. As a result of this visit it was established that with some minor corrections Cal-Vet Hall was safe for occupancy. These corrections were made.

"With respect to Section L, the deficiencies identified did not preclude the use of the rooms in the building except for five rooms on the second floor. These rooms were not being used at the time of the inspection, nor have they been used since, nor will they be used, until the planned fire exit included in the 1979-80 budget is completed.

"Further, the nine members in Section L were never reported under Section B; therefore, the report erroneously concluded that there were 20 members under question for reimbursement. We wrote the VA Medical Center in San Francisco on November 27, 1978 reporting the results of the follow-up inspection of October 26, 1978, and requested corrections of the records to reflect the change in the status of Section L and Cal-Vet Hall. This request was confirmed by VA Medical Center,

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San Francisco, in their letter of March 13, 1979. All 11 members who resided in Section A at the time of July 1978 inspection have been moved and agreement has been reached with the VAMC, San Francisco, for reimbursement for the identifying members who resided in Section A from November 27, 1978 through March 27, 1979. This adjustment has been made. Therefore, the conclusion reached on page 25 of the report and the recommendation must be viewed in the light of these facts."

Finally, we wish to thank you, your staff, and the representatives of the Office of the Inspector General, U. S. Veterans Administration, for your cooperation in assisting us to improve our services and to provide the proper environment to the California Veterans Home members. We will continue to work diligently to carry out the efforts begun by this joint, cooperative venture.



VIRGINIA MAE DAYS
Director

VMD:jy



VETERANS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20420

APR 20 1979

IN REPLY
REFER TO: 52C


Mr. Dore C. Tanner
Office of the Auditor General
925 L St.
Room 750
Sacramento, California 95814

Dear Mr. Tanner:

Enclosed is a copy of the Department of Medicine and Surgery's response to our draft report. The Chief Medical Director has concurred in all recommendations.

We are anxiously awaiting receipt of the twenty-five copies of the final report as per our telephone conversation of April 19, 1979. If you have any questions, please contact me.

Sincerely,


H. CARLYLE GRIFFITH
Director, Contract and
Special Audit

Memorandum

DATE:

TO: Assistant Inspector General for Audit (52C)

FROM: Chief Medical Director (10B3C)

SUBJ: Report of Audit, The Veterans' Home of California,
Yountville, California, Project 52C-78-199

The subject report along with responses from the state home and hospital of jurisdiction were reviewed by concerned DM&S officials. Following are our comments on each of the recommendations contained in the report:

Recommendation No. 1:

We recommend that the Legislature consider requiring the Veterans' Home to deposit interest earnings for members under representative payee provisions of the Social Security Administration and the Veterans Administration to the members' individual trust accounts for their use and benefit as required by federal regulations.

Comment

We Concur.

Recommendation No. 2:

We recommend the Veterans' Home establish the appropriate written financial controls on the accounts of the members under guardianship, conservatorship and representative payee provisions.

We further recommend that the Veterans' Home obtain the proper documentation to support the establishment of financial restrictions on members or remove the financial restrictions.

Comment

We Concur.

Recommendation No. 3:

We recommend that the Veterans' Home submit an amended claim for \$87,884 to recover allowable reimbursements for nursing costs for January 1976 to September 1976. In light of deficiencies



Assistant Inspector General for Audit (52C)

Report of Audit, The Veterans' Home of California,
Yountville, CA

in the physical plant and other non-personal related inadequacies in the delivery of care to the veteran members noted in previous sections of this report, it is suggested that the California Legislature give consideration to allocating the \$87,884 as the State's portion of a VA remodeling grant.

Comment

Concur. Claims submitted by the Veterans' Home to recover allowable reimbursements for nursing costs for January 1976, to September 1976, will be considered. The Chief of Medical Administration Service will be implementing this according to VA regulations.

Recommendation No. 4:

We recommend that a comprehensive annual inspection program be implemented by the VAMC, San Francisco, to determine the adequacy of care provided the veterans and the Veterans' Home qualification for combined participation in the VA State Home Program.

Comment

Concur. However, the Veterans Administration Medical Center's authority is limited by existing VA Standards and Regulations.

Recommendation No. 5:

We recommend that the VAMC Chief of Medical Administration Service independently verify the accuracy of patient days of care claimed by the Veterans' Home.

We further recommend that the VAMC maintain a current list of Veterans' Home members.

Assistant Inspector General for Audit (52C)

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Yountville, CA

Comment

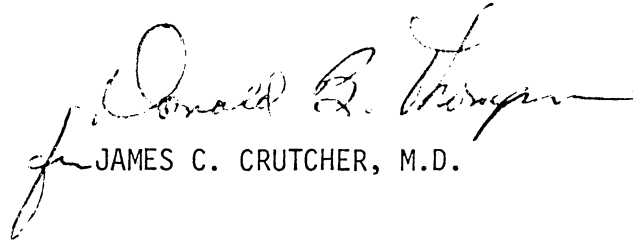
Concur. The Chief, Medical Administration Service is and will continue to independently verify the accuracy of patient days of care claimed by the Veterans' Home and is maintaining a current listing of Veterans' Home members.

Recommendation No. 6:

We recommend that the VAMC Chief of Medical Administration Service disapprove claims for members residing in Sections A and L.

Comment

Concur. The Chief, Medical Administration Service in accordance with Section 642,38 USC, has taken action. The home was sent a bill of collection.


JAMES C. CRUTCHER, M.D.

EXCERPTS FROM A LEGISLATIVE COUNSEL
OPINION, VETERANS' HOME OF CALIFORNIA, #16881

QUESTION NO. 3

If the home is designated a representative payee, under regulations of the Social Security Administration contained in Subpart Q (commencing with Section 404.1601) of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations, is the home required to invest and account for interest on any such funds of a member which it has received and which are not used for the current maintenance of the member?

OPINION NO. 3

The home is required to invest and credit interest to a member on social security funds received in its capacity as representative payee with respect to such of the funds which are not used for the member's current maintenance.

ANALYSIS NO. 3

When it appears to the Social Security Administration that the interest of a beneficiary entitled to payments under Title II of the Social Security Act, Subchapter II (commencing with Section 401) of Chapter 7 of Title 42, United States Code, would be served thereby, the administration may make payment to a relative or other person as the "representative payee" of the beneficiary, regardless of the beneficiary's legal competency, either for direct payment to the beneficiary or for the beneficiary's use or benefit (20 C.F.R. 404.1601). Payments thus made to a representative payee not needed for the current maintenance of the beneficiary are to be conserved or invested on the beneficiary's behalf pursuant to specified interest- or dividend-bearing investments (20 C.F.R. 404.1605).

The regulations specify that the representative payee may apply the social security payments for the use and benefit of the beneficiary in the manner and for the purposes determined by the payee to be in the beneficiary's best

interest (20 C.F.R. 404.1603), such as for the beneficiary's current maintenance (20 C.F.R. 404.1604). What is more, the regulations provide that where a beneficiary is confined in a state institution because of mental or physical incapacity, the representative payee shall give the highest priority to expenditure of the payments for the current maintenance needs of the beneficiary, including the customary charges made by the institution in providing care and maintenance, and it is specifically considered to be in the best interest of the beneficiary for the representative payee to allocate expenditure of the payments in a manner which will facilitate the beneficiary's earliest possible rehabilitation or release from the institution or which otherwise will help the beneficiary live as normal a life as practicable in the institutional environment (20 C.F.R. 404.1604 and 404.1606).

As stated, the federal regulations specifically require the representative payee to conserve or invest payments not needed for the beneficiary's current maintenance (20 C.F.R. 404.1605). Additionally, when a successor representative payee is designated, the former representative payee is directed to pay over the beneficiary's funds, including interest (20 C.F.R. 404.1610).

We think, in view of this, that the home's procedure, pursuant to Chapter 1 (commencing with Section 1010) of Division 5 of the Military and Veterans Code, to deposit any interest earned on the money of a member held by the home in the post fund, to be expended for the general welfare of all members of the home (see Sec. 1047, M. & V.C.), would not be consistent with the provisions of the federal regulations discussed above, and that social security funds in excess of the home's applicable fees³ must be conserved or invested on the member's behalf.

³ According to information you have submitted to us, the fee schedule for the home, effective April 1, 1978, specifies that the fee is zero for a member whose monthly income is \$100 or less, that amount which exceeds \$100 for a member having an income of \$101 to \$175, inclusive, and \$75 plus 20 percent of the amount of a member's income which exceeds \$175. The maximum fee which is charged is \$175 per month, so that members having incomes of \$675 or more per month pay the maximum fee.

We conclude, therefore, that the home is required to invest and credit interest to a member on social security funds received in its capacity as representative payee, with respect to such of the funds which are not used for the member's current maintenance.⁴

4

We have no information on the position of the Social Security Administration on the question of interest. A determination that interest did not have to be credited to the individual in a state institution when the state was the representative payee would be entitled to great weight by a court on any action to compel payment of such interest, as discussed in Analysis No. 4 (See Misasi v. Jacobsen, 55 Cal. 2d 303).

APPENDIX B

COST OF CARE AS DETERMINED BY
THE VETERANS' HOME AND THE VETERANS ADMINISTRATION

<u>PERIOD</u>	<u>LEVEL OF CARE</u>	<u>COST OF CARE</u>	
		<u>Veterans Administration</u>	<u>Veterans' Home</u>
7/75-6/76	Domiciliary	\$17.82	\$14.17
	Nursing	34.10	19.28
	Hospital	31.84	42.39
7/76-9/76	Domiciliary	15.87	14.17
	Nursing	34.79	19.28
	Hospital	33.73	42.39
10/76-6/77	Domiciliary	17.85	18.81
	Nursing	39.47	21.05
	Hospital	37.05	51.22
7/77-6/78	Domiciliary	13.09	17.91
	Nursing	48.29	23.85
	Hospital	46.16	46.60

Except for those differences in nursing costs for July 1976 to June 1977, the discrepancies between reported and audited costs did not change the reimbursements received by the Veterans' Home for the three levels of care for the periods covered. Both reported and audited costs of care exceeded the maximum reimbursement rates; therefore, the reimbursement paid to the Veterans' Home did not change.

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
Capitol Press Corps