

VETERANS' APPEAL PROCEDURES—INDEPENDENT MEDICAL EXPERTS

AUGUST 6, 1962.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted
the following

REPORT

[To accompany H.R. 852]

The Committee on Finance, to whom was referred the bill (H.R. 852) to amend chapter 3 of title 38, United States Code, to authorize the Administrator of Veterans' Affairs to establish medical advisory panels to resolve conflicts of evidence in questions involving service connection of disabilities or deaths, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

PURPOSE OF BILL

The purpose of the bill is to improve the appellate procedures applicable to veterans' claims by authorizing the referral of such claims to independent medical experts.

PURPOSE OF AMENDMENT

The committee amendment, which was recommended by the Veterans' Administration, simplifies the proposed procedure by making the use permissive with the Veterans' Administration.

GENERAL EXPLANATION

The bill authorizes the use of independent medical experts when, in the judgment of the Board of Veterans' Appeals, their use is warranted by the medical complexity or controversy involved in an appeal case. To assure the independence of the medical experts used in such circumstances, their services would be secured through arrangements with recognized medical schools, universities, or clinics, by which the individual expert, or experts, who would render the

opinion in specific cases would be selected by an appropriate institution official.

The committee adopted an amendment recommended by the Veterans' Administration and endorsed by the Bureau of the Budget which made the use of independent medical experts permissive with the Board rather than mandatory as would have been required by the bill as passed by the House of Representatives. The bill, as approved by the committee, makes no reference to the Board of Veterans' Appeals securing an advisory opinion from the Chief Medical Director of the Veterans' Administration since this is a matter within Agency discretion and ample authority for this practice now exists. In fact, the committee was informed that between 200 and 300 cases per year are currently submitted to the Chief Medical Director by the Board of Veterans' Appeals for expert advisory opinions.

The following excerpts are from the Veterans' Administration report on the bill:

We cannot precisely estimate the cost of the legislation amended according to our recommendation. At the present time, between 200 and 300 cases per year are submitted to the Chief Medical Director by the Board of Veterans' Appeals for expert advisory opinions. It might logically be expected that enactment of the bill, even as amended, would result in an increase in the number of cases in which medical advisory opinions from either the Chief Medical Director or independent experts would be requested. But we are unable to predict the number in advance, although it is our best judgment that the number would not be excessive from the standpoint of cost—unlike the situation which would exist if the original version of the bill were enacted. Opinions through universities can probably be secured for about \$50 for each opinion by a single specialist. Payments would be made under the authority of section 213 of title 38, United States Code, which authorizes the Administrator to secure the necessary services by contract or agreement as he deems practicable.

In summary, while I must strongly oppose H.R. 852 in its present form I believe the underlying purpose has merit. Accordingly, if it is amended as suggested in this report, I would recommend its enactment.

We are advised by the Bureau of the Budget that there is no objection from the standpoint of this administration's program to the presentation of this report to your committee.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

TITLE 38—VETERANS' BENEFITS

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§ 3301. Confidential nature of claims

All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration shall be confidential and privileged, and no disclosure thereof shall be made except as follows:

(1) To a claimant or his duly authorized agent or representative as to matters concerning himself alone when, in the judgment of the Administrator, such disclosure would not be injurious to the physical or mental health of the claimant. *And to an independent medical expert or experts for an advisory opinion pursuant to section 4009 of this title.*

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CHAPTER 71.—BOARD OF VETERANS' APPEALS

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4009. Independent medical opinions.

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§ 4009. Independent medical opinions

(a) *When, in the judgment of the Board, expert medical opinion, in addition to that available within the Veterans' Administration, is warranted by the medical complexity or controversy involved in an appeal case, the Board is authorized to secure an advisory medical opinion from one or more independent medical experts who are not employees of the Veterans' Administration.*

(b) *The Administrator shall make necessary arrangements with recognized medical schools, universities or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Such arrangement will provide that the actual selection of the expert or experts to give the advisory opinion in any individual case will be made by an appropriate official of such institution.*