The original documents are located in Box 47, folder "6/29/76 HR10268 Release of Names and Addresses by the Veterans Administration" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
JUN 29 1976

6/29/76

THE WHITE HOUSE

WASHINGTON

June 28, 1976

ACTION

Last Day: June 30

Posted 6/29/76

To archives 6/29/76

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 10268 - Release of Names and Addresses by the Veterans Administration

Attached for your consideration is H.R. 10268, sponsored by Representative Satterfield and two others.

The enrolled bill clarifies existing law by specifying the purposes and conditions regarding release by the Veterans Administration of the names and addresses of veterans and their dependents who are receiving or have received treatment in VA health care facilities.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), Ted Marrs and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 10268 at Tab B.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 24 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10268 - Release of names and addresses by the Veterans Administration
Sponsor - Rep. Satterfield (D) Virginia and 2 others

Last Day for Action

June 30, 1976 - Wednesday

Purpose

Clarifies existing law by specifying the purposes and conditions regarding release by the Veterans Administration (VA) of the names and addresses of veterans and their dependents who are receiving or have received treatment in VA health care facilities.

Agency Recommendations

Office of Management and Budget	Approval
Department of Health, Education, and Welfare	Approval
Veterans Administration	Approval
Domestic Council Committee on the Right of Privacy	Approval(Informally)
Department of Justice	Defers to VA
Department of Defense	Defers to VA

Discussion

H.R. 10268 is designed to correct a situation resulting from a VA General Counsel's opinion which, for the past 18 months, has halted the traditional cooperation between VA health care facilities and public health and law enforcement authorities in reporting the identity of veterans and their dependents treated for such conditions as communicable diseases or gunshot wounds. As originally introduced, the bill conflicted with the standards of the Privacy Act of 1974 (P.L. 93-579) for the release of this type of information. VA, accordingly, proposed several amendments

to bring the provisions of the bill into conformance with the provisions of that Act. These amendments were accepted by the Congress and are incorporated in the enrolled bill.

Background

For many years, VA provided public health authorities and other agencies of State and local governments, including law enforcement agencies and motor vehicle departments, with the names of veterans and their dependents who received VA medical treatment, where such information was required and/or needed under State laws. According to VA, most State laws require the reporting of treatment for communicable diseases, certain disabilities, gunshot wounds and child abuse to the appropriate State or local department or agency. Until 1972, names and addresses of veteran patients and dependents were provided under VA's general authority to release such information when it would serve a "useful purpose."

In 1972, the Congress amended this general authority (P.L. 92-540) by specifying that the release of names and addresses to non-profit organizations would be permitted only if the release was "directly connected" with VA programs or benefits. According to the Congress, the amendment was enacted specifically to preclude the distribution of mailing lists of veterans' names and addresses to commercial organizations and to insure that the release of names and address lists to veterans' service organizations and other non-profit entities for such purposes as advising veterans of their eligibility for VA programs and benefits would be carried out fairly and impartially among all such organizations.

Under a 1974 opinion by the VA General Counsel, this amendment was interpreted as precluding the release of names or addresses of veterans and their dependents to State and local agencies on the grounds that their purposes were not "directly connected" with the conduct of VA programs or the utilization of VA benefits. The VA, accordingly, stopped furnishing such information to State and local public health, law enforcement and other agencies.

A number of public health agencies subsequently have advised both VA and the Congress that VA's new non-disclosure policy has greatly hampered State and local efforts to seek out and treat persons who may have come into contact with

various communicable and infectious diseases. Law enforcement agencies also have advised that the non-disclosure policy impedes agency investigative efforts. In addition, congressional authors of the amendment strongly disagree with the 1974 VA General Counsel opinion and both the Senate and House Veterans' Affairs Committees have urged VA to reconsider its interpretation of the amendment.

The VA believes its interpretation of the amendment is legally correct, but proposed earlier this year that clarifying legislation be enacted to specifically authorize the release of names and addresses to State and local agencies, consistent with the provisions of the Privacy Act of 1974. H.R. 10268 incorporates substantially the language recommended by VA.

Description of the bill

H.R. 10268 would:

-- specifically authorize the release of patient names or addresses to any criminal or civil law enforcement governmental agency charged with the protection of public health or safety if a qualified representative of the agency has made a written request that such names and addresses be provided for a purpose authorized by Federal, State or local law,

-- require that any such disclosure of information be made in accordance with the provisions of the Privacy Act of 1974, and

-- increase the fines for willful misuse of names and addresses from $500 to $5000 for a first offense, and from $5000 to $20,000 for any subsequent offense.

Recommendations

VA recommends approval of H.R. 10268. In its attached views letter, VA states its belief that H.R. 10268 will satisfactorily meet the legitimate needs of Federal, State and local criminal and civil law enforcement agencies and at the same time will provide maximum confidentiality of names and address of veterans and their dependents.

The Domestic Council Committee on the Right of Privacy, which strongly objected to earlier versions of H.R. 10268,

indicates that several improvements have been made and states that "the present bill provides sufficient privacy safeguards to warrant Administration support."

We concur with the views expressed by VA and the Domestic Council Committee and, accordingly, recommend that you sign H.R. 10268.

James M. Frey

Assistant Director for
Legislative Reference

Enclosures

S/C-29

To: J. Cavanaugh 6-24-76 4:30 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 24 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10268 - Release of names and addresses by the Veterans Administration
Sponsor - Rep. Satterfield (D) Virginia and 2 others

Last Day for Action

June 30, 1976 - Wednesday

Purpose

Clarifies existing law by specifying the purposes and conditions regarding release by the Veterans Administration (VA) of the names and addresses of veterans and their dependents who are receiving or have received treatment in VA health care facilities.

Agency Recommendations

Office of Management and Budget	Approval
Department of Health, Education, and Welfare	Approval
Veterans Administration	Approval
Domestic Council Committee on the Right of Privacy	Approval (Informally)
Department of Justice	Defers to VA
Department of Defense	Defers to VA

Discussion

H.R. 10268 is designed to correct a situation resulting from a VA General Counsel's opinion which, for the past 18 months, has halted the traditional cooperation between VA health care facilities and public health and law enforcement authorities in reporting the identity of veterans and their dependents treated for such conditions as communicable diseases or gunshot wounds. As originally introduced, the bill conflicted with the standards of the Privacy Act of 1974 (P.L. 93-579) for the release of this type of information. VA, accordingly, proposed several amendments

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: June 25 Time: 1000am

FOR ACTION: David Lissy
Spencer Johnson
Max Friedersdorf
Dick Parsons
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: June 25 Time: 500pm

SUBJECT:

H.R. 10268-release of names and addresses by the VA

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__X__ For Your Comments ____ Draft Remarks

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

JUN 23 1976

The Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for a report on H.R. 10268, an enrolled bill "To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and/or addresses of present and former members of the Armed Forces and their dependents."

The Veterans' Administration has interpreted a 1972 amendment to the Veterans' Benefits title of the United States Code to preclude the release of the names and addresses of veterans with various disease conditions to State and local public health authorities.

The Veterans' Administration, prior to its interpretation of the 1972 amendment, for many years provided State and local health agencies with the names and addresses of persons with communicable diseases who received treatment at Veterans' Administration health care facilities. The enrolled bill would overcome the recent Veterans' Administration interpretation and would therefore again permit the Veterans' Administration to cooperate with State and local public health authorities.

The reporting of persons who have communicable diseases to public health authorities is an essential part of the effort to control effectively such diseases; persons with a disease cannot be treated nor others protected from the disease if the persons with the disease cannot be identified and located. We therefore strongly support this provision of the enrolled bill.

Subject to the views of other agencies with respect to those portions of the bill which do not affect the programmatic interests of this Department, we recommend that the enrolled bill be approved.

Sincerely,

Marjorie Lynch

Under Secretary

VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420
June 18, 1976

The Honorable
James T. Lynn
Director, Office of
Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This will respond to the request of the Assistant Director for Legislative Reference for the views of the Veterans Administration on the enrolled enactment of H. R. 10268, 94th Congress, a bill, "To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and/or addresses of present and former members of the Armed Forces and their dependents."

The subject bill would principally allow the Administrator, under section 3301 of title 38, "to prescribe regulations to release the names and/or addresses of veterans and their dependents to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law." The bill would also designate certain subsections of section 3301, redesignate certain numbered paragraphs, and require in subparagraph (g) that any disclosures made pursuant to section 3301 be made in accordance with the provisions of section 552a of title 5 (Privacy Act).

The principal purpose of the bill was necessitated because of the affect of the existing subparagraph (9) of section 3301. That subparagraph allows the Administrator to release names and addresses of veterans and their dependents but only if the release is directly connected with the conduct of programs and the utilization of benefits under title 38. Most state laws require the reporting of treatment for communicable diseases, certain disabilities, gunshot wounds and child abuse to the appropriate state agency charged with monitoring

such information. Under an opinion by the General Counsel in 1974, subparagraph (9) of section 3301 was interpreted as precluding the voluntary or requested release of names and addresses of veterans and their dependents to these state agencies as their purposes were not directly connected with the conduct of programs and the utilization of benefits under title 38. The enrolled bill would now allow the Administrator, consistent with the Privacy Act, to prescribe regulations to release names and addresses of veterans and their dependents treated for communicable diseases, certain disabilities, gunshot wounds, and child abuse to the applicable Federal, state, or local law enforcement agency charged with the protection of the public health or safety upon written request.

Although the bill changes the structure of section 3301, there is no other substantive change enacted by this bill. The bill would also increase the authorized fines for willful misuse of names and addresses from $500 to $5,000 in the case of a first offense and from $5,000 to $20,000 in the case of any subsequent offense.

We recognize the legitimate need for Federal, state, and local criminal and civil law enforcement agencies to maintain the public health and safety and believe that the provisions of subsection (f) of the subject bill will satisfactorily meet those needs and at the same time require such specificity as to provide maximum confidentiality of names and addresses of veterans and their dependents. In support of this recognition, we reported favorably on this bill on February 18, 1976 to the Senate Veterans' Affairs Committee. We further believe the other revisions of the bill lend needed organization and clarity to section 3301. Therefore, we support the foregoing provisions and recommend that the President approve H. R. 10268.

Sincerely,

Odell W. Vaughn

Deputy Administrator - in the absence of

RICHARD L. ROUDEBUSH
Administrator

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

June 18, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 10268),"To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and/or addresses of present and former members of the Armed Forces and their dependents."

The enrolled bill would clarify existing law regarding the release by the Administrator of the Veterans' Administration of names and addresses of patients who are receiving or have received treatment in VA hospitals. Criminal penalties are provided for knowing violations.

The Department of Justice defers to the Veterans' Administration regarding Executive action on this proposal.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

18 June 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of the Department of Defense on the enrolled enactment of H.R. 10268, 94th Congress, an Act "To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and/or addresses of present and former members of the Armed Forces and their dependents".

The basic purpose of this Act is to clarify existing law permitting the Veterans Administration (VA) to release the names or addresses of patients who are receiving or have received treatment in VA health care facilities. The Act would authorize the release of names or addresses to (1) any non-profit entity if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. (an authority which the Administrator now possesses under 38 U.S.C. 3391(9)), or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law. Disclosures made pursuant to this Act shall be made in accordance with the provisions of the Privacy Act of 1974 (5 U.S.C. 522a). The willful use or release of names or addresses under conditions not authorized as described above would subject the violator to substantially increased fines and to criminal liability instead of the civil liability now authorized.

The Department of Defense has no objections to this legislation, but defers to the position of the Veterans Administration.

Sincerely,

Richard A. Wiley

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: June 25 Time: 1000am

FOR ACTION: David Lissy
Spencer Johnson
Max Friedersdorf
Dick Parsons
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults
Ted Marrs

FROM THE STAFF SECRETARY

DUE: Date: June 25 Time: 500pm

SUBJECT:

H.R. 10268-release of names and addresses by the VA

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
__X__ For Your Comments
____ Draft Remarks

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

No comment
Max

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: June 25 Time: 1000am

FOR ACTION: David Lissy
Spencer Johnson
Max Friedersdorf
Dick Parsons
Ken Lazarus

cc (for information): Jack Marsh
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Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: June 25 Time: 500pm

SUBJECT:

H.R. 10268-release of names and addresses by the VA

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS: Recommend: Approval. RP

please return to Judy Johnston, Ground Floor West Wing

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

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Date: June 25 Time: 1000am

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DUE: Date: June 25 Time: 500pm

SUBJECT:

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ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__X__ For Your Comments ____ Draft Remarks

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

No objection -- Ken Lazarus 6/25/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

June 25, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF

SUBJECT: HR 10268 - release of names and addresses by the VA

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 6-25-76

TO: Bob Linder

FROM: Jim Frey

Attached is the views letter of the Domestic Council Committee on the Right of Privacy, on H.R. 10268, for inclusion in the enrolled bill file.

OMB FORM 38
REV AUG 73

DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

June 21, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Attention: Naomi R. Sweeney

Subject: H.R. 10268 a bill to amend 38 USC 3301 (9) to clarify the Veteran's Administration authority to release personal information pertaining to veterans under certain circumstances.

Dear Mr. Lynn:

We have been asked to comment on a recently amended version of H.R. 10268 a bill to authorize the VA administrator to release the names and addresses of veterans under certain circumstances. To our knowledge this redraft represents the fourth attempt since April of 1975 to amend 38 USC 3301 (9) to clarify the Administrator's authority to release veterans' data.

The bill as redrafted by the Senate Committee on Veterans Affairs would authorize the release of names or addresses:

(1) to any nonprofit entity if the release is directly connected with the conduct of programs and the utilization of benefits under title 38, United States Code (an authority which the Administrator now possesses under 38 USC 3301 (9)), or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law. The knowing use or release of names or addresses under conditions not authorized as described above would subject the violator to substantial fines and criminal liability.

This draft of HR 10268 contains privacy safeguards that were missing in earlier drafts and are absent under current law. First it would restrict the VA's broad authority under present 3301 (8) to release statistical and other veterans' information by making clear that such authority only pertains to types of information not otherwise regulated by Section 3301. Earlier drafts of HR 10268 made no effort to limit or reconcile the broad disclosure authorization of subsection 8. Secondly, the bill requires a written request by an appropriate representative of a civil or criminal law enforcement agency for a purpose authorized by law before the VA can release name and address information. Earlier drafts were not as specific in describing the governmental agencies that could request veterans information, and they did not require that requests be made in writing.

A third improvement in the present draft is its requirement that all disclosures under this section must be made in conformance with the Privacy Act. Earlier versions of 10268 ignored the Privacy Act and therefore could have resulted in confusion or circumvention of its protections.

Although the present bill has some shortcomings - for example we would have preferred to see the Congress specifically enumerate the purposes for which the VA could order release of this information - we think that the present bill provides sufficient privacy safeguards to warrant Administration support.

Sincerely,

Robert R. Belair
Acting General Counsel

RRB/lak

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-704

RELEASE OF NAMES AND ADDRESSES OF PRESENT AND FORMER PERSONNEL OF THE ARMED SERVICES BY THE ADMINISTRATOR OF VETERANS' AFFAIRS

DECEMBER 10, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROBERTS, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 10268]

The Committee on Veterans' Affairs to whom was referred the bill (H.R. 10268) to amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and addresses of present and former personnel of the armed services and their dependents, having considered the same, reports favorably thereon, unanimously by voice vote, with amendments and recommends that the bill do pass.

The amendments are as follow:

Page 1, line 5, strike out "may" and insert in lieu thereof "shall".

Page 2, line 14, strike out "$5,000" and insert in lieu thereof "$1,000".

Page 2, line 15, strike out "$20,000" and insert in lieu thereof "$5,000".

Amend the title so as to read:

A bill to amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and addresses of present and former personnel of the armed services and their dependents.

PURPOSE OF THE BILL

The purpose of the reported bill (H.R. 10268, as amended) is to clarify existing law which permits the Veterans' Administration to release the names and addresses and relevant medical information of patients in VA health care facilities. The reported bill would authorize the release of names and addresses of present or former personnel of the armed services, or their dependents, or both, to organizations recognized under section 3402 of title 38, United States Code, for purposes

of the preparation, presentation and prosecution of claims under laws administered by the Veterans' Administration and to any Federal, State or local government agency for the protection of the public health and safety.

BACKGROUND

Medical experts widely agree that the most effective way to prevent the spread of communicable diseases such as tuberculosis, venereal disease, and virulent forms of hepatitis and influenza is to contact and treat all persons who may have been exposed to an infected carrier of the disease. According to information received by the committee, all 50 States have established infectious disease units or their equivalents in the State health agency to facilitate and coordinate the treatment of communicable diseases, and have enacted State laws requiring that hospitals submit to the unit the names and addresses of persons who contract one of the dangerous communicable diseases.

While VA hospitals and clinics, as Federal installations, are clearly not bound by State law reporting requirements, the VA for many years has followed universally recognized principles of epidemiology by voluntarily cooperating with State and local health agencies in reporting to those agencies the names and addresses of persons with communicable diseases who received treatment at VA health care facilities. This policy of voluntary release of names and addresses has rested on the authority in paragraph (8) of section 3301 of title 38, United States Code, as follows:

> The Administrator may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

Section 3301 was amended in 1972 to restrict the Administrator's authority to release the names and addresses of veterans in certain situations; however, the VA continued to cooperate with State and local health agencies. Eighteen months ago, in General Counsel's Opinion 13–74 of May 30, 1974, the General Counsel held that the Administrator no longer had the discretionary authority to release the names and addresses of veterans to State and local health agencies. The Opinion relied upon paragraph (9) of section 3301 as requiring this conclusion of law. The pertinent part of section 3301 reads as follows:

> All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Veterans' Administration shall be confidential and privileged, and no disclosure thereof shall be made except as follows:
>
> * * * * * * *
>
> (9) The Administrator may, pursuant to regulations he shall prescribe, release the names and addresses of present or former personnel of the armed services, and/or dependents to any non-profit organization but only if the release is directly connected with the conduct of programs and the utilization of benefits under this title * * *.

Paragraph (9) was added to section 3301 by section 412(2) of Public Law 92–540 in 1972, specifically for the purpose of precluding the distribution of mailing lists of veterans' names and addresses to commercial organizations, and ensuring that the release of such lists for purposes in connection with the use of VA benefits (generally for outreach purposes) by veterans' service organizations and other nonprofit entities would be carried out on an evenhanded basis. The General Counsel's Opinion concluded that, by adding paragraph (9) and amending the first sentence of the section to refer specifically to "names and addresses" as within the confidentiality protection of the section, Congress intended to remove altogether the release of veterans' names and addresses from the Administrator's broad authority under the existing paragraph (8) to release information "when in his judgment such release would serve a useful purpose" and to restrict release of names and addresses only to the circumstances of paragraph (9)—when the release is to a non-profit organization and "is directly connected with the conduct of programs and the utilization of benefits under this title * * *".

On September 25 of this year, the Department of Medicine and Surgery dispatched a telegram to the Directors of hospitals, domiciliaries, and outpatient clinics in the VA health care system requiring them to stop the release of all "information containing personal identification" to State health data banks, cancer registries, and similar organizations. On October 30, the Department of Medicine and Surgery implemented the September 25 directive by releasing an interim issue, in implementation of the Privacy Act of 1974 (Public Law 93–579) generally, which, in pertinent part, prohibited the release of patient names and addresses to State health agencies—although not in any way, apparently, in reliance upon restrictions in that Act:

> The names and addresses of present or former personnel of the armed services, and/or dependents may be released to any nonprofit organization without the consent of that individual *but* only if the release is directly connected with the conduct of programs and utilization of benefits under title 38, U.S.C. (38 U.S.C. 3301(9)). This prohibition on release would include, but would not be limited to, *the voluntary release of information on communicable diseases to health departments* * * *. (Emphasis added.)

The effect of the September 25 directive and the interim issue of October 30 has been to halt the traditional cooperation between VA health care facilities and public health authorities in reporting to them the identity of patients with communicable diseases. The VA's new policy of noncooperation raises the distinct possibility that health officials might be unable to control the spread of a dangerous communicable disease.

Earlier this year the committee received the following letter from Dr. E. Kenneth Aycock, president of the Association of State and Territorial Health Officials:

APRIL 1, 1975.

Hon. DAVID E. SATTERFIELD III,
Chairman, Subcommittee on Hospitals, House Committee on Veterans' Affairs, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to you on a matter of considerable importance to State and local public health departments throughout this nation, with specific reference to H.R. 5324, which has been introduced by Congressmen Teague (Texas) and Hammerschmidt (Arkansas). The need for enactment of this legislation arises from what we believe to be an extremely unfortunate ruling by the Chief Attorney of the Veterans Administration (copy enclosed), which has effectively discontinued provision of information necessary for communicable disease control programs by public health departments to the serious detriment of both the veterans and general population.

For years it has been the practice of VA hospitals to routinely inform appropriate public health departments of the hospital release of veteran patients diagnosed with communicable diseases such as tuberculosis, hepatitis, venereal disease and others. This information is essential if the health department is to aid the veteran and to assure protection to the general population with whom the veteran comes into contact. It appears to us that the 1972 amendments approved by the Congress were in no way intended to result in the consequences of the aforementioned ruling. We urge, therefore, that your Subcommittee act speedily to remedy this unfortunate situation and make clear to the VA that the furnishing of necessary information to legitimate State public health agencies is not only permissible but desirable.

Your favorable consideration of this request will be most appreciated. If we can provide additional information, please let me know.

Very truly yours,

E. KENNETH AYCOCK, M.D.,
President.

The need for cooperation between the Veterans' Administration and State and local public health officials was clearly demonstrated during the recent encephalitis epidemics in Texas, Mississippi, and other States. Local VA medical officials refused to release information to State health officials because of the agency opinion; however, in view of the emergency situation existing at the time, the Chief Medical Director of the Veterans' Administration, Dr. John D. Chase, directed all hospital directors in the appropriate States to cooperate with State public health officials, notwithstanding the agency opinion.

Although the committee has focused on the policy concerning the Administrator's cooperation with public health authorities only, the same considerations would apply to VA cooperation with State and local law enforcement agencies. The General Counsel's opinion of May 30, 1974 concluded that the 1972 amendments to section 3301 precluded the Administrator from releasing names and addresses of patients treated for certain ailments to, for example, a State department of motor vehicles, and the October 30, 1975, interim issue of the Department of Medicine and Surgery prohibits the "notification to police departments of patients admitted for gunshot wounds. . . ." The committee feels that voluntary cooperation with law enforcement

authorities and State licensing authorities is equally important for public safety.

The 1972 amendments to section 3301 were intended to cut back on the Administrator's broad discretion to release lists of the names and addresses of veterans under paragraph (8) of the section. The legislative history of the amendments indicates that Congress had two very clear intentions—to halt the unauthorized release of lists of veterans' names and addresses to commercial organizations interested in solicitation and to provide for even handed standards to govern the release of such lists for VA-program-related purposes. The General Counsel's interpretation of the 1972 amendments to section 3301 severely limits the scope of paragraph (8) without any affirmative indication from the Congress that it intended any such limit, and abrogates a longstanding VA policy of voluntary cooperation with State and local public health authorities without any indication from the Congress that it disapproved of the policy.

Despite repeated appeals for reconsideration of its position the Veterans' Administration continues to hold that Congress, by its amendments to section 3301 of title 38 (Public Law 92–540), withdrew the Administrator's authority under paragraph (8) to release medical record information in order to cooperate with State and local public health authorities.

Protection of the privacy rights of patients with communicable diseases is adequately achieved by existing State and Federal law. Section 3301 and its longstanding, underlying regulations operate to protect the confidentiality of VA records, including medical records, from unwarranted disclosure without authorization by the subjects of those records. When, however, the agency to which VA medical records are disclosed is a State or local public health agency, then their confidentiality is more than adequately safeguarded by existing State laws. The VA's concern for the privacy rights of patients with communicable diseases is wholly consistent with notifying public health authorities of a communicable disease patient's name and address, since those agencies are legally obliged to preserve the confidentiality of the patient's identity and hospital records.

The Privacy Act of 1974 (Public Law 93–597) does not require the Veterans' Administration to withhold the name and address of a patient or former patient in a VA health care facility. That Act restricts the circumstances under which any Federal agency, including the Veterans' Administration, may release records or information contained in their systems of records, and attaches civil and criminal penalties to the unauthorized disclosures of such records or information by agency officers or employers.

The Act expressly authorizes a Federal agency to make disclosure pursuant to a "routine use" as that term is used in the Act and defined in the agency's published regulations and record-keeping system notices. Both of the other major Federal health care systems—the Department of Defense and the U.S. Public Health Service—have defined the release of a communicable disease patient's identity to public health authorities as a "routine use" in their published system notices, and cooperate as a matter of course with State and local authorities in preventing the spread and facilitating the treatment of communicable disease.

Although the amendments to section 3301 of title 38 in 1972 were not intended to limit the Administrator's longstanding discretionary authority under paragraph (8) to release information (including the name and address) about a patient or former patient in a VA health care facility, the Committee has concluded that legislation is necessary in that the Opinion of the Veterans Administration's General Counsel has caused widespread problems in relationships between the Veterans' Administration and officials charged with protecting community public health and safety.

SUMMARY OF THE BILL

The proposed amendment to subsection (9) of section 3301 of title 38 would provide that the Administrator of Veterans' Affairs shall release the names and addresses of present or former personnel of the armed services, or their dependents, or both, to organizations recognized under section 3402 of title 38, United States Code, for purposes of the preparation, presentation and prosecution of claims under laws administered by the Veterans' Administration and to any Federal, State, or local government agency for the protection of the public health and safety. Any organization or member thereof, or any agency, officer or employee thereof, who uses any name or address other than for the purposes called for in the proposed amendment shall be fined not more than $1,000 in the case of a first offense and not more than $5,000 in the case of any subsequent offense.

The release of names and addresses by the VA to State or local government agencies will be applicable only to those agencies charged under applicable State law with the protection of the public health and safety, and only in accordance with applicable Federal law and regulation safeguarding individual privacy.

OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee issues the following oversight findings:

There have been numerous discussions between officials of the Veterans' Administration and the committee concerning the May 30, 1974, Opinion by the Agency's General Counsel. Every effort has been made to resolve the matter by administrative action in order to continue the longstanding practice of VA hospitals routinely informing appropriate public health departments of the hospital release of veteran patients diagnosed with communicable diseases such as tuberculosis, hepatitis, venereal disease and other similar diseases.

A hearing was held on July 15, 1975 with testimony received from the Veterans' Administration and various veterans' organizations.

The committee feels strongly that since the release of names and addresses, for the limited purposes authorized in the reported bill, cannot be accomplished by administrative action, legislative action is essential in order to avoid the serious implications caused by the Opinion of the Veterans' Administration.

In regard to clause 2(l)(3)(D) of Rule XI, no oversight findings have been submitted to the committee by the Committee on Government Operations.

In regard to clause 2(l)(3)(C) of Rule XI, no cost estimate or comparison has been presented by the Congressional Budget Office relative to the provisions of H.R. 10268, as amended.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the committee feels that the enactment of H.R. 10268, as amended, would not be inflationary.

COST ESTIMATE

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the cost of the enactment of H.R. 10268, as amended, would be negligible, involving only administrative costs.

AGENCY REPORT

As of the time of the filing of this report, the Committee has not received the views of the Veterans' Administration, even though the Chairman had requested that such views be provided no later than October 29, 1975.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * * * *

Chapter 57—Records and Investigations

* * * * * * *

Subchapter I—Records

§ 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 and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of 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.

(2) When required by process of a United States court to be produced in any suit or proceeding therein pending.

(3) When required by any department or other agency of the United States Government.

(4) In all proceedings in the nature of an inquest into the mental competency of a claimant.

(5) In any suit or other judicial proceeding when in the judgment of the Administrator such disclosure is deemed necessary and proper.

(6) The amount of pension, compensation, or dependency and indemnity compensation of any beneficiary shall be made known to any person who applies for such information, and the Administrator, with the approval of the President, upon determination that the public interest warrants or requires, may, at any time and in any manner, publish any or all information of record pertaining to any claim.

(7) The Administrator in his discretion may authorize an inspection of Veterans' Administration records by duly authorized representatives of recognized organizations.

(8) The Administrator may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

[(9) The Administrator may, pursuant to regulations he shall prescribe, release the names and addresses of present or former personnel of the armed services, and/or dependents to any nonprofit organization but only if the release is directly connected with the conduct of programs and the utilization of benefits under this title. Any such organization or member thereof which uses such names and addresses for purposes other than those specified in this clause shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of subsequent offenses.]

(9) (A) The Administrator shall, pursuant to such regulations as he shall prescribe, release the names and addresses of present or former personnel of the armed services, or their dependents, or both—

(i) to service organizations recognized under section 3402 of this title for purposes of the preparation, presentation, and prosecution of claims under laws administered by the Veterans' Administration; and

(ii) to any Federal, State, or local government agency if the Administrator deems such release to be necessary or appropriate for the protection of the public health and safety.

(B) Any organization or member thereof, or any agency or officer or employee thereof, who uses any name or address released pursuant to subparagraph (A) of this paragraph for purposes other than those specified in such subparagraph shall be fined not more than $1,000 in the case of a first offense and not more than $5,000 in the case of any subsequent offense.

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Calendar No. 848

94TH CONGRESS
2d Session

SENATE

REPORT
No. 94-892

RELEASING OF NAMES AND/OR ADDRESSES OF PRESENT AND FORMER ARMED FORCES MEMBERS BY THE ADMINISTRATOR OF VETERANS' AFFAIRS

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 10268

MAY 14, 1976.—Ordered to be printed

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Calendar No. 848

94TH CONGRESS, *2d Session* | SENATE | REPORT No. 94-892

RELEASING OF NAMES AND/OR ADDRESSES OF PRESENT AND FORMER ARMED FORCES MEMBERS BY THE ADMINISTRATOR OF VETERANS' AFFAIRS

MAY 14, 1976.—Ordered to be printed

Mr. CRANSTON (for Mr. HARTKE), from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 10268]

The Committee on Veterans' Affairs, to which was referred the bill (H.R. 10268) to amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and addresses of present and former personnel of the armed services and their dependents, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute and an amendment to the title and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follow:

Strike out all after the enacting clause as follows:

[That paragraph (9) of section 3301 of title 38, United States Code, is amended to read as follows:

["(9)(A) The Administrator shall, pursuant to such regulations as he shall prescribe, release the names and addresses of present or former personnel of the armed services, or their dependents, or both—

["(i) to service organizations recognized under section 3402 of this title for purposes of the preparation, presentation, and prosecution of claims under laws administered by the Veterans' Administration; and

[“(ii) to any Federal, State, or local government agency if the Administrator deems such release to be necessary or appropriate for the protection of the public health and safety.

[“(B) Any organization or member thereof, or any agency or officer or employee thereof, who uses any name or address released pursuant to subparagraph (A) of this paragraph for purposes other than those specified in such subparagraph shall be fined not more than $1,000 in the case of a first offense and not more than $5,000 in the case of any subsequent offense.”.]

and insert in lieu thereof the following:

That (a) section 3301 of title 38, United States Code, is amended by—

(1) inserting “(a)” before “All”;

(2) striking out “follows:” and inserting in lieu thereof “provided in this section.”, and inserting thereafter the following new subsection:

“(b) The Administrator shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:”;

(3) redesignating paragraphs (6), (7), (8), and (9) as subsections (c), (d), (e), and (f), respectively;

(4) striking out “The” at the beginning of subsection (e) (as redesignated by clause (3) of this subsection) and inserting in lieu thereof “Except as otherwise specifically provided in this section with respect to certain information, the”; and

(5) striking out subsection (f) (as redesignated by clause (3) of this subsection) and inserting in lieu thereof the following new subsections:

“(f) The Administrator may, pursuant to regulations the Administrator shall prescribe, release the names or addresses, or both, of any present or former members of the Armed Forces, and/or their dependents, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Administrator pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

“(g) Any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5.”.

(b) The amendments made by subsection (a) of this section with respect to subsection (f) (as redesignated by subsection (a)(3) of this section) of section 3301 of title 38, United States Code (except for the increase in criminal penalties for a violation of the second sentence of such subsection (f)), shall be effective with respect to names or addresses released on and after October 24, 1972.

Amend the title so as to read:

An Act to amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and/or addresses of present and former members of the Armed Forces and their dependents.

Introduction and Summary of H.R. 10268, as Reported

The House of Representatives passed H.R. 10268 by unanimous vote on December 15, 1975, and the measure was referred to the Committee on Veterans' Affairs. On February 2, 1976, S. 2908, the proposed Veterans Omnibus Health Care Act of 1976, was introduced in the Senate. Section 113 of S. 2908 contained provisions which were similar in scope and purpose to those of the House-passed H.R. 10268.

On February 18 and 19, the Subcommittee on Health and Hospitals held hearings on S. 2908 and other pending veterans health care legislation. Several witnesses testified specifically on section 113 of the omnibus bill, H.R. 10268, and the administration proposal, S. 2856. These witnesses impressed upon the Committee the urgency of the problem which these legislative proposals were designed to solve, and the potential danger of delaying a resolution of this problem while congressional attention focused on the many other provisions of S. 2908. The Committee was urged to separate section 113 of the omnibus bill and consider it independently and on an expedited basis.

In open executive session on March 10, 1976, the full Committee on Veterans' Affairs unanimously ordered H.R. 10268 favorably reported to the full Senate with an amendment in the nature of a substitute which was the text of section 113 of S. 2908 (with minor technical changes).

Basic Purpose

The basic purpose of the Committee bill is to clarify existing law permitting the Veterans' Administration to release the names or addresses of patients who are receiving or have received treatment in VA health care facilities. The Committee bill would authorize the release of names or addresses (1) to any nonprofit entity if the release is directly connected with the conduct of programs and the utilization of benefits under title 38, United States Code (an authority which the Administrator now possesses under 38 U.S.C. 3301(9)), or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law. The knowing use or release of names or addresses under conditions not authorized as described above would subject the violator to substantial fines and criminal liability.

Summary of Provisions

H.R. 10268 as reported would:

(1) Make technical, stylistic, and conforming modifications in existing section 3301 of title 38, United States Code.

(2) Limit the Administrator's broad authority under existing section 3301(8) (subsection (g), as revised by the bill) to release information, statistics, or reports in the possession of the VA by prohibiting the release, under this provision, of information the release of which is specifically limited or otherwise provided for in other subsections of section 3301, as amended.

(3) Specifically authorize the release of patient names or addresses to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by applicable Federal, State, or local law. Under this specific statutory authority, the Administrator could report the names or addresses of patients with communicable or environmentally

related diseases to State or local public health authorities; could cooperate with State or local law enforcement agencies in reporting on patients whose injuries or disabilities suggest potential criminal liability; and could comply with State or local laws that require the names of patients treated for certain diseases or disabilities to be reported to departments or registries of motor vehicles. At present, the VA's official policy, under its interpretation of existing law, is not to cooperate with State or local public health or law enforcement agencies in any of the circumstances above.

(4) Require that any disclosure of information under section 3301 be made in accordance with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(5) Increase the fines for knowing and willful violations of the conditions under which patient names or addresses may be released or used, and subject violators to criminal liability. Current law prescribes fines of up to $500 for a first offense, and $5,000 for subsequent offenses. Under the Committee bill, these maximum fines would be increased to $5,000 and $20,000, respectively.

(6) Make the clarifying amendments as to release of names or addresses effective as of October 24, 1972 (except for increases in criminal penalties), the date of enactment of Public Law 92-540.

Background and Discussion

Origin of Problem

Medical experts widely agree that the most effective way to prevent the spread of communicable diseases such as tuberculosis, venereal disease, and virulent forms of hepatitis and influenza is to contact and treat all persons who may have been exposed to an infected carrier of the disease. According to HEW's Center for Disease Control, all 50 States have established infectious disease units or their equivalents in the State health agency to facilitate and coordinate the treatment of communicable diseases, and have enacted State laws requiring that hospitals submit to the unit the names and addresses of persons who contract one of the dangerous communicable diseases. The necessity for such a procedure was recently summarized in cogent fashion by Dr. John J. Hanlon, Assistant Surgeon General of the United States Public Health Service and an eminent professor and authority on public health:

> To be segregated and subsequently rendered noncommunicable, diseased individuals first must be discovered. Fundamental to this is a system for the reporting of cases of communicable diseases both by physicians in the area and by health authorities in other localities to which infected individuals may emigrate. . . . The value of a report of a case of communicable disease is not in the counting of a "vital fact" or merely in the control of the patient but in the lead it gives in finding sources and contacts. This implies engaging in what some have termed *shoe-leather epidemiology*. A routine procedure must operate to determine and locate for subsequent examination members of a group in which active infection of either recent or earlier origin is most likely to exist. (*Public Health Administration and Practice* (6th ed., 1974), pp. 391-392; emphasis in the original.)

While VA hospitals and clinics, as Federal installations, are clearly not bound by State law reporting requirements, the VA for many years has followed universally recognized principles of epidemiology by voluntarily cooperating with State and local health agencies in reporting to those agencies the names and addresses of persons with communicable diseases who received treatment at VA health care facilities. This policy of voluntary release of names and addresses has rested on the authority in paragraph (8) of section 3301 of title 38, United States Code, as follows:

> The Administrator may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

Even after section 3301 was amended in 1972 to restrict the Administrator's authority to release the names and addresses of veterans in certain situations, the VA continued to cooperate with State and local health agencies.

However, in General Counsel's Opinion 13-74 of May 30, 1974, the General Counsel held that the Administrator no longer had the discretionary authority to release the names and addresses of veterans to State and local health agencies. The Opinion relied upon paragraph (9) of section 3301 as requiring this conclusion of law. The pertinent part of section 3301 reads as follows:

> All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Veterans' Administration shall be confidential and privileged, and no disclosure thereof shall be made except as follows:
>
> * * * * *
>
> (9) The Administrator may, pursuant to regulations he shall prescribe, release the names and addresses of present or former personnel of the armed services, and/or dependents to any nonprofit organization but only if the release is directly connected with the conduct of programs and the utilization of benefits under this title. . . .

Paragraph (9) was added to section 3301, by section 412(2) of Public Law 92-540 in 1972, specifically for the purpose of precluding the distribution of mailing lists of veterans' names and addresses to commercial organizations, and ensuring that the release of such lists for purposes in connection with the use of VA benefits (generally for outreach purposes) by veterans' service organizations and other nonprofit entities would be carried out on an evenhanded basis. The General Counsel's Opinion concluded that, by adding paragraph (9) and amending the first sentence of the section to refer specifically to "names and addresses" as within the confidentiality protection of the section,

Congress intended to remove altogether the release of veterans' names and addresses from the Administrator's broad authority under the existing paragraph (8) to release information when in his judgment such release would serve a useful purpose and to restrict release of names and addresses only to the circumstances of paragraph (9)—when the release is to a nonprofit organization and "is directly connected with the conduct of programs and the utilization of benefits under this title. . . ."

On September 25, 1975, the Department of Medicine and Surgery dispatched a telegram to the Directors of hospitals, domiciliaries, and outpatient clinics in the VA health care system requiring them to stop the release of all "information containing personal identification" to State health data banks, cancer registries, and similar organizations. On October 30, the Department of Medicine and Surgery implemented the September 25 directive by releasing an interim issue, in implementation of the Privacy Act of 1974 (Pub. L. 93–579) generally, which, in pertinent part, prohibited the release of patient names and addresses to State health agencies—although not in any way, apparently, in reliance upon restrictions in that Act:

> The names and addresses of present or former personnel of the armed services, and/or dependents may be released to any nonprofit organization without the consent of that individual *but* only if the release is directly connected with the conduct of programs and utilization of benefits under title 38, U.S.C. (38 U.S.C. 3301(9)). This prohibition on release would include, but would not be limited to, *the voluntary release of information on communicable diseases to health departments.* . . . (Emphasis added.)

The effect of the September 25 directive and the interim issue of October 30 has been generally to halt the traditional cooperation between VA health care facilities and public health authorities in reporting to them the identity of patients with communicable diseases, a point made by the Association of State and Territorial Health Officials in testimony before the Subcommittee on Health and Hospitals on February 19, 1976:

> Recent rulings by the Veterans' Administration's General Counsel on legislation affecting the confidentiality of VA medical information have precluded routine reporting of infectious diseases to State and local health authorities, although such cooperation is required by State law. This creates a situation in which a Federal enclave exists within a community where some persons with communicable diseases are diagnosed and treated but where there is no possibility of thereafter containing spread. Cooperation is thus mandatory because the VA has no authority for protecting the health of the general public and must rely on the constituted health agencies at [the] State and local level. If State or local health authorities do not know the existence of a VA beneficiary with a communicable disease, the disease will be permitted to spread for an unacceptable period of time, affecting both VA beneficiaries and other members of the community. The Federal Government is committed to assisting State and local agencies in controlling communicable diseases and also has a direct responsibility for controlling interstate spread. The current VA position undermines both of these goals. We propose that the VA rely on the requirements of the Privacy Act of 1974, to ensure that the personal privacy of VA beneficiaries is protected, and that appropriate regulations be promulgated immediately to ensure disease reporting. (Other Federal agencies are able to report diseases to State and local health agencies under the Privacy Act.) We view this as an urgent matter.

The VA's sudden decision to stop complying with State laws in all 50 States requiring the disclosure of the identity of certain hospital patients to State and local public health authorities and other agencies raised the distinct possibility that health officials might be unable to control the spread of a dangerous disease, threatening the health of literally millions of Americans inside and outside the VA health care system. Also abruptly ended was the VA's amicable working relationship with other agencies of State and local government, including law enforcement agencies and motor vehicle departments, to which, under applicable law, hospitals were required to release information on relevant patients.

Alarmed by the VA's sudden reversal of policy, and convinced that the VA's new policy of noncooperation with State and local agencies accorded neither with the dictates of Federal law nor with principles of sound public policy, the chairman of the Committee on Veterans' Affairs and the chairman of its Subcommittee on Health and Hospitals wrote jointly to Administrator Richard L. Roudebush on November, 11, 1975, requesting that the VA reconsider its position and that, pending the outcome of such reconsideration, the policy of cooperation with State and local agencies be reinstituted. Accompanying the letter was a lengthy Memorandum of Points and Authorities in support of the Chairmen's contention that the legislative history and plain meaning of section 3301 did not support the VA's new interpretation of that section. This request was reinforced in a November 17, 1975 letter from the ranking minority members of the Committee and Subcommittee.

The General Counsel's Opinion 13–74 of May 30, 1974, the letters of November 11 and 17, 1975, to Administrator Roudebush, and the Memorandum of Points and Authorities that accompanied the November 11 letter are set forth in the section entitled "Agency Reports," *infra.*

Although there has been no formal answer to the November 11 letter from Chairman Hartke and Senator Cranston, the Committee understands that the opinion of the General Counsel is unchanged and that no change in policy will be forthcoming unless the law is changed. The VA has officially requested that clarifying legislation be enacted.

The Committee is unconvinced that the VA's interpretation is correct as a matter of law. Further, the VA's own policy guidelines have been contradictory on this question. As part of its regula-

tions under the Privacy Act of 1974, the VA included these routine uses for patient medical records:

> Disclosure of medical record data as deemed necessary and proper to Federal, State and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants and to protect their rights under law and assure that they are receiving all benefits to which they are entitled. . . .
>
> A record from this system of records may be disclosed as a "routine use" to Federal, State or local agency maintaining civil, criminal or other relevant information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational, or welfare benefit. (From MP–1, Part II, Chapter 21, Appendix B, page B–58, Veterans' Administration, September 27, 1975.)

The Committee is puzzled that the VA deemed, in 1975, the release of such information to Federal, State, and local agencies as a "routine use", when, in 1974, it had concluded that section 3301 banned the release of exactly this sort of information under any circumstances. This example of inconsistency in VA policy is noted simply to illustrate that the confusion engendered by the current VA interpretation of the state of the law is unsatisfactory and must be rectified so as to restore the VA's traditional cooperative relations with State and local governmental agencies.

Purpose of Legislation

Under the Committee bill, the Administrator is authorized to release the name or address, or both, of any patient or former patient treated in a VA health care facility to any criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety. The Committee, in drafting this language, has substantially tracked the language of subsection (b)(7) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(7), which authorizes disclosure of agency records to "another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity." The legislative history of this subsection of the Privacy Act and the well-developed body of regulatory and case law arising thereunder make it quite clear that a "civil or criminal law enforcement activity" includes the activities of Federal, State, and local public health authorities, and Federal, State, and local law enforcement agencies and departments or registries of motor vehicles. Thus, the amendments to section 3301 contained in the Committee bill would authorize the release of patient names or addresses to all of the Federal, State, and local agencies and instrumentalities specified in the previous sentence for purposes for which those agencies or instrumentalities are authorized to use the information by applicable law.

As an additional precondition of the release of patient names or addresses to such agencies or instrumentalities, the Committee bill would require that a qualified representative of the agency or instrumentality make a written request of the VA asking that the names or addresses be provided and stating that they are required for a purpose authorized by law. The Committee does not intend that State or local agencies will have to file written requests each time patient identification is sought, or with each hospital from which data must be obtained. Rather, the Committee believes that the purposes of this written request requirement are adequately served if each agency which needs or will need patient identification data files with the Department of Medicine and Surgery in Washington, D.C., a written request stating the information needed and the purpose, as authorized by applicable law, for which the information is needed. Regulations which the Administrator is required to prescribe pursuant to the amended section 3301 can specify whether such written requests should be resubmitted annually or otherwise.

The Scope of Disclosure

The Committee recognizes that the language of its amendment vests considerable discretion in the Administrator to prescribe regulations with regard to the release of patient names or addresses to governmental agencies or instrumentalities for public health and safety purposes pursuant to State laws. This is because the Committee believes it cannot anticipate all potential situations which might call for the release of such information, and is reluctant under such circumstances to recommend statutory language that might prove unduly restrictive or inflexible. Thus, the Committee intends to give the Administrator the latitude necessary to develop regulations in accordance with the sound dictates of practical experience. But the Committee stresses that the Administrator, in prescribing and implementing those regulations, should be guided by the principle that the scope of the Veterans' Administration's disclosure of names and addresses to governmental agencies or instrumentalities should be no broader than is absolutely necessary to accomplish the "protection of the public health or safety" purpose designated by the Administrator, and should in all circumstances comport with Federal and State privacy statutes and with the constitutionally protected right of privacy.

Accordingly, the Committee directs the Administrator to specify with particularity in the regulations required to be prescribed pursuant to this new provision the standards to be used in designating those governmental agencies and instrumentalities to which disclosure would be authorized; the ambit of authorized disclosure to those agencies and instrumentalities; the public health or safety purposes for which such disclosure is to be made; and the procedures (including concurrence in the release decision by a VA physician or responsible administrative official in addition to the treating physician) to be followed in each VA health care facility for the disclosure of patient identification information pursuant to this provision. Disclosure of patient names or addresses should be authorized only under the circumstances, and according to the guidelines, described in the regulations.

The Committee recognizes that occasional cases will pose interpretive questions under the regulations, and directs that in such cases no

disclosure of patient identification information be made until the Director of the VA health care facility (or the Director's designeee) has consulted, either orally or in writing, with the Office of General Counsel in a way so as to ensure uniformity of interpretation. The Committee expects that VA Central Office will work closely and cooperatively with facility directors in the field to ensure that the regulations are implemented fully and in accordance with the underlying Congressional intent.

Because of the sensitivity of the question of disclosure of veterans' names or addresses, and because of the widespread concern voiced at all levels of government over this issue, the Committee plans to monitor closely the manner in which the VA implements the authority contained in new subsections (f) and (g). If the Committee is dissatisfied, further legislation may be considered to provide additional clarification or modification of this important authority.

Areas of Special Concern

The Committee believes there may be special concerns involved in the release to public health authorities of the names of patients with venereal disease. In 1972, by enacting Public Law 92–449, the Communicable Disease Control Amendments Act of 1972, Congress recognized the extraordinary sensitivity surrounding the medical records, and the release of information from them, of patients treated for venereal disease. The 1972 Act contained a provision prohibiting the release of a patient's name to public health authorities when the patient received treatment for venereal disease in a program under a venereal disease grant.

The purpose of this confidentiality requirement was to encourage persons with venereal disease to seek treatment by giving them the assurance that their treatment would be handled in the strictest confidence. The Committee feels that, for two reasons, these considerations may not be as compelling in the present context. First, almost all patients seeking treatment for venereal disease in VA health care facilities are adult males, as opposed to the females and juvenile males who make up a significant proportion of patients at non-VA facilities, and for whose benefit the confidentiality protection in Public Law 92–449 seems primarily intended. Second, the Privacy Act of 1974 has been enacted since the Communicable Disease Control Amendments of 1972, and requires greater protection by Federal agencies of the privacy of patient records than was previously required by law.

While believing that there should be particular sensitivity to the implications of releasing the identity of patients treated for venereal disease, the Committee nevertheless doubts that any blanket exclusion should be made for communication to public health authorities of the identity of patients with venereal disease, the most common communicable disease in the United States.

There is one additional area of special concern to the Committee. Many State laws provide for communication of the information on communicable diseases to State public health authorities, which in turn share this information with appropriate local authorities which in most States actually carry out the investigative and epidemiological activities. The Committee believes that it may well be preferable for the VA, as a matter of policy, to limit disclosure only to such local

officials in order to ensure that this information receives only that degree of dissemination which is absolutely essential to the achievement of the public health goal. The Committee raises this point because of its deep concern about the possible misuse of information such as this in States with data banks or computer information systems to which a broad spectrum of public and quasi-public agencies and organizations may have access.

The Administrator should give both of these matters close consideration in prescribing regulations pursuant to this legislation.

Relationship to the Privacy Act

The Committee bill would add a new subsection to section 3301 requiring that any disclosure of information made pursuant to that section accord with the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. Because of the overlap, in certain respects, between the Privacy Act and section 3301 of title 38, difficult questions of statutory interpretation and Congressional intent could conceivably arise as a result of this post-Privacy Act legislation, without further explication of the relationship between these two Federal laws.

The potential problem is illustrated by the following example: Present section 3301(3) of title 38 (which, under the Committee bill, would be redesignated as section 3301(b)(3), but the substance of which would not be altered) authorizes the disclosure of information "[w]hen required by any department or other agency of the United States Government". Subsection (b)(7) of the Privacy Act also authorizes disclosure of information to another Federal agency, but imposes three additional requirements on the disclosure—it must be for "a civil or criminal law enforcement activity", the activity must be "authorized by law", and the head of the agency seeking disclosure must make a written request specifying the particular portion of the information desired and the law enforcement activity for which it is sought. In this instance, the Privacy Act clearly imposes more restrictions on the release of information than section 3301 of title 38 does. If, then, the releasing agency is the VA, which law applies?

The Committee's guiding principle in resolving this problem has been that the confidentiality of patient records should always be protected to the maximum extent authorized by Federal law. The Committee understands that this comports with the VA's interpretation. By amending section 3301 to make the provisions of the Privacy Act specifically applicable to all disclosures of information under that section, the Committee has made sure that this policy will continue, as follows: Each law applies to the release of information, and in situations where either law could apply, then the stricter of the two applicable provisions is operable. By "stricter", the Committee means the provision more protective of the confidentiality of the individual's records.

Thus, in the example cited above, the stricter provisions of the Privacy Act would apply, and the VA could release information to another Federal agency only when the three additional requirements contained in subsection (b)(7) of the Privacy Act—but not contained in section 3301(3) of title 38—were satisfied. Conversely, in situations where the applicable provision in title 38 is stricter than the applicable Privacy Act provision—for example, the criminal fine for a second or

subsequent violation of the confidentiality provisions, which would be up to $20,000 under title 38, but no more than $5,000 under the Privacy Act—then the title 38 provision would apply.

The Committee views these two Federal laws as complements serving the same objective—protection of the privacy and confidentiality of individuals and their records.

The limited release of patient identification data authorized by the Committee bill is consistent with the underlying purpose of the Privacy Act. In this context, it is noteworthy that both of the other major Federal health care systems—the Department of Defense and the U.S. Public Health Service—have defined the release of patient identification information to State and local public health authorities as a "routine use" under the Privacy Act, and cooperate as a matter of course with these authorities to prevent the spread and facilitate the treatment of communicable disease.

Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510, 91st Congress), the Committee, based on information supplied by the Veterans' Administration, estimates that the cost resulting from the enactment of H.R. 10268, as reported, would be negligible, involving only administrative costs.

Tabulation of Votes Cast in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes cast in person or by proxy of the Members of the Committee on Veterans' Affairs on a motion to report H.R. 10268, with amendments, favorably to the Senate:

Yeas—9

Vance Hartke	Clifford P. Hansen
Herman E. Talmadge	Strom Thurmond
Jennings Randolph	Robert T. Stafford
Alan Cranston	
Richard (Dick) Stone	
John A. Durkin	

Nays—0

Section-by-Section Analysis and Explanation of H.R. 10268, as Reported

Section 1

Section 1 amends section 3301 (relating to confidentiality of records) of title 38 of the United States Code to permit the release, under certain circumstances, of the name and/or address of any veteran to State and local public health agencies and other criminal or civil law enforcement governmental agencies charged under applicable law with the protection of the public health or safety.

Clauses 1, 2, and 3 of subsection (a) of the first section of the bill make conforming changes in existing section 3301 to (A) designate the material above clause (1) as subsection (a), (B) insert immediately thereafter a new subsection (b) requiring disclosure of the files, records, reports, and other papers and documents described in new subsection (a) (as redesignated by the bill), in accordance with the circumstances specified in clauses (1) through (5), and (C) redesignate clauses (6) through (9) as subsections (c) through (f), respectively.

Clause 4 of subsection (a) of the first section of the bill limits the Administrator's authority under section 3301(e) (as redesignated by the bill) to release information, statistics, or reports when in the Administrator's judgment such release would serve a useful function, by prohibiting the release under section 3301(e) of certain information specifically covered in other subsections of section 3301.

Clause 5 of subsection (a) of the first section of the bill strikes out section 3301(f) (as redesignated by the bill) and inserts two new subsections with respect to the release of veterans' names or addresses.

New subsection (f): Provides that such names or addresses, or both, may be released by the Administrator (A) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 (as is now authorized under existing section 3301(9)), or (B) to any criminal or civil law enforcement governmental agency charged under applicable law with the protection of the public health or safety, provided that a qualified representative of such agency has made a written request that such names or addresses be provided for an activity authorized by law. Knowing and willful release of a name or address under circumstances other than those specified in new subsection (f) subjects the violator to criminal liability (instead of the civil liability now authorized) and very substantial fines (a maximum of $5,000 for the first offense and $20,000 for subsequent offenses, instead of the $500 and $5,000 fines authorized under existing law).

New subsection (g): Provides that any disclosure of files, records, reports, other papers and documents, information, statistics, or names and addresses made pursuant to section 3301 must also be made in accordance with the provisions of section 552a of title 5 of the United States Code—the Privacy Act of 1974.

Subsection (b) of the first section of the bill makes the amendments made to subsection (f) (as redesignated by subsection (a)(3), and amended by subsection (a)(5), of the bill) of section 3301 (except for the increase in criminal penalties for a violation of the second sentence of such subsection) retroactively effective to October 24, 1972, with respect to names and addresses released since that date. The date—October 24, 1972—is the effective date of Public Law 92-540, which added existing paragraph (9) to section 3301, and which the General Counsel of the Veterans' Administration has held precludes the VA from continuing its policy of voluntarily cooperating with local and State public health and safety agencies by releasing to such agencies names and addresses of veterans treated in VA health care facilities in certain situations, such as when a communicable disease or gunshot wound is treated.

Agency Reports

The Committee requested and received reports from the Veterans' Administration and the Office of Management and Budget, on H.R. 10268, S. 2908, and S. 2856. These reports and other pertinent material follow:

[No. 77]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., February 9, 1976.

Hon. VANCE HARTKE,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of December 19, 1975, in which you requested our comments on H.R. 10268, 94th Congress.

Currently, 38 U.S.C. 3301(9) limits the release of names and addresses of veterans and their dependents, by the Veterans' Administration, to nonprofit organizations, but only if the release is directly connected with the conduct of programs and utilization of benefits under title 38, United States Code. H.R. 10268, if enacted, would amend subsection 3301(9) to permit our release of these names and addresses for two limited purposes in lieu of the existing provision. First, it would give the Administrator of Veterans' Affairs discretionary authority to release the names and addresses to those veterans' service organizations recognized under section 3402 of title 38, United States Code; and second, it would permit such release to any Federal, State, or local government agency if the Administrator deems the release to be "necessary or appropriate for the protection of the public health and safety."

We would have no objection to limiting the release of names and addresses to service organizations recognized under section 3402 of title 38, instead of to nonprofit organizations presently eligible to receive such information. We would point out, however, that the recognized service organizations are presently able to secure the names for title 38 purposes, but that the proposed change will not permit a continuance of the present practice of supplying this information to nonprofit educational institutions and other agencies interested in contacting veterans in order to alert them as to their eligibility for benefits and to the advantages available to them by making use of these benefits. For this reason, we would prefer retention of the present language permitting release "to any nonprofit organization but only if the release is directly connected with the conduct of programs and utilization of benefits under this title."

The second proposed authorization for the release of the names and addresses does involve an area that has created considerable concern, both within the Veterans' Administration and among many State and local government agencies. Since the addition of subsection 3301(9) to title 38, in 1972, the Veterans' Administration has been unable to legally comply with various State and local laws requiring the reporting of the identity of persons treated for infectious and communicable diseases, gunshot wounds, and other medical conditions with respect to which the public welfare would properly override an individual's right to confidentiality. It is our opinion that some such change is both desirable and necessary for the welfare and safety of the general public.

We believe, however, that the language contained in H.R. 10268 is unnecessarily broad and that, as drafted, it goes beyond the principles of personal privacy embodied in the Privacy Act of 1974. As an aid to the Committee, we enclose a draft revision of H.R. 10268, in which we have attempted to develop language which could accomplish the purposes of the bill and also clarify the relationship between an amended form of section 3301(9) and the Privacy Act. The language we have employed is basically from the Privacy Act. Proper precautions can be taken in the supplementing regulations to carry out the intent of the Congress with full consideration as to the individuals' rights of privacy.

H.R. 10268 also revises the penalties for an unauthorized use of information received from the Veterans' Administration pursuant to 38 U.S.C. § 3301, but does not state whether the penalty provision is civil or criminal in nature. We have been advised by the Department of Justice that if civil, the bill should state whether individuals are authorized to bring a cause of action in district courts, whether they must have first suffered some injury, whether they are entitled to attorney's fees, and whether the action is to be directed against an agency, an individual, or both. If the offending agency is a State governmental agency, H.R. 10268, as presently worded, appears to authorize a suit against a State without its consent. Such a procedure may run afoul of the Eleventh Amendment to the Constitution.

In light of the foregoing and to make it clear that the penal provisions are criminal rather than civil in nature, our draft revision includes the language "shall be guilty of a misdemeanor and." We have also added a requirement of guilty knowledge as to the limited use of the information and as to its willful use.

On a similar report on H.R. 10268 which we forwarded on January 21, 1976, to the chairman, Committee on Veterans' Affairs, House of Representatives, we were advised by the Office of Management and Budget that there was no objection to the presentation of that report from the standpoint of the administration's program.

The fiscal cost of this bill, either in its present form or in the form presented by the enclosed draft revision, would be negligible, involving only administrative costs.

Sincerely,

ODELL W. VAUGHN,
Deputy Administrator
(For and in the absence of
Richard L. Roudebush, Administrator).

Enclosure:

A BILL To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of the Veterans' Affairs may release the names and addresses of present and former personnel of the armed service and their dependents

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (9) of section 3301 of title 38, United States Code, is amended to read as follows:

(9) The Administrator may, pursuant to regulations he shall prescribe, release the names and addresses of present or former personnel of the armed services, and/or dependents, to any non-

profit organization but only if the release is directly connected with the conduct of programs and the utilization of benefits under this title or to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a criminal or civil law enforcement activity if the activity is authorized by law and if a qualified representative of the agency or instrumentality has requested in writing such names and addresses. Any such organization or member thereof, or other person having access to names and addresses released by the Administrator pursuant to the preceding sentence and knowing that the use of such names and addresses is limited to the purposes specified in this clause, willfully uses such names and addresses for purposes other than those specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

SEC. 2. Any disclosures made pursuant to 38 U.S.C. 3301, as amended by the first section of this bill, shall be made in accordance with the provisions of 1 U.S.C. 552a.

[No. 74]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., January 30, 1976.

Hon. VANCE HARTKE,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of December 19, 1975 for the views of this office on H.R. 10268, a bill "To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and addresses of present and former personnel of the armed services and their dependents."

In its report to your Committee on H.R. 10268, the Veterans' Administration states its reasons for opposing enactment of the bill as passed by the House of Representatives. Instead, the VA recommends that H.R. 10268 be revised to clarify the relationship between an amended form of section 3301(9) of title 35, United States Code, and the Privacy Act of 1974.

We concur in the views expressed by the VA in its report. Accordingly, we oppose enactment of H.R. 10268 as passed by the House of Representatives, but would not object to enactment of the revised draft of H.R. 10268 which was submitted to your Committee by the VA.

Sincerely,

(Signed) JAMES M. FREY,
Assistant Director for Legislative Reference.

[No. 94]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., March 2, 1976.

Hon. VANCE HARTKE,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This will respond to your request for a report by the Veterans' Administration on S. 2908, 94th Congress, a bill "To amend title 38, United States Code, to improve the quality of hospital care, medical services, and nursing home care in Veterans' Administration health care facilities; to require the availability of comprehensive treatment and rehabilitative services and programs for certain disabled veterans suffering from alcoholism, drug dependence, or alcohol or drug abuse disabilities; to make certain technical and conforming amendments; and for other purposes."

S. 2908 contains a number of provisions directed toward extending or clarifying the authority of the Department of Medicine and Surgery to provide care to veterans. There are other provisions which would facilitate the administration of this program. There are still other provisions which would redirect the emphasis of veterans medical care to the service connected veteran. A complete analysis of each of these provisions is enclosed herewith, as well as our position thereon and a cost analysis thereof.

As can be ascertained by reading the enclosed analysis, there are a number of provisions of this bill which we favor. Furthermore, there are other provisions which may have some desirable features, but which provide the type of benefit extensions with associated cost factors which we cannot support, particularly at this time when the need for reasonable restraint in the growth of Government spending is being stressed. In this regard, we share the concern expressed by Senator Cranston at the time this measure was introduced. As the Senator suggested, we must question whether it is reasonable for the VA health care budget to continue to expand at the rapid rate achieved over the last 5 years, and whether the VA can continue to provide more and more care and services to more and more veterans and still be able to make the treatment of veterans service connected disabilities our primary focus. Accordingly, for the reasons specified in the analysis, we cannot support the bill as introduced.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

ODELL W. VAUGHN,
Deputy Administrator,
(In the absence of
Richard L. Roudebush, Administrator).

Enclosure.

The first section of the bill provides that the Act may be cited as the "Veterans Omnibus Health Care Act of 1976".

TITLE I—GENERAL VETERANS HEALTH CARE AND DEPARTMENT OF MEDICINE AND SURGERY AMENDMENTS

* * * * * * *

Section 113 of the bill, would restructure and make substantive amendments to section 3301 of title 38.

Clause (3) of section 113 would redesignate paragraphs (6), (7), (8), and (9) of section 3301 of subsections (c), (d), (e), and (f). No comment is made in the bill as to the retention, deletion or redesignation of paragraphs 1 through 5 of section 3301. If those paragraphs are to be retained, then presumably they would be subsections of the new (b). However, if that is, in fact, how section 3301 will be structured, we fail to see any reason for splitting the exemptions into two categories so that five are designated by numbers and four are designated by letters. The present state of section 3301 with nine exemptions numbered 1 through 9 would seem to be a reasonable and less confusing approach.

Regarding the new subsection (f), as proposed in section 113(5) of the bill, we have no objections to the proposed substantive changes. This provision would change the law to allow the Administrator to release the names and addresses of veterans and their dependents to any Federal, State, or local government agency if the Administrator deems the release to be necessary or appropriate for the protection of the public health or safety to provide for the release of names and addresses of veterans to nonprofit organizations for research purposes and for followup purposes of medical registries.

Participation in such registeries (cancer, hypertension) have direct bearing on patient education and preventive medicine programs, as well as patient care. The wording of subsection (f) is substantially in accord with changes suggested by this Agency in reporting on other bills relating to the confidentiality of VA records. We, therefore, find no objection to it.

Regarding the proposed subsection (g), it is felt that by requiring release under section 3301 to be in accordance with the provisions respecting routine uses in section 552a of title 5, problems may arise in the future. Should the Courts or Congress restrict the nature of routine uses, the ability to release information under 3301 itself would be correspondingly limited. In addition, there are provisions in the Privacy Act which would allow release of certain information without the necessity of establishing routine uses. However, if this section is enacted, the VA would apparently have to establish routine uses for all releases. We feel that the following language would be preferable in that it would establish the requirement that the Privacy Act provisions be adhered to! "Any disclosure made pursuant to 38 U.S.C. 3301, as amended by this bill, shall be made in accordance with the provisions of 5 U.S.C. 552a."

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[No. 83]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., February 18, 1976.

Hon. VANCE HARTKE,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR HARTKE: This is in response to our request of January 29, 1976, for a report on S. 2856, a bill "To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and addresses of present and former personnel of the armed services and their dependents."

On January 21, 1976, we submitted a report to the Chairman of the House Committee on Veterans' Affairs on H.R. 10268, a similar bill to amend section 3301(9) of title 38, United States Code, to allow the Veterans' Administration to release names and addresses of veterans and dependents in certain circumstances when necessary or appropriate for the protection of the public health or safety. With that report, we submitted a draft revision of H.R. 10268, which is almost identical to S. 2856. Copies of the report and the draft revision are enclosed.

We support the amendment to section 3301(9), which would allow the Veterans' Administration to comply with various State and local laws requiring the reporting of the identity of persons treated for infectious and communicable diseases, gunshot wounds, and other medical conditions in situations which properly warrant giving priority to the public welfare over the rights of an individual to confidentiality of his records.

We wish to point out one substantive difference between our draft submission and S. 2856. Whereas we suggested that disclosure should be allowed ". . . to an agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a criminal or civil law enforcement activity if the activity is authorized by law and if a qualified representative of the agency or instrumentality has requested in writing such names and addresses," S. 2856 would enact the same language with the exception of the words "in writing." Our proposal was drawn to be consistent with the Privacy Act of 1974 (Public Law 93–579), and specifically with the provision of the Act now found in title 5, United States Code, section 552a(b)(7), which provides the following exception to the basic rule of nondisclosure without the consent of the individual to whom the record pertains: "(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or

instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought."

Since we were advised by the Office of Management and Budget that there was no objection to the presentation of our report to the Chairman, House Committee on Veterans' Affairs, on H.R. 10268, including our draft revision of the bill, we are assuming there is no objection to the submission of this report directly to you, from the standpoint of the Administration's program.

Sincerely,

RICHARD L. ROUDEBUSH,
Administrator.

GENERAL COUNSEL'S OPINION, VETERANS' ADMINISTRATION—OP. G.C. 13–74

May 30, 1974.

Subject: Release of names and addresses.

Question presented: The question has arisen as to whether the Administrator has discretionary authority to release the names and addresses of present or former personnel of the armed services, and their dependents, in accordance with the provisions of 38 U.S.C. 3301 (1) through (8) as well as 3301(9), or whether the latter provision of law, since its enactment in October 1972, constitutes his only discretionary authority for the release of such names and addresses, thus restricting exceptions 3301 (1) through (8) as they may be concerned with releasing names and addresses. In particular, this question has recently been brought to our attention in the context of whether or not the Veterans' Administration should comply with an Arkansas Statute requiring the reporting of the name, age, sex, and address of persons found to have venereal infection to the Arkansas Department of Health, and a Maryland Statute requiring the reporting of names and addresses of persons being treated for certain specified disorders to the Department of Motor Vehicles.

Comments: The specific state statutes with which this Opinion is concerned read, in pertinent part, as follows:

In Maryland, at Maryland Code Annotated Section 6–1103,

> . . . all physicians and other persons authorized to diagnose, detect, or treat disorders and disabilities defined by the State Department of Health and Mental Hygiene shall report to the Medical Advisory Board of the Department of Motor Vehicles and to the person who is the subject of each report, in writing, the full name, date of birth, and address of every person over 15 years of age having any such specified disorder or disability within 10 days of diagnosis.

In Arkansas, Act 60, Acts of Arkansas 1973,

> Any person who determines by laboratory examination that a specimen derived from a human body yields microscopic, cultural, serological, or other evidence suggestive of those venereal diseases enumerated hereinafter shall notify the Division of Communicable Diseases, Arkansas State Department of Health, of such findings, . . . Notification of positive or doubtful test results shall contain the name, age, sex, and address of the person from whom the specimen was obtained. . . .

While it is clear that the Veterans' Administration cannot be compelled by the several states to comply with their statutory requirements to report matters of the types with which the Maryland and Arkansas statutes deal, the agency has, through the years, as a matter of policy, voluntarily filed reports of this nature.

Section 10 of Public No. 866, 76th Congress, October 17, 1940, first enacted a provision authorizing the Administrator of Veterans' Affairs to "release information, statistics, or reports to individuals or organizations when, in his judgment, such release would serve a useful purpose." Identical language has since been reflected in the law and is now set out as 38 U.S.C. 3301(8). Since 1940 this authority has been utilized by the several administrators on a number of occasions to release names and addresses of veterans and their survivors (and, of course, other information, statistics, and reports) when it was determined that the release "would serve a useful purpose."

In addition, through the years, the names and addresses of veterans, and their dependents, have been released in accordance with other enumerated exceptions to the basic confidentiality provision of 38 U.S.C. 3301, some of which are discretionary in nature while others are directive. This could have been done, for example, when required by process of a United States Court to be produced in any suit or proceeding therein pending (exception (2)); when required by any department or other agency of the United States Government (exception (3)); in all proceedings in the nature of an inquest into the mental competency of a claimant (exception (4)); when furnished to independent medical experts for purpose of obtaining an advisory opinion pursuant to 38 U.S.C. 4089 (exception (1)); and in any suit or other judicial proceeding when "in the judgment of the Administrator" the disclosure is deemed necessary and proper (exception (5)).

In 1972, the Congress (by section 412 of P.L. 92–540) revised the provisions of 38 U.S.C. 3301 to specifically provide that the "names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the VA" shall be confidential and privileged, and to add an additional exception to such confidentiality, reading:

> (9) the Administrator may, pursuant to regulations he shall prescribe, release the names and addresses of present or former personnel of the armed services, and/or dependents to any nonprofit organization but only if the release is directly connected with the conduct of programs and the utilization of benefits under this title. Any such organization or member thereof which uses such names and addresses for purposes other than those specified in this clause shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of subsequent offenses.

At the outset, it is apparent that the enactment of section 3301(9) in no way affects the authority of the Administrator to release "information, statistics, or reports" encompassed by 38 U.S.C. 3301 other than names and addresses. However, under the doctrine of *ejusdem generis*, the new section 3301(9) has no effect on the release of names and addresses pursuant to those subsections of 38 U.S.C. 3301 which *direct* rather than *grant discretionary authority* to the Administrator to affect such release.

While the language added by P.L. 92–540 seems to be permissive in nature, i.e., "the Administrator *may, pursuant to regulations he shall prescribe*, release the names and addresses", it should be noted

that at the same time the new subsection (9) was enacted, the Congress amended the basic paragraph of section 3301 to declare that names and addresses in the Veterans' Administration's possession, generally, are confidential and privileged, and also limited whatever discretionary authority it was providing to the Administrator "to nonprofit organizations" and then only if the release satisfied certain specified criteria. This would seem to suggest that the Congress believed it was removing names and addresses from the Administrator's broad authority under 3301(8) and other discretionary exceptions to section 3301, and was identifying the only group to which the names and addresses could be released and the criteria governing such release. The comments of Chairman Hartke of the Senate Committee on Veterans' Affairs, on the Senate floor on October 13, 1972, during the consideration of the bill that was ultimately enacted as P.L. 92–540, add support to this conclusion. He stated, for example, that the Committee believed that "if the names are to be released *at all*, it should be done on a nondiscriminatory basis *to those who are working to aid the veteran in utilization of his benefits*", and "The names are not to be released to any commercial organization." This latter sentence suggests that the Administrator no longer has authority under section 3301 to release names and addresses to organizations for any commercial use.

Another compelling consideration is the establishment of criminal penalties for the use of the names and addresses by any organization (or member thereof) to whom they are released, for any purpose other than the conduct of programs or the utilization of benefits under title 38, United States Code. To conclude that the Administrator's discretionary authority under section 3301 continues to encompass names and addresses would negate the Congressionally prescribed criminal penalties merely by releasing the names and addresses to such organization under one of the other subsections rather than section 3301(9). Having seen fit to limit the release to nonprofit organizations and to specify fairly narrow purposes for which the released names and addresses may be used, and having prescribed criminal penalties for violation, we conclude that the Congress did not anticipate that the Administrator would continue to have authority to release names and addresses to other groups or individuals who do not meet the test prescribed, for purposes outside of those specified, and not subject to the criminal penalties established.

We recognize that the Congress could have resolved any doubts by amending section 3301(8) to specifically exclude it from application to names and addresses (assuming that was its intention). The Congress failure to so amend section 3301(8) does not necessarily mean that that provision remains available for use with respect to names and addresses, since the Congress may have believed that having provided only one specific exception, that that was the only way the several provisions could be interpreted. A review of the legislative background of this amendment supports this interpretation.

In light of the foregoing, I conclude that 38 U.S.C. 3301(9), as enacted by P.L. 92–540, constitutes the Administrator's *only* discretionary authority for, and specifies the conditions governing, the release of names and addresses of present or former personnel of the

armed services and/or dependents. This conclusion also applies to the release of a single name and/or address. To say that the restricted release provisions for names and addresses in section 3301(9) apply only to *lists* of names and addresses, which might be assumed from the Congressional discussion, would not change this interpretation since a list may consist of a single item (see Bouvier's Law Dictionary, citing 14 New Hampshire 35).

Held: Any names and addresses or any name or address of present or former personnel of the armed services, and/or dependents may only be released by the Veterans' Administration in accordance with the provisions of 38 U.S.C. 3301(9), that is, to a nonprofit organization, and only if directly connected with the conduct of programs and the utilization of benefits under title 38. (As noted above, the conclusion reached in this Opinion does not affect the mandatory exceptions to 38 U.S.C. 3301, i.e., (2), (3), and (4).)

Held further: While the Arkansas Department of Health and the Maryland Department of Motor Vehicles would meet the requirement of "nonprofit organization" in 38 U.S.C. 3301(9), it cannot be said that the release of names or addresses to such bodies would be directly connected with the conduct of programs or the utilization of benefits under title 38.

JOHN J. CORCORAN,
General Counsel.

Note. This opinion combines the opinions expressed in letters released to the Chief Attorney in Little Rock on June 24, 1974, and the Chief Attorney in Baltimore on June 27, 1974.

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C., November 11, 1975.

Hon. RICHARD L. ROUDEBUSH,
Administration of Veterans' Affairs, Veterans' Administration, 810 Vermont Avenue, N.W., Washington, D.C.

DEAR MR. ADMINISTRATOR: We are deeply concerned by the action the Veterans' Administration has recently taken to discontinue the longstanding VA policy under which VA physicians and hospital administrators cooperated with State and local health agencies by reporting, pursuant to State law, the names and addresses of patients with communicable diseases who have been treated at VA health care facilities. We believe that this action by the VA is contrary to the public health and safety and is not required by law, as contended in General Counsel's Opinion 13–74 of May 30, 1974. We urge a more reasonable and flexible interpretation of existing law in order to conform to Congressional intent and to the dictates of sound medical practice. We respectfully request that you direct that the VA's position on this very important issue be reconsidered, and that, pending the outcome of such reconsideration, you reinstate the discontinued policy of cooperation with State and local public health authorities.

In 1972, Congress enacted Public Law 92–540, the Vietnam Era Veterans' Readjustment Assistance Act of 1972. Section 412 of that Act

amended section 3301 of title 38, United States Code, in two respects: (1) a reference to "the names and addresses of present or former personnel of the armed services, and their dependents" was added to the first sentence of the section (which requires that certain records and information be confidential and privileged except as specified thereafter); and (2) a new paragraph (9) was added at the end of the section to describe circumstances under which "names and addresses" could be released by the Administrator.

The General Counsel in his Opinion of May 30, 1974, interpreted these amendments as an expression of Congressional intent that names and addresses of veterans could no longer be released pursuant to paragraph (8) of the section (allowing the Administrator to release "information . . . when in his judgment such release would serve a useful purpose . . ."), but could only be released in accordance with the requirements of paragraph (9) (to any nonprofit organization but only "if the release is directly connected with the conduct of programs and the utilization of benefits under . . . title [38] . . ."). The 1972 amendments, the General Counsel concluded, had the effect of prohibiting the Administrator from continuing the VA's longstanding policy of cooperation with State and local public health authorities by advising them of the identity of any veteran patient with a communicable disease. We disagree.

On September 25, 1975, the Department of Medicine and Surgery notified all stations by telegram that the names and addresses of patients suffering from communicable diseases were no longer to be reported to State or local public health agencies. On October 30, the Department released an interim issue, generally implementing the Privacy Act of 1974 (Public Law 93–579), reiterating the prohibition on the release of names and addresses to those agencies.

In our view, two alternative interpretations of existing law permit you to continue the VA's longstanding policy of advising the appropriate local public health authority of the identity of any VA patient with a communicable disease.

We believe, first of all, that there is no basis for concluding that Congress, by amending section 3301 in 1972, intended that *information from medical records*, including the identity of a patient treated for a communicable disease, fall under the limitation of paragraph (9) of that section, as the General Counsel contends. As the principal Senate authors of Public Law 92–540, we conclude that the preexisting authority in paragraph (8), as limited by other applicable State and Federal laws, was not in any way altered by that 1972 law insofar as the release of information from a VA patient's medical records is concerned.

Second, we believe, alternatively, that, even under the more restrictive language of paragraph (9)—and we stress that we believe that paragraph (8) continues to apply to the release of information from VA medical records, as discussed above—there is authority for the Administrator to release the name and address of a patient to State or local public health authorities, because we are unable to conclude that such release would not be "directly connected with the conduct of programs and the utilization of benefits" under title 38. The General Counsel's holding to the contrary is not supported by the legislative

history of the 1972 amendments to section 3301 as interpreted in accordance with well-recognized canons of statutory construction.

Our detailed analysis in support of these conclusions is set forth in the enclosed Memorandum of Points and Authorities.

We feel that a more flexible interpretation of the applicable Federal law will avoid the dangerous risk of the uncontrolled spread of highly infectious disease. The urgency of the present situation is underscored by the enclosed recent article and editorial on this matter in the Los Angeles Times and the enclosed copy of a letter from the Los Angeles County Board of Supervisors.

In view of the fact that both the House and Senate Committees on Veterans' Affairs have expressed strong disagreement with the VA's interpretation of applicable law on this question, a full review, and, we hope, redetermination of the issue in question would seem the most appropriate course of action. We, therefore, urge that you direct that such a review be undertaken and that, pending the result of such review, the appropriate adminitsrative steps be taken to permit physicians and administrators in VA health care facilities to continue the policy of cooperating fully with appropriate local health agencies consistent with reporting requirements under State law and regulation.

At the same time, we recognize the advisability of clarifying applicable provisions of title 38, and would greatly appreciate the technical assistance of your General Counsel's office in revising the law appropriately so its meaning will be free from doubt. However, we believe that there are some subtle and complex issues involved in making such revision, and we would greatly prefer not to make this revision in the emergent circumstances necessitated by the Department of Medicine and Surgery's issuances of September 25 and October 30, on advice of the General Counsel, directing discontinuation of the VA's longstanding policy of releasing a communicable disease patient's name and address to appropriate public health authorities.

As a final matter, we understand that the May 30, 1974, Opinion of the General Counsel referred to above was circulated to all VA facility directors. Had we received a copy, we might have been able to resolve this matter long ago. To prevent repetition of such situations in the future, we believe it would be helpful if we received all circulated General Counsel Opinions as a matter of course, and we would appreciate your making the arrangements to have each of our names added to the circulation list for all such published Opinions.

Thank you for your continuing cooperation with the Committee and Subcommittee. We look forward to receiving a reply as promptly as possible.

Sincerely,

VANCE HARTKE,
Chairman, Committee on Veterans' Affairs.

ALAN CRANSTON,
Chairman, Subcommittee on Health and Hospitals.

Enclosures.

[From the Los Angeles Times, Oct. 28, 1975]

REPORTS ON COMMUNICABLE DISEASES HALTED BY VA

AGENCY MOVE IN VIOLATION OF STATE LAW TAKEN AFTER FEDERAL PRIVACY ACT BECAME EFFECTIVE

(By Harry Nelson)

The Veterans' Administration's legal interpretation of confidentiality laws has brought to a halt the agency's reporting of communicable diseases to county and state health officials, although reporting is required by state law.

No cases of venereal disease, tuberculosis or other communicable diseases have been reported by the VA to Los Angeles public health officials since Sept. 27, according to Dr. Shirley Fannin, chief of communicable diseases for the county.

She said such information is used by public health investigators to see whether persons who have been in contact with patients have contracted diseases.

Dr. James Chin, chief of infectious diseases for the state Department of Health, said the problem is statewide and appears to be nationwide with the VA but not with other Federal agencies such as the Department of Defense.

Because Monday was a legal holiday for Federal employees, VA administrators were not available for comment.

However, Fannin said she has been told by the local VA legal counsel that the action was taken as a consequence of a reinterpretation of a 1972 Federal law directed at the VA and dealing with confidentiality of patients' records.

In December, 1974, Congress passed the Privacy Act that included patient medical record confidentiality. While preparing for implementation of this act, which went into effect on Sept. 27, 1975, the VA reinterpreted the earlier law to include a prohibition providing public health agencies with information about communicable disease cases, Fannin said.

She said the VA sent a message to all its facilities on Sept. 25 telling them not to provide other agencies with information that could identify a patient.

It is this type of information that California state law requires be reported to public health agencies for certain diseases.

Fannin said the VA has been reporting about 5% of all the TB cases reported in the state. A total of about 3,500 new cases of TB are reported in the state annually. She said no data is available on how many VD or other contagious diseases stem from veterans.

"Everybody in the VA is sympathetic and understanding but they're not doing anything about it," she said in an interview.

She said an amendment to exclude health agency reporting from the 1972 law is before Congress but has not been acted on.

[From the Los Angeles Times, Oct. 31, 1975]

Privacy Law and Public Health

When communicable diseases are reported to them, health authorities act promptly to check the families and possible contacts of the patients and take steps necessary to prevent spread of the disease.

That is why state law requires such reporting by doctors and hospitals. But the Veterans' Administration in Washington has decided that Federal privacy statutes make patient medical records confidential. VA officials can report the number of cases treated in any given period but not the names and addresses of the patients.

That's plain crazy, in the judgment of one local health expert, and we agree. It means that patients treated in VA hospitals for tuberculosis, diphtheria, hepatitis, venereal and other infectious diseases have their privacy protected at the expense of their families and others in society who might have been exposed to them. It sounds disturbingly like an invitation to epidemics.

We are strong advocates of the laws protecting privacy, but we believe that the laws should make provision for sharing disease information when there is potential jeopardy to the health of other individuals and communities.

An initial attempt to correct the situation with new legislation was made by Rep. John Paul Hammerschmidt (R-Ark.) but attorneys for the Veterans' Administration held that his proposal was too broad. A revised version was then introduced by Rep. David E. Satterfield (D-Va.), chairman of the Hospital Subcommittee of the House Veterans' Affairs Committee. That measure, HR 10268, amends the VA Act to permit release of patients' names for the protection of public health and safety and is so worded as to remove such disclosures from the strictures of the 1974 Privacy Act. That is the way to go.

Board of Supervisors,
County of Los Angeles,
Washington, D.C., November 3, 1975.

Hon. Alan Cranston,
U.S. Senate,
Washington, D.C.

Dear Senator: We would like to call your attention to a very serious problem that has arisen regarding the Veterans' Administration.

Recently, the Veterans' Administration ruled that records involving Veterans' Administration hospital patients afflicted with communicable diseases are not accessible. As a direct result of this ruling, Los Angeles County public health officials were denied access to information on a tubercular case at the Long Beach Veterans Hospital, and the health officials have been unable to contact relatives or associates of the infected patient as a preventative measure.

The Veterans' Administration contends that this action is based on a recent interpretation of the law dealing with confidentiality requirements, a law in effect since 1972, but not strictly enforced until it was reviewed following adoption of the Federal Privacy Act of 1974.

The immediate effect of this interpretation has been to deny information to the County's Department of Health Services in the areas of communicable disease control.

Our Los Angeles County Supervisor, Pete Schabarum, has alerted our Board of this problem, and it is hopeful that you may be able to assist in this matter.

Thank you for your interest. If you need further information please do not hesitate to call.

Sincerely,

Joseph M. Pollard,
Legislative Consultant.

Memorandum of Points and Authorities, November 11, 1975

To: Richard L. Roudebush, Administrator of Veterans' Affairs.

From: Vance Hartke, Chairman, and Alan Cranston, Chairman, Subcommittee on Health and Hospitals.

Re: Legal Conclusions and Analysis in November 11, 1975, Letter Regarding Authority in Section 3301 of Title 38 to Advise Public Health Authorities about Identity of VA Communicable Disease Patients

BACKGROUND

Medical experts widely agree that the most effective way to prevent the spread of communicable diseases such as tuberculosis, venereal disease, and virulent forms of hepatitis and influenza is to contact and treat all persons who may have been exposed to an infected carrier of the disease. According to HEW's Center for Disease Control, all fifty States have established infectious disease units or their equivalents in the State health agency to facilitate and coordinate the treatment of communicable diseases, and have enacted State laws requiring that hospitals submit to the unit the names and addresses of persons who contract one of the dangerous communicable diseases. The necessity for such a procedure was recently summarized in cogent fashion by Dr. John J. Hanlon, Assistant Surgeon General of the United States Public Health Service and an eminent professor and authority on public health:

> To be segregated and subsequently rendered noncommunicable, diseased individuals first must be discovered. Fundamental to this is a system for the reporting of cases of communicable diseases both by physicians in the area and by health authorities in other localities to which infected individuals may emigrate. . . . The value of a report of a case of communicable disease is not in the counting of a "vital fact" or merely in the control of the patient but in the lead it gives in finding sources and contacts. This implies engaging in what some have termed *shoe-leather epidemiology.* A routine procedure must operate to determine and locate for subsequent examination members of a group in which active infection of either recent or earlier origin is most likely to exist. (*Public Health Administration and Practice* (6th ed., 1974), pp. 391–392; emphasis in the original)

While VA hospitals and clinics, as Federal installations, are clearly not bound by State law reporting requirements, the VA for many years has followed universally recognized principles of epidemiology by voluntarily cooperating with State and local health agencies in reporting to those agencies the names and addresses of persons with communicable diseases who received treatment at VA health care facilities. This policy of voluntary release of names and addresses has rested on the authority in paragraph (8) of section 3301 of title 38, United States Code, as follows:

> The Administrator may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

Even after section 3301 was amended in 1972 to restrict the Administrator's authority to release the names and addresses of veterans in certain situations (see below, page 4 of this Memorandum), the VA continued to cooperate with State and local health agencies.

Eighteen months ago, in General Counsel's Opinion 13–74 of May 30, 1974, the General Counsel held that the Administrator no longer had the discretionary authority to release the names and addresses of veterans to State and local health agencies. The Opinion relied upon paragraph (9) of section 3301 as requiring this conclusion of law. The pertinent part of section 3301 reads as follows:

> All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Veterans' Administration shall be confidential and privileged, and no disclosure thereof shall be made except as follows:
>
> * * * * * * *
>
> (9) The Administrator may, pursuant to regulations he shall prescribe, release the names and addresses of present or former personnel of the armed services, and/or dependents to any nonprofit organization but only if the release is directly connected with the conduct of programs and the utilization of benefits under this title. . . .

Paragraph (9) was added to section 3301 by section 412(2) of Public Law 92–540 in 1972, specifically for the purpose of precluding the distribution of mailing lists of veterans' names and addresses to commercial organizations, and ensuring that the release of such lists for purposes in connection with the use of VA benefits (generally for outreach purposes) by veterans' service organizations and other nonprofit entities would be carried out on an evenhanded basis. The General Counsel's Opinion concluded that, by adding paragraph (9) and amending the first sentence of the section to refer specifically to "names and addresses" as within the confidentiality protection of the section, Congress intended to remove altogether the release of veterans' names and addresses from the Administrator's broad authority under the existing paragraph (8) to release information "when in

his judgment such release would serve a useful purpose" and to restrict release of names and addresses only to the circumstances of paragraph (9)—when the release is to a nonprofit organization and "is directly connected with the conduct of programs and the utilization of benefits under this title. . . ."

On September 25 of this year, the Department of Medicine and Surgery dispatched a telegram to the Directors of hospitals, domiciliaries and outpatient clinics in the VA health care system requiring them to stop the release of all "information containing personal identification" to State health data banks, cancer registries, and similar organizations. On October 30, the Department of Medicine and Surgery implemented the September 25 directive by releasing an interim issue, in implementation of the Privacy Act of 1974 (Public Law 93–579), which, in pertinent part, prohibited the release of patient names and addresses to State health agencies:

> The names and addresses of present or former personnel of the armed services, and/or dependents may be released to any nonprofit organization without the consent of that individual *but* only if the release is directly connected with the conduct of programs and utilization of benefits under title 38, U.S.C. (38 U.S.C. 3301(9)). This prohibition on release would include, but would not be limited to, *the voluntary release of information on communicable diseases to health departments*. . . . (Emphasis added.)

The effect of the September 25 directive and the interim issue of October 30 has been to halt the traditional cooperation between VA health care facilities and public health authorities in reporting the identity of patients with communicable diseases. The VA's new policy of noncooperation raises the distinct possibility that health officials might be unable to control the spread of a dangerous communicable disease, a point made in the "Statement of the Association of State and Territorial Health Officials" sent last week to the Subcommittee on Health and Hospitals by Dr. E. Kenneth Aycock, the Association's President:

> Recent rulings by the Veterans' Administration's General Counsel on legislation affecting the confidentiality of VA medical information have precluded routine reporting of infectious diseases to State and local health authorities, although such cooperation is required by State law. This creates a situation in which a Federal enclave exists within a community where some persons with communicable diseases are diagnosed and treated but where there is no possibility of thereafter containing spread. Cooperation is thus mandatory because the VA has no authority for protecting the health of the general public and must rely on the constituted health agencies at State and local level. If State or local health authorities do not know the existence of a VA beneficiary with a communicable disease, the disease will be permitted to spread for an unacceptable period of time, affecting both VA beneficiaries and other members of the community. The Federal

Government is committed to assisting State and local agencies in controlling communicable diseases and also has a direct responsibility for controlling interstate spread. The current VA position undermines both of these goals. We propose that the VA rely on the requirements of the Privacy Act of 1974, to ensure that the personal privacy of VA beneficiaries is protected, and that appropriate regulations be promulgated immediately to ensure disease reporting. (Other Federal agencies are able to report diseases to State and local health agencies under the Privacy Act.) We view this as an urgent matter. We request further that Congress approve legislation such as H.R. 10268, now pending in the House Committee on Veterans' Affairs.

DISCUSSION

Alternative Interpretations of Applicable Law Authorizing Continuation of VA Policy of Cooperation with State and Local Public Health Authorities

We believe that two alternative interpretations of section 3301 permit the Administrator to continue the VA's longstanding policy of advising the appropriate public health authority of the identity of any VA patient with a communicable disease.

We believe, first of all, that there is no basis for concluding that Congress, by amending section 3301 in 1972, intended that *information from medical records*, including the name and address of a patient treated for a communicable disease, fall under the limitation of paragraph (9), as the General Counsel contends. As the principal Senate authors of Public Law 92–540, we conclude that the preexisting authority in paragraph (8), as limited by other applicable State and Federal laws, was not in any way altered by the 1972 law insofar as the release of information from a VA patient's medical records is concerned.

Second, we believe, alternatively, that even under the more restrictive language of paragraph (9)—and we stress that we believe that paragraph (8) continues to apply to the release of information from VA medical records, as discussed above—there is authority for the Administrator to release the names and addresses of patients to State or local public health agencies, because we are unable to conclude that such release would not be "directly connected with the conduct of programs and the utilization of benefits" under title 38. The General Counsel's holding to the contrary is not supported by the legislative history of the 1972 amendments to section 3301 as interpreted in accordance with well-recognized canons of statutory construction.

A. Continuation of Authority Under Paragraph (8) To Release Certain Medical Information to State and Local Public Health Authorities

The 1972 amendments to section 3301 were intended to cut back on the Administrator's broad discretion to release lists of the names and addresses of veterans under paragraph (8) of the section. Unclear on the face of the statutory provision is whether the curb on the Administrator's discretion was intended to extend to the release of certain information—in this case the name and address of a veteran with a communicable disease—to State and local public health agencies under long-honored cooperative procedures.

The language of the statute offers little guidance to clarify this ambiguity. The legislative history of the amendments indicates that Congress had two very clear intentions—to halt the unauthorized release of lists of veterans' names and addresses to commercial organizations interested in solicitation or lobbying and to provide for even-handed standards to govern the release of such lists for VA-program-related purposes—but says nothing about Congress' intent with regard to existing provisions governing the release of information from VA medical records (including the name and address of a patient) to public health authorities.

The General Counsel, in his Opinion of May 30, 1974, concluded that, by amending section 3301 to add a reference to "names and addresses" in the first sentence and a new paragraph (9) limiting the release of "names and addresses" to certain specific circumstances, Congress "believed it was removing names and addresses from the Administrator's broad authority under [section] 3301(8) and other discretionary exceptions to section 3301, and was identifying the only group to which the names and addresses could be released and the criteria governing such release." We can find no support for any such sweeping implicit repealer of much of paragraph (8). The fact is that paragraph (8) was *not* directly amended in the 1972 Act, nor since then, and that there is no substantive reference whatsoever to paragraph (8) anywhere in the House or Senate legislative history surrounding that Act.

The General Counsel's interpretation of Congress' 1972 amendments to section 3301 severely limits the scope of paragraph (8) without any affirmative indication from the Congress that it intended any such limit, and abrogates a longstanding VA policy of voluntary cooperation with State and local public health authorities without any indication from the Congress that it disapproved of the policy. In view of the ambiguity of the statute insofar as the relationship of paragraphs (8) and (9) is concerned and the complete silence of the legislative history specifically regarding medical records, we believe that an implicit repealer of paragraph (8) cannot be inferred except to the extent absolutely essential to carry out the stated purposes underlying the addition of paragraph (9). In fact, that Congress clearly did not intend any repealer with regard to medical records is clear, we think, from the broader legislative context in which the 1972 amendments were considered and enacted.

An analysis of the legislative history of Public Law 92–540 in the context of the many measures on the confidentiality of medical information enacted by Congress during the 91st through 93d Congresses (the period during which Public Law 92–540 was considered, enacted, and implemented) reveals three reasons for concluding that Congress did not intend to remove the release of medical record information from the Administrator's discretionary authority under paragraph (8).

1. *Legislation affecting the confidentiality of medical records has always clearly been identified as such by Congress.* During the period from 1970 to 1974, Congress enacted five major measures dealing with the confidentiality of information bearing on medical treatment.[1] In each case, Congress used specific and carefully drawn statutory language to describe the confidentiality requirements and disclosure circumstances, and the legislative history of each measure carefully justified the reason for the requirement and the scope of confidentiality to be observed.[2] By contrast, Public Law 92–540 was not a medical bill, but a readjustment assistance bill. It was not considered by the Senate Veterans' Affairs Committee's Subcommittee on Health and Hospitals, but by the Subcommitee on Readjustment, Education, and Employment. (It was similarly considered in the House Committee.) It contained no provisions that related directly to the Department of Medicine and Surgery or to any medical program under the direction of the VA. There was no testimony or discussion during hearings before the House Committee on Veterans' Affairs (where the amendments to section 3301 originated) on the effect the amendments would have on the confidentiality of medical record information, nor did the VA make any reference to such an effect in its official report to the Senate Committee on the House-passed bill, H.R. 12828.

[1] Public Law 91–616 (Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970), section 333; Public Law 92–255 (Drug Abuse Office and Treatment Act of 1972), section 408; Public Law 92–449 (Communicable Disease Control Amendments Act of 1972), section 203 (adding a new section 318 to the Public Health Service Act, 42 U.S.C. §§ 201 ff.); Public Law 93–82 (Veterans Health Care Expansion Act of 1973), section 109 (adding a section 653, "Voluntary participation; confidentiality", to subchapter VI ("Sickle Cell Anemia") of title 38); and Public Law 93–282 (Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974), section 122.

[2] The report of the Senate Committee on Labor and Public Welfare on legislation that later became Public Law 91–616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, contained the following explanation of the Act's confidentiality requirement:

> It is, of course, essential that the confidentiality of a patient's records . . . be honored at all times. It takes little imagination to realize that alcoholics will be far more hesitant to consider treatment if they will be in danger of public ridicule by exposure of their illness. This factor is of particular significance because a treatment program's success is dependent upon the voluntary cooperation of the patient. Disclosure of an individual's name is of no value for research purposes and should be avoided in all situations. (Sen. Rept. No. 91–1069, p. 19 (August 3, 1970).)

See also Sen. Rept. No. 92–700, p. 33 (March 17, 1972), where a similar justification is offered for the confidentiality requirement in the Drug Abuse Office and Treatment Act of 1972 (later Public Law 92–255).

The Senate Committee on Labor and Public Welfare was strongly impressed with the need for confidentiality in the treatment of venereal disease, and included in its report on legislation which later became Public Law 92–449, the Communicable Disease Control Amendments Act of 1972, the following statement:

> The Committee was impressed with the need to overcome the . . . problem of venereal disease sufferers failing to seek treatment due to their concern that their identity would be divulged and physician failure to report incidence of venereal disease cases because of local public health laws which require them to breach the "physician-patient" relationship of confidentiality by providing the patient's name. The Committee amended the bill to ensure that patient examination, care and treatment shall be held confidential and identity sacrosanct except with the individual's consent or as may be necessary to provide service to the individual, in the utilization of any funds made available under this bill.
>
> Any provision of information to State public health authorities from programs so funded would thus have to be made without identifying the patient. The Committee was also concerned that in writing up clinical studies, researchers should do all possible to ensure that the particulars of the case do not reveal the identity of the patient. (Sen. Rept. No. 92–825, pp. 10–11 (June 1, 1972).)

See also Sen. Rept. No. 93–54, p. 34 (March 2, 1973), describing the confidentiality requirement in the Sickle Cell anemia program added to title 38 by Public Law 93–82, the Veterans Health Care Expansion Act of 1973; and House Rept. No. 93–759, pp. 10–11, 13–14 (January 21, 1974), describing the confidentiality provisions in H.R. 11387, legislation that later became Public Law 93–282, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974.

In light of Congress' careful consideration of other bills affecting the confidentiality of medical information, it seems most unlikely to us that Congress would have chosen such an unorthodox procedure for formulating a major new policy on confidentiality of VA patient information. In every other case, Congress proceeded deliberately and openly by drafting a confidentiality requirement within the context of a larger health bill, and by justifying the requirement by appropriate language in the legislative history. Here, if the General Counsel's analysis is correct, Congress would have chosen a readjustment assistance measure as the vehicle for a broad change in VA medical confidentiality requirements, and then proceeded to effect the change without any express statutory language or even the most rudimentary mention—let alone a justification—in the legislative history.

We believe that the broad legislative context in which Public Law 92–540 was considered and passed supports our assertion that the amendments to section 3301 were not intended to reduce or in any way affect the Administrator's authority under paragraph (8) of the section to release the identity of a communicable disease patient to State or local public health authorities. This context makes clear to us that, if Congress had intended to remove that authority from the Administrator, then it would have done so specifically, in both the law and legislative history.

2. *The stated purpose for which section 3301 was amended in 1972 in no way supports the conclusion that Congress withdrew the Administrator's authority under paragraph (8) of the section to release medical record information in order to cooperate with State and local public health authorities.* The legislative history of Public Law 92–540 shows clearly that the amendments to section 3301 were designed by the House Committee to prevent the distribution of mass mailing lists of veterans' names and addresses to "persons who desire such information for debt collection, canvassing, harassing, or propaganda purposes." (House Rept. No. 92–887, p. 18 (Feb. 29, 1972)). Prior to the amendments, the VA permitted distribution of lists of veterans' names to commercial organizations which used the lists for solicitation campaigns and direct-mail lobbying and propagandizing. Primarily prompted by complaints of harassment and invasion of privacy by concerned veterans and veterans groups, Congress then acted to prevent the release of lists of names and addresses to commercial organizations by making the appropriate amendments to section 3301.

What was important to commercial groups seeking access to veterans' mailing lists was the veteran's status as a veteran. This status, and nothing else, made him a prime "target" for the commercial organizations' appeals. The same analysis obtains in the case of release of lists of veterans' names and addresses to veterans' service organizations, a subsidiary focus of the 1972 amendment.

In contrast, public health authorities do not seek lists of names or identity of individuals because of their veteran status, but rather the identity of an individual who has contracted a communicable disease. The authorities are not interested in the patient's status as a veteran *per se*, but in his status as a carrier of a communicable disease. They are primarily interested, not in contacting and treating the particular veteran (who presumably has already been treated by the VA), but in

seeking out other persons with whom the infected veteran might have, or might thereafter, come in contact.

In short, by giving the name of a patient to State or local public health authorities, the Administrator is communicating "information" from that patient's medical record that he has contracted and is being treated for a communicable disease. In our view, paragraph (8), under which the Administrator may release "information . . . when in his judgment such release would serve a useful purpose," remains unaffected by Public Law 92–540 as a fully operative authority for the release of a communicable disease patient's identity to public health authorities. Paragraph (9) was designed to apply only to the altogether different situation of veterans' name and address lists, and has no applicability to this medical information context.

3. *Protection of the privacy rights of patients with communicable diseases is adequately achieved by existing State and Federal law.* Section 3301 and its longstanding underlying regulations operate to protect the confidentiality of VA records, including medical records, from unwarranted disclosure without authorization by the subjects of those records. When, however, the agency to which VA medical records are disclosed is a State or local public health agency, then their confidentiality is more than adequately safeguarded by existing State and Federal laws.

According to officials of HEW's Center for Disease Control, all fifty States have laws or regulations that safeguard the identity and addresses of persons with infectious diseases who are reported to public health authorities. The VA's laudable concern for the privacy rights of patients with communicable diseases is wholly consistent with notifying public health authorities of a communicable disease patient's name and address, since those agencies are legally obliged to preserve the confidentiality of the patient's identity and hospital records.

Nor does the Privacy Act of 1974, Public Law 93–579, require the VA to withhold such information. That Act restricts the circumstances under which any Federal agency, including the VA, may release records or information contained in their systems of records, and attaches civil and criminal penalties to the unauthorized disclosures of such records or information by agency officers or employers.

The Act expressly authorizes a Federal agency to make disclosure pursuant to a "routine use" as that term is used in the Act and defined in the agency's published regulations and recordkeeping system notices. Both of the other major Federal health care systems—the Department of Defense and the United States Public Health Service—have defined the release of a communicable disease patient's identity to public health authorities as a "routine use" in their published system notices,[3] and cooperate as a matter of course with State and local authorities in preventing the spread and facilitating the treatment of communicable disease.

(We note that, in a related context, one other set of laws governs directly the release of information from certain VA medical records.

[3] *Federal Register*, Vol. 40, p. 35256 (August 18, 1975) (U.S. Army); p. 35657 (August 18, 1975) (U.S. Air Force); p. 35899 (August 18, 1975) (U.S. Navy); p. 38632 (August 27, 1975) (Public Health Service).

The Drug Abuse Office and Treatment Act of 1972 (Public Law 92–255) and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974 (Public Law 93–282) establish criteria for the protection of the privacy of drug and alcohol abuse patients treated in federally assisted programs and specifically make these criteria generally applicable to VA health care facilities.)

In view of the foregoing discussion, we conclude that the amendments to section 3301 in 1972 were not intended to limit the Administrator's longstanding discretionary authority under paragraph (8) to release information (including the name and address) about a patient or former patient in a VA health care facility "when in his judgment such release would serve a useful purpose." There is no disagreement, we believe, that the release of such information to public health authorities to prevent the spread and facilitate the treatment of communicable diseases, consistent with the requirements of State and Federal law, is a "useful purpose" within the meaning of that term as used in paragraph (8) of section 3301.

B. Alternative Theory: Application of Paragraph (9)

Even assuming (as we do not) that paragraph (9) constitutes, after its enactment, the applicable standard under which to determine the appropriateness of notifying public health authorities about a communicable disease patient's identity, we find that the General Counsel's final conclusion of law is not supported by any stated analysis or by any we can reasonably posit. In the last paragraph of the May 30, 1974, Opinion, the General Counsel stated:

> While [State health agencies] . . . would meet the requirement of "nonprofit organization" in 38 U.S.C. 3301(9), it cannot be said that the release of names or addresses to such bodies would be directly connected with the conduct of programs or the utilization of benefits under title 38.

This holding is offered without any explanation, justification, or citation to legislative history. In the third-from-the-last paragraph of the Administrator's June 3, 1975, letter to House Veterans' Affairs Committee Chairman Roberts on this question, the General Counsel's conclusion was repeated almost *verbatim* without any explanation or support.

We are not aware of any legislative history whatsoever to support a conclusion that information about the treatment of a veteran with a communicable disease at VA facilities and the release of the veteran's name and address to public health authorities to help prevent the spread of the disease cannot be said to be "directly connected with the conduct of programs and the utilization of benefits" under title 38. In fact, a common sense interpretation of the statutory words in question indicates very much the opposite conclusion. According to section 4101(a) of title 38:

> . . . The functions of the Department of Medicine and Surgery shall be *those necessary for a complete medical and hospital service* . . . for the medical care and treatment of veterans. (Emphasis added.)

Under the medical program carried out by the VA's Department of Medicine and Surgery, eligible veterans receive broad health care benefits as prescribed in chapter 17 of title 38 ("Hospital, Domiciliary, and Medical Care"). The release of the name and address of a patient with a communicable disease prevents the spread and facilitates the treatment of the disease among members of the community, including other veterans. Because it promotes the health of veterans in general, the release of names and addresses to public health authorities thereby reduces the demand for hospital and other health care services provided by the VA health care system for eligible veterans. Such release is, therefore, "directly connected with the conduct of [the DM&S medical and hospital service] programs and the utilization of [chapter 17] benefits" under title 38, within the meaning of paragraph (9), since such release serves a necessary and vital purpose in a "complete medical and hospital service".

Because the statutory language is not free from ambiguity, and the legislative history does not offer the illumination necessary to resolve all ambiguities, the VA is required by well-recognized canons of statutory construction to read the provision in light of its purpose and to avoid any interpretation of the language of the provision that would yield an unreasonable result.[4] Yet that is precisely the result of the VA's interpretation, for it has resolved the statutory ambiguity in such a way as to contravene sound epidemiological practice and the VA's longstanding procedure (in effect until less than two months ago) of cooperating with State health agencies in releasing the name and address of a patient with a communicable disease.

We thus conclude that paragraph (9) itself permits the release of the name and address of a VA patient to State and local health agencies for the purpose of controlling communicable diseases.

C. Three Special Problems

In addition to the legal and medical issues described above, there are three areas of particular concern to us which we believe the VA should consider in its exercise of policymaking discretion on this issue.

1. *State and local law enforcement agencies.*—First, although we have focused on the issues of law and policy concerning the Administrator's cooperation with public health authorities only, the same considerations would apply to VA cooperation with State and local law enforcement agencies. The General Counsel's Opinion of May 30, 1974, concluded that the 1972 amendments to section 3301 precluded the Administrator from releasing names and addresses of patients treated for certain ailments to, for example, a State department of motor vehicles, and the October 30, 1975, interim issue of the Department of Medicine and Surgery prohibits the "notification to police departments of patients admitted for gunshot wounds. . . ." This policy of VA noncooperation with law enforcement authorities may be substantively a somewhat different and less emergent issue than non-

[4] "All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a "reasonable application consistent with their words and with the legislative purpose." *Hagger Co.* v. *Helvering*, 308 U.S. 389 (1940).

See also 2A Sutherland. Statutory Construction 4th ed. (edited by C. Dallas Sands), § 45.12 ("[U]nreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result".)

cooperation with public health authorities, since the latter poses an immediate serious threat to the public health and welfare. However, we feel that voluntary cooperation with law enforcement authorities by the VA is still authorized under paragraph (8) of section 3301 (or, in the alternative, under paragraph (9)) by virtue of the same analysis set forth above in the context of cooperation with public health authorities. We, therefore, urge that your review of the General Counsel's Opinion and VA policies in this area extend to consideration of this issue.

2. *Venereal disease patients.*—Second, we believe there may be special concerns—which you should evaluate—involved in the release to public health authorities of the names of patients with venereal disease. In 1972, by enacting Public Law 92–449, the Communicable Disease Control Amendments Act of 1972, Congress recognized the extraordinary sensitivity surrounding the medical records, and the release of information from them, of patients treated for venereal disease. The 1972 Act contained a provision prohibiting the release of a patient's name to public health authorities when the patient received treatment for venereal disease in a program under a venereal disease grant.[5]

The purpose of this confidentiality requirement was to encourage persons with venereal disease to seek treatment by giving them the assurance that their treatment would be handled in the strictest confidence. We feel that, for two reasons, these considerations may not be as compelling in the present context. First, almost all patients seeking treatment for venereal disease in VA health care facilities are adult males, as opposed to the females and juvenile males who make up a significant proportion of patients at non-VA facilities, and for whose benefit the confidentiality protection in Public Law 92–449 seems primarily intended. Second, the Privacy Act of 1974 has been enacted since the Communicable Disease Control Amendments Act of 1972, and requires greater protection by Federal agencies of the privacy of patient records than was previously required by law.

We therefore believe that there should be particular sensitivity to the implications of releasing the identity of patients treated for venereal disease; but we also doubt that any blanket exclusion should be made for communication to public health authorities of the identity of patients with venereal disease, the most common communicable disease in the United States.

3. *Privacy Considerations.*—Third, we recognize that many State laws provide for communication of the information on communicable diseases to *State* public health authorities, which in turn share this information with appropriate local authorities which in most States actually carry out all investigative and epidemiological activities. We believe that it might be preferable for the VA, as a matter of policy, to limit disclosure only to local officials in order to ensure that this information receives the narrowest dissemination. We raise this point because of our deep concern about the possible misuse of information such as this in States with data banks or computer information systems to which a broad spectrum of public and quasi-public agencies and organizations may have access. We hope that the Administrator will give this matter further close consideration.

[5] See *supra*, fn. 2.

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C., November 17, 1975.

Hon. RICHARD L. ROUDEBUSH,
Administrator of Veterans' Affairs, Veterans' Administration, Washington, D.C.

DEAR ROWDY: It has come to our attention that the Veterans' Administration has discontinued its policy of allowing VA physicians and hospital administrators to cooperate with State and local health agencies, disallowing the reporting of the names and addresses of patients with communicable diseases who have received VA medical treatment.

We are told that the new policy has had a profoundly deleterious effect on the ability of local and State health authorities to provide for the public health and safety. It has greatly encumbered their ability to seek out and treat those who may have come in contact with various infectious diseases in the community.

Legislation has been introduced in the House of Representatives to vitiate the General Counsel's Opinion 13–74 of May 30, 1974, which we understand is controlling in this matter.

If it is possible to make administrative adjustments, or to review and rescind the General Counsel's Opinion 13–74, we would appreciate your giving this approach most careful consideration. If that is not possible, or if you have any other recommendations, or if you care to recommend legislative changes, we would appreciate having your views on this matter.

We regard the current situation with some urgency, since it strikes at the heart of the mission of State and local health agencies. We would appreciate hearing from you at your earliest convenience.

With kindest regards and best wishes,

Very truly,

CLIFFORD P. HANSEN,
Ranking Minority Member,
Committee on Veterans' Affairs.
STROM THURMOND,
Ranking Minority Member,
Subcommittee on Health and Hospitals,
Committee on Veterans' Affairs.

CHANGES IN EXISTING LAW MADE BY H.R. 10268, AS REPORTED

In accordance with subsection 4 of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, 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—UNITED STATES CODE

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 57—RECORDS AND INVESTIGATIONS

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Subchapter I—Records

§ 3301. Confidential nature of claims

(*a*) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Veterans' Administration shall be confidential and privileged, and no disclosure thereof shall be made except as [follows:] *provided in this section.*

(*b*) *The Administrator shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section 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.

(2) When required by process of a United States court to be produced in any suit or proceeding therein pending.

(3) When required by any department or other agency of the United States Government.

(4) In all proceedings in the nature of an inquest into the mental competency of a claimant.

(5) In any suit or other judicial proceeding when in the judgment of the Administrator such disclosure is deemed necessary and proper.

[(6) The amount of pension, compensation, or dependency and indemnity compensation of any beneficiary shall be made known to any person who applies for such information, and the Administrator, with the approval of the President, upon determination

that the public interest warrants or requires, may, at any time and in any manner, publish any or all information of record pertaining to any claim.

[(7) The Administrator in his discretion may authorize an inspection of Veterans' Administration records by duly authorized representatives of recognized organizations.

[(8) The Administrator may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

[(9) The Administrator may, pursuant to regulations he shall prescribe, release the names and addresses of present or former personnel of the armed services, and/or dependents to any nonprofit organization but only if the release is directly connected with the conduct of programs and the utilization of benefits under this title. Any such organization or member thereof which uses such names and addresses for purposes other than those specified in this clause shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of subsequent offenses.]

(c) The amount of pension, compensation, or dependency and indemnity compensation of any beneficiary shall be made known to any person who applies for such information, and the Administrator, with the approval of the President, upon determination that the public interest warrants or requires, may, at any time and in any manner, publish any or all information of record pertaining to any claim.

(d) The Administrator in his discretion may authorize an inspection of Veterans' Administration records by duly authorized representatives of recognized organizations.

(e) Except as otherwise specifically provided in this section with respect to certain information, the Administrator may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

(f) The Administrator may, pursuant to regulations the Administrator shall prescribe, release the names or addresses, or both, of any present or former members of the Armed Forces, and/or their dependents, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Administrator pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

(g) Any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5.

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H. R. 10268

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend title 38 of the United States Code in order to clarify the purposes for which the Administrator of Veterans' Affairs may release the names and/or addresses of present and former members of the Armed Forces and their dependents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3301 of title 38, United States Code, is amended by—

(1) inserting "(a)" before "All";

(2) striking out "follows:" and inserting in lieu thereof "provided in this section.", and inserting thereafter the following new subsection:

"(b) The Administrator shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:";

(3) redesignating paragraphs (6), (7), (8), and (9) as subsections (c), (d), (e), and (f), respectively;

(4) striking out "The" at the beginning of subsection (e) (as redesignated by clause (3) of this subsection) and inserting in lieu thereof "Except as otherwise specifically provided in this section with respect to certain information, the"; and

(5) striking out subsection (f) (as redesignated by clause (3) of this subsection) and inserting in lieu thereof the following new subsections:

"(f) The Administrator may, pursuant to regulations the Administrator shall prescribe, release the names or addresses, or both, of any present or former members of the Armed Forces, and/or their dependents, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Administrator pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

"(g) Any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5.".

(b) The amendments made by subsection (a) of this section with respect to subsection (f) (as redesignated by subsection (a)(3) of this section) of section 3301 of title 38, United States Code (except for the increase in criminal penalties for a violation of the second sentence of such subsection (f)), shall be effective with respect to names or addresses released on and after October 24, 1972.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

June 18, 1976

Dear Mr. Director:

The following bills were received at the White House on June 18th:

H.J. Res. 726
H.R. 10268

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.