

CHANGE TO NCA POLICY IN DIRECTIVE 3210/1 REGARDING ELIGIBILITY OF UNMARRIED ADULT CHILDREN

1. PURPOSE/REASON FOR ISSUE: This notice changes NCA policy contained in NCA Directive 3210/1, Eligibility Requirements (January 18, 2011) regarding the eligibility of unmarried adult children of Veterans for burial by the Department of Veterans Affairs (VA) National Cemetery Administration (NCA).

2. BACKGROUND: Under title 38 United States Code (U.S.C.) § 2402, NCA is required to provide burial for the unmarried adult child of—

- “a) a Veteran;
- b) certain members of the Reserve components of the Armed Forces, the Army National Guard or Air National Guard;
- c) certain members of the Reserve Officers' Training Corps of the Army, Navy, or Air Force;
- d) any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably; and
- e) any person who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.”

VA promulgated regulations, at section 38.620(e)(3) of title 38, Code of Federal Regulations (CFR), to define the term “unmarried adult child” as “a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution.”

NCA Directive 3210/1 contains a statement, in the chart located in Section III., paragraph c., that interpreted “unmarried adult child” as an unmarried adult child who “was never married, or, if married at any time during their life, was not married at time of death because the marriage was void or had been annulled by a court.” NCA staff has indicated a belief that the “never married” requirement was based on 38 U.S.C. § 103(e), Special provisions relating to marriage. That provision states that the marriage of a child shall not bar recognition of such child as the child of a Veteran for benefit purposes if the child’s marriage was void or annulled, unless VA determines the annulment was secured by fraud or collusion by any party. However, while the statute does not require VA to recognize a child whose marriage was terminated under other circumstances, it also does not preclude VA from recognizing such person as a child of a Veteran for benefit purposes.

3. CHANGE IN POLICY: NCA is changing its interpretation of “unmarried adult child” in 38 CFR § 38.620(e)(3) to include a permanently disabled child who was previously married and was divorced or widowed at the time of death. Therefore, NCA will not require that an unmarried adult child have never been married.

4. ACTION: Effective immediately, any NCA employee adjudicating eligibility for, or providing information about the eligibility of, unmarried adult children will refer to the definition contained in 38 CFR § 38.630(e)(3), which does not include a “never married” requirement.

5. RESPONSIBLE OFFICE: National Cemetery Administration, Office of Finance and Planning, Legislative and Regulatory Service (42E), 810 Vermont Avenue, NW, Washington, DC 20420, is responsible for the contents of this notice. Questions may be referred to the Legislative and Regulatory Service at NCA42EACTION@va.gov.

6. EXPIRATION/ARCHIVE: This notice will remain in effect until rescinded by a permanent NCA directive.

/s/ Ronald E. Walters
Principal Deputy Under Secretary for Memorial Affairs

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