

**SUMMARY OF MAJOR CHANGES TO CHAPTER 16
DOD 7000.14-R, VOLUME 7B
MILITARY PAY POLICY AND PROCEDURES FOR RETIRED PAY**

New and revised instructions are indicated by a star placed immediately before the new or revised section, paragraph, subparagraph, decision logic table, etc.

Page	Paragraph	Explanation of Change/Revision	Effective Date
16-3, 16-3 through 16-5, 16-5 16-6 16-7	160304, 1604 160503 1607, Bibliography	IC R3-00 addresses physical or mental incapacitation.	Apr 13, 2000

NOTE: Interim change R3-00 is incorporated in this chapter.

CHAPTER 16

PHYSICAL OR MENTAL INCAPACITATION

1601 DEFINITIONS

160101. Physically or Mentally Incapacitated Retiree. An individual who is impaired by physical disability, mental illness, mental deficiency, advanced age, chronic use of drugs or alcohol, or other causes which prevent sufficient understanding or capacity to competently manage his or her own affairs.

160102. Committee. A person, assembly, or board of persons to whom (or which) the consideration or management of any matter is committed or referred by some court, as a person or persons having guardianship of the person and property of an insane person.

160103. Conservator. A guardian, protector, or preserver; a maintainer.

160104. Court of Competent Jurisdiction. A court having power and authority of law at the time of acting to do the particular act; one that has jurisdiction both of the person and of the subject matter; one provided for in the Constitution (reference (df)) or created by the legislature and which has jurisdiction of the subject matter and of the person.

160105. Guardian. A person who legally has the care of the person or property, or both, of another person who is incompetent to act for himself or herself.

160106. Trustee. As used in the legal sense, a person who takes and holds the legal title to the trust property for the benefit of another, one to whom another's property is legally committed in trust; or a person holding the legal title to property under an expressed or implied agreement to apply it, and the income arising from it, to the use and for the benefit of another person.

1602 PHYSICALLY INCAPACITATED RETIREE

160201. It frequently has been held that physical infirmity does not warrant the appointment of a guardian for the estate of a person. A statute which makes physical disability or infirmity a ground for the appointment of a guardian of the property of a person mentally competent, but physically incompetent, is unconstitutional and an unwarranted abridgment of the liberty of such person, and an unwarranted abridgment of the person's right to acquire, possess, and protect property. On the other hand, in some cases, incompetence to manage an estate or property has been found primarily from evidence of advanced age and physical infirmity, and a guardian or conservator has been appointed. Also, in some jurisdictions there are statutes, held to be constitutional, which authorize the

appointment of guardians of the estates of those who, because of old age or physical incapacity, are incapable of managing their property.

160202. In several states, statutes authorize persons who, although of sound mind, believe themselves incapable of managing their own estates or of caring for their own property, to apply for, request or consent to the appointment of a conservator or guardian of the estate or of their persons, or both. The conservator or guardian, when appointed, possesses over the estate substantially the same power and is subject to substantially the same duties as a guardian of an incompetent.

160203. Because of the variety of county and state statutes regarding the appointment of legal representatives for physically incapacitated members, the DFAS Centers accept and process court orders appointing such representatives. It is not the responsibility of the DFAS Center to authenticate each order.

160204. Examples

A. A person who is bedfast and physically incapacitated as the result of two strokes is not necessarily incompetent so as to require the appointment of a guardian.

B. A 77-year-old woman suffering from complete paralysis of the left side, was unable to speak except an occasional word, could not swallow and could write only with difficulty and very briefly, but could hear, read, watch television, walk with assistance, and could be out of bed and sit up for short periods of time. She was, according to medical testimony, mentally competent, but the evidence was sufficient to support a finding that she was physically incompetent and unable to manage her property.

C. When an adult person has sufficient mental capacity to understand the nature and consequences of the application for a conservator, that person's wishes, if conducive to welfare and contentment of mind, may properly be given great weight in determining whether a conservator (rather than a guardian) should be appointed.

D. The physical condition of the person for whom a conservator is required can be considered only insofar as it may affect the person's mental condition.

1603 MEDICAL EXAMINATION

160301. Federal agencies authorized to make determinations of the competency of a retired service member hospitalized in a facility under its jurisdiction are:

- A. Department of the Army
- B. Department of the Navy

- C. Department of the Air Force
- D. Department of Health and Human Services
- E. Department of Veterans Affairs.

160302. Upon receipt of information that a retiree may be mentally incapacitated, a board of no fewer than three medical officers or physicians (including one specially trained in treatment of mental disorders), is convened to determine whether the retiree is competent. The board also is convened when requested to do so by proper authority.

160303. The convening authority ensures that the board's findings are certified by three members of the board.

★ 160304. The convening authority *of the appropriate Military Service shall send one copy of the board's findings, as applicable to:*

Director, DFAS-Cleveland Center, ATTN: DFAS-CL/G, Office of General Counsel, P.O. Box 998006, Room 2829, Cleveland OH 44199-8006 (IC R3-00).

★1604 APPOINTMENT OF TRUSTEE (IC R3-00)

160401. *The authority of the Secretaries of the Military Departments to appoint trustees under 37 U.S.C. 602 has been delegated to the Director, DFAS-Cleveland Center.*

160402. *The Director, DFAS-Cleveland Center may designate one of the following persons as trustee for all incompetent military retirees if the trustee is 21 years of age or over:*

- A. *Lawful spouse (not subject to age requirement)*
- B. *Legitimate son or daughter or legally adopted son or daughter*
- C. *Parents*
- D. *Head of an institution, if member is a patient*
- E. *Any other person or persons if in the best interest of the member.*

160403. *All applications to appoint a trustee and related documentation should be submitted to DFAS-CL, Code G, Office of General Counsel, P.O. Box 998006, Room 2829, Cleveland, OH 44199-8006.*

160404. *While next of kin or other relative of the retiree ordinarily is preferred for designation as trustee, any other person, willing and suitable to act as such, may be designated as temporary or permanent trustee unless a committee, guardian, or other legal representative is appointed by a court of competent jurisdiction. If more than one qualified person applies to be named as trustee for a mentally incompetent retiree, the Director, DFAS-Cleveland Center shall determine which applicant is a more appropriate trustee.*

160405. *The trustee designated to receive monies in behalf of the incompetent retiree must furnish a suitable bond in all cases when the amounts to be received may be expected to exceed \$1,000. The bond so required and furnished must have, as the surety, a company approved by the U.S. Government and must be in such amount as required by the Office of General Counsel, DFAS-CL. The person who has been designated as trustee acts in this capacity without remuneration. However, if a bond is required, the premium fee charged by the bonding company may be paid from the funds received on behalf of the mentally incompetent retiree. Any other expenses incurred in securing the bond may not, however, be paid from the amount payable to the incompetent retiree.*

160406. *The trustee appointed by the Office of General Counsel, DFAS-CL has the authority only to receive, expend, and account for monies received from the military; the appointment does not convey authority to act as a trustee in a civilian capacity without prior authority from a court of competent jurisdiction. The trustee must use the monies received for the benefit of the incompetent retiree. The government may not appoint a trustee in any case in which a court of competent jurisdiction has appointed a legal committee, guardian or other representative.*

160407. *The designated trustee submits accounting reports annually or at such times as directed by the Office of General Counsel, DFAS-CL. The reports must show all funds received, all expenditures made in behalf of the incompetent retiree, and a statement of the condition of the trustee account at the time the report is submitted. The trustee also may be required to provide all receipts, cancelled checks, or voucher accounts, savings account pass books or statements, or any other records concerning the trustee account. If the trustee fails to report promptly at the end of the accounting period, the appointing authority may either temporarily suspend or terminate further payments to the trustee, and may designate a successor trustee.*

160408. *Payments due an incompetent retiree cease to be paid to the trustee upon receipt of notification by the DFAS-Cleveland Center of:*

- A. *Death of the incompetent*
- B. *Death or disability of the trustee*

C. *Receipt of notice that a committee, guardian, or other legal representative has been appointed for the incompetent by a court of competent jurisdiction*

D. *Failure of a trustee to render required accounting reports*

E. *Probable cause to believe that there is improper use of monies received on behalf of the incompetent or*

F. *Receipt of notification that a board of medical officers or other appropriate medical authorities has now found the retiree to be capable of managing his or her own affairs. The appointing authority may, at his or her discretion, accept the findings of a Department of Veterans Affairs or Public Health Service medical facility, or the findings of other public or private medical facilities, that a person formerly found incompetent is not competent.*

G. *If payments are terminated under subparagraph 160408.B, D, or E, above, the Office of General Counsel, DFAS-Cleveland Center may appoint a successor trustee. Upon death or disability of a trustee, the trustee's legal representative makes the final accounting report.*

160409. *When payments cease to be paid to the trustee, as described in paragraph 160408, above, the trustee files a final accounting report with the Office of General Counsel, DFAS-Cleveland Center. Then the final accounting report has been approved, the trustee is discharged and the surety released of its bond.*

160410. *Upon the death of the incompetent retiree, any funds remaining in the fiduciary account, maintained on behalf of the incompetent retiree by the trustee, must be made payable to the deceased retiree's estate. (IC R3-00)*

1605 COURT APPOINTMENT OF A GUARDIAN OR OTHER LEGAL REPRESENTATIVE FOR PHYSICALLY, OR MENTALLY INCAPACITATED RETIREE

160501. The incapacitated retiree or any person interested in the welfare of the retiree may petition a court of competent jurisdiction for a finding of incapacity and appointment of a guardian or other legal representative.

160502. A copy of the appropriate court order certifying to the appointment of the guardian, committee, or conservator is required before payments may be made to the appointee.

★ 160503. *Accounting reports, similar to those identified in paragraph ~~160408~~ 160407, above, are not required. Such reports, if required by the court, are matters of concern between the court-appointed guardian or legal representative and the court. (IC R3-00)*

1606 COMFORT ITEMS WHILE IN THE HOSPITAL

The commanding officer of any military hospital or the director of a VA hospital may designate an officer under the command to receive and receipt for a sum of money from the accrued pay of a retiree who, as a patient at the hospital, has been found to be physically or mentally incapacitated in a report of medical officers. This money may be used only for the purchase of comfort items for the use and benefit of that retiree when all of the following conditions exist.

160601. A trustee has not been designated and a guardian or other legal representative has not been appointed by a court of competent jurisdiction; and

160602. There are no other funds available for use on behalf of the retiree; and

160603. Competent medical authority agrees that the items to be purchased will serve the comfort of the retiree.

1607 GENERAL MAINTENANCE OF ACCOUNTS

★ *Once the appointment of trustee, guardian, committee, etc., has been made, the DFAS Cleveland Center shall change or update the account per the appropriate provisions of this regulation. (IC R3-00)*

Chapter 16-Physical or Mental Incapacitation

1601-Definitions	160102	15A C.J.S. Committee
	160103	15A C.J.S. Conservator
	160104	21 C.J.S. Courts 22
	160105	39 C.J.S. Guard and W2
	160106	89 C.J.S. Trusts 3
1602-Physically Incapacitated Retiree		
	160203	39 Am Jur 2d, Guardian and Ward, 21 and 22
	160204.A	<u>In re Cass/Guardianship</u> 155 Neb 792, 54 NW 2d 68, 1952
	160204.B	<u>Loss vs Loss</u> , 251 12d 515 185 NE 2d 228, 1962
	160204.C	<u>Hogan's Appeal</u> , 135, Me 249, 194A 854, 113 ALR 350, 1937
	160204.D	<u>Shapter vs Pillar</u> , 28 Col 209, 63P 302, 1900
1603-Medical Examination		
	160302	37 U.S.C. Chapter 11 Public Law 86-145, Aug 7, 1959
★ <i>1604-Appointment of Trustee (IC R3-00)</i>		<i>37 U.S.C. 601-604</i>