

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 894  
OFFERED BY MR. RUNYAN OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. IMPROVEMENT OF FIDUCIARIES FOR VET-**  
2 **ERANS.**

3 (a) APPOINTMENT AND SUPERVISION.—

4 (1) Section 5502 of title 38, United States  
5 Code, is amended to read as follows:

6 **“§ 5502. Appointment of fiduciaries**

7 “(a) APPOINTMENT.—(1) Where it appears to the  
8 Secretary that the interest of the beneficiary would be  
9 served thereby, payment of benefits under any law admin-  
10 istered by the Secretary may be made directly to the bene-  
11 ficiary or to a relative or some other fiduciary for the use  
12 and benefit of the beneficiary, regardless of any legal dis-  
13 ability on the part of the beneficiary.

14 “(2) When in the opinion of the Secretary, a tem-  
15 porary fiduciary is needed in order to protect the benefits  
16 provided to the beneficiary under any law administered by  
17 the Secretary while a determination of incompetency is  
18 being made or appealed or a fiduciary is appealing a deter-

1 mination of misuse, the Secretary may appoint one or  
2 more temporary fiduciaries for a period not to exceed 120  
3 days. If a final decision has not been made within 120  
4 days, the Secretary may not continue the appointment of  
5 the fiduciary without obtaining a court order for appoint-  
6 ment of a guardian, conservator, or other fiduciary under  
7 the authority provided in section 5502(b) of this title.

8       “(b) APPEALS.—(1) If the Secretary determines a  
9 beneficiary to be mentally incompetent for purposes of ap-  
10 pointing a fiduciary under this chapter, the Secretary shall  
11 provide such beneficiary with a written statement detailing  
12 the reasons for such determination.

13       “(2) A beneficiary whom the Secretary has deter-  
14 mined to be mentally incompetent for purposes of appoint-  
15 ing a fiduciary under this chapter may appeal such deter-  
16 mination.

17       “(c) MODIFICATION.—(1) A beneficiary for whom the  
18 Secretary appoints a fiduciary under this chapter may, at  
19 any time, request the Secretary to—

20               “(A) remove the fiduciary so appointed; and

21               “(B) have a new fiduciary appointed.

22       “(2) The Secretary shall comply with a request under  
23 paragraph (1) unless the Secretary determines that the  
24 request is not made in good faith.

1           “(3) The Secretary shall ensure that any removal or  
2 new appointment of a fiduciary under paragraph (1) does  
3 not delay or interrupt the beneficiary’s receipt of benefits  
4 administered by the Secretary.

5           “(d) INDEPENDENCE.—A fiduciary appointed by the  
6 Secretary shall operate independently of the Department  
7 to determine the actions that are in the interest of the  
8 beneficiary.

9           “(e) PREDESIGNATION.—A veteran may predesignate  
10 a fiduciary by—

11                 “(1) submitting written notice to the Secretary  
12 of the predesignated fiduciary; or

13                 “(2) submitting a form provided by the Sec-  
14 retary for such purpose.

15           “(f) APPOINTMENT OF NON-PREDESIGNATED FIDU-  
16 CIARY.—If a beneficiary designates an individual to serve  
17 as a fiduciary under subsection (e) and the Secretary ap-  
18 points an individual not so designated as the fiduciary for  
19 such beneficiary, the Secretary shall notify such bene-  
20 ficiary of—

21                 “(1) the reason why such designated individual  
22 was not appointed; and

23                 “(2) the ability of the beneficiary to modify the  
24 appointed fiduciary under subsection (c).

1           “(g) PRIORITY OF APPOINTMENT.—In appointing a  
2 fiduciary under this chapter, if a beneficiary does not des-  
3 ignate a fiduciary pursuant to subsection (e), to the extent  
4 possible the Secretary shall appoint a person who is—

5                   “(1) a relative of the beneficiary;

6                   “(2) appointed as guardian of the beneficiary  
7 by a court of competent jurisdiction; or

8                   “(3) authorized to act on behalf of the bene-  
9 ficiary under a durable power of attorney.”.

10           (2) CLERICAL AMENDMENT.—The table of sec-  
11 tions at the beginning of chapter 55 of title 38,  
12 United States Code, is amended by striking the item  
13 relating to section 5502 and inserting the following:

“5502. Appointment of fiduciaries.”.

14           (b) SUPERVISION.—

15                   (1) IN GENERAL.—Chapter 55 of title 38,  
16 United States Code, is amended by inserting after  
17 section 5502, as amended by subsection (a)(1), the  
18 following new section:

19           **“§ 5502A. Supervision of fiduciaries**

20                   “(a) COMMISSION.—(1)(A) In a case in which the  
21 Secretary determines that a commission is necessary in  
22 order to obtain the services of a fiduciary in the best inter-  
23 ests of a beneficiary, the Secretary may authorize a fidu-  
24 ciary appointed by the Secretary to obtain from the  
25 monthly benefits provided to the beneficiary a reasonable

1 commission for fiduciary services rendered, but the com-  
2 mission for any month may not exceed the lesser of the  
3 following amounts:

4           “(i) The amount that equals three percent  
5           of the monthly monetary benefits under laws  
6           administered by the Secretary paid on behalf of  
7           the beneficiary to the fiduciary.

8           “(ii) \$35.

9           “(B) A commission paid under this paragraph may  
10 not be derived from any award to a beneficiary regarding  
11 back pay or retroactive benefits payments.

12           “(C) A commission may not be authorized for a fidu-  
13 ciary who receives any other form of remuneration or pay-  
14 ment in connection with rendering fiduciary services for  
15 benefits under this title on behalf of the beneficiary.

16           “(D) In accordance with section 6106 of this title,  
17 a commission may not be paid to a fiduciary if the Sec-  
18 retary determines that the fiduciary misused any benefit  
19 payments of a beneficiary.

20           “(E) If the Secretary determines that the fiduciary  
21 has misused any benefit or payments of a beneficiary, the  
22 Secretary may revoke the fiduciary status of the fiduciary.

23           “(2) Where, in the opinion of the Secretary, any fidu-  
24 ciary receiving funds on behalf of a Department bene-  
25 ficiary is acting in such a number of cases as to make

1 it impracticable to conserve properly the estates or to su-  
2 pervise the persons of the beneficiaries, the Secretary may  
3 refuse to make future payments in such cases as the Sec-  
4 retary may deem proper.

5       “(b) COURT.—Whenever it appears that any fidu-  
6 ciary, in the opinion of the Secretary, is not properly exe-  
7 cuting or has not properly executed the duties of the trust  
8 of such fiduciary or has collected or paid, or is attempting  
9 to collect or pay, fees, commissions, or allowances that are  
10 inequitable or in excess of those allowed by law for the  
11 duties performed or expenses incurred, or has failed to  
12 make such payments as may be necessary for the benefit  
13 of the ward or the dependents of the ward, then the Sec-  
14 retary may appear, by the Secretary’s authorized attorney,  
15 in the court which has appointed such fiduciary, or in any  
16 court having original, concurrent, or appellate jurisdiction  
17 over said cause, and make proper presentation of such  
18 matters. The Secretary, in the Secretary’s discretion, may  
19 suspend payments to any such fiduciary who shall neglect  
20 or refuse, after reasonable notice, to render an account  
21 to the Secretary from time to time showing the application  
22 of such payments for the benefit of such incompetent or  
23 minor beneficiary, or who shall neglect or refuse to admin-  
24 ister the estate according to law. The Secretary may re-  
25 quire the fiduciary, as part of such account, to disclose

1 any additional financial information concerning the bene-  
2 ficiary (except for information that is not available to the  
3 fiduciary). The Secretary may appear or intervene by the  
4 Secretary's duly authorized attorney in any court as an  
5 interested party in any litigation instituted by the Sec-  
6 retary or otherwise, directly affecting money paid to such  
7 fiduciary under this section.

8       “(c) PAYMENT OF CERTAIN EXPENSES.—Authority  
9 is hereby granted for the payment of any court or other  
10 expenses incident to any investigation or court proceeding  
11 for the appointment of any fiduciary or other person for  
12 the purpose of payment of benefits payable under laws ad-  
13 ministered by the Secretary or the removal of such fidu-  
14 ciary and appointment of another, and of expenses in con-  
15 nection with the administration of such benefits by such  
16 fiduciaries, or in connection with any other court pro-  
17 ceeding hereby authorized, when such payment is author-  
18 ized by the Secretary.

19       “(d) TEMPORARY PAYMENT OF BENEFITS.—All or  
20 any part of any benefits the payment of which is sus-  
21 pended or withheld under this section may, in the discre-  
22 tion of the Secretary, be paid temporarily to the person  
23 having custody and control of the incompetent or minor  
24 beneficiary, to be used solely for the benefit of such bene-  
25 ficiary, or, in the case of an incompetent veteran, may be

1 apportioned to the dependent or dependents, if any, of  
2 such veteran. Any part not so paid and any funds of a  
3 mentally incompetent or insane veteran not paid to the  
4 chief officer of the institution in which such veteran is a  
5 patient nor apportioned to the veteran's dependent or de-  
6 pendants may be ordered held in the Treasury to the credit  
7 of such beneficiary. All funds so held shall be disbursed  
8 under the order and in the discretion of the Secretary for  
9 the benefit of such beneficiary or the beneficiary's depend-  
10 ents. Any balance remaining in such fund to the credit  
11 of any beneficiary may be paid to the beneficiary if the  
12 beneficiary recovers and is found competent, or if a minor,  
13 attains majority, or otherwise to the beneficiary's fidu-  
14 ciary, or, in the event of the beneficiary's death, to the  
15 beneficiary's personal representative, except as otherwise  
16 provided by law; however, payment will not be made to  
17 the beneficiary's personal representative if, under the law  
18 of the beneficiary's last legal residence, the beneficiary's  
19 estate would escheat to the State. In the event of the death  
20 of a mentally incompetent or insane veteran, all gratuitous  
21 benefits under laws administered by the Secretary depos-  
22 ited before or after August 7, 1959, in the personal funds  
23 of patients trust fund on account of such veteran shall  
24 not be paid to the personal representative of such veteran,  
25 but shall be paid to the following persons living at the

1 time of settlement, and in the order named: The surviving  
2 spouse, the children (without regard to age or marital sta-  
3 tus) in equal parts, and the dependent parents of such  
4 veteran, in equal parts. If any balance remains, such bal-  
5 ance shall be deposited to the credit of the applicable cur-  
6 rent appropriation; except that there may be paid only so  
7 much of such balance as may be necessary to reimburse  
8 a person (other than a political subdivision of the United  
9 States) who bore the expenses of last sickness or burial  
10 of the veteran for such expenses. No payment shall be  
11 made under the two preceding sentences of this subsection  
12 unless claim therefor is filed with the Secretary within five  
13 years after the death of the veteran, except that, if any  
14 person so entitled under said two sentences is under legal  
15 disability at the time of death of the veteran, such five-  
16 year period of limitation shall run from the termination  
17 or removal of the legal disability.

18       “(e) ESCHEATMENT.—Any funds in the hands of a  
19 fiduciary appointed by a State court or the Secretary de-  
20 rived from benefits payable under laws administered by  
21 the Secretary, which under the law of the State wherein  
22 the beneficiary had last legal residence would escheat to  
23 the State, shall escheat to the United States and shall be  
24 returned by such fiduciary, or by the personal representa-  
25 tive of the deceased beneficiary, less legal expenses of any

1 administration necessary to determine that an escheat is  
2 in order, to the Department, and shall be deposited to the  
3 credit of the applicable revolving fund, trust fund, or ap-  
4 propriation.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-  
6 tions at the beginning of chapter 55 of title 38,  
7 United States Code, is amended by inserting after  
8 the item relating to section 5502 the following new  
9 item:

“5502A. Supervision of fiduciaries.”.

10 (c) DEFINITION OF FIDUCIARY.—Section 5506 of  
11 title 38, United States Code is amended—

12 (1) by striking “For purposes” and inserting  
13 “(a) For purposes”; and

14 (2) by adding at the end the following new sub-  
15 section:

16 “(b)(1) For purposes of subsection (a), the term ‘per-  
17 son’ includes any—

18 “(A) State or local government agency whose  
19 mission is to carry out income maintenance, social  
20 service, or health care-related activities;

21 “(B) any State or local government agency with  
22 fiduciary responsibilities; or

23 “(C) any nonprofit social service agency that  
24 the Secretary determines—



1           “(2) adequate evidence that certification of that  
2           person as fiduciary for that beneficiary is in the in-  
3           terest of such beneficiary (as determined by the Sec-  
4           retary under regulations);

5           “(3) adequate evidence that the person to serve  
6           as fiduciary protects the private information of a  
7           beneficiary in accordance with subsection (d)(1); and

8           “(4) the furnishing of any bond that may be re-  
9           quired by the Secretary, in accordance with sub-  
10          section (f).

11          “(b) ELEMENTS OF INVESTIGATION.—(1) In con-  
12          ducting an inquiry or investigation of a proposed fiduciary  
13          under subsection (a)(1), the Secretary shall conduct—

14               “(A) a face-to-face interview with the proposed  
15               fiduciary by not later than 30 days after the date on  
16               which such inquiry or investigation begins; and

17               “(B) a background check of the proposed fidu-  
18               ciary to—

19                       “(i) in accordance with paragraph (2), de-  
20                       termine whether the proposed fiduciary has  
21                       been convicted of a crime; and

22                       “(ii) determine whether the proposed fidu-  
23                       ciary will serve the best interest of the bene-  
24                       ficiary, including by conducting a credit check

1 of the proposed fiduciary and checking the  
2 records under paragraph (5).

3 “(2) The Secretary shall request information con-  
4 cerning whether that person has been convicted of any of-  
5 fense under Federal or State law. If that person has been  
6 convicted of such an offense, the Secretary may certify the  
7 person as a fiduciary only if the Secretary finds that the  
8 person is an appropriate person to act as fiduciary for the  
9 beneficiary concerned under the circumstances.

10 “(3) The Secretary shall conduct the background  
11 check described in paragraph (1)(B)—

12 “(A) each time a person is proposed to be a fi-  
13 duciary, regardless of whether the person is serving  
14 or has served as a fiduciary; and

15 “(B) at no expense to the beneficiary.

16 “(4) Each proposed fiduciary shall disclose to the  
17 Secretary the number of beneficiaries that the fiduciary  
18 acts on behalf of.

19 “(5) The Secretary shall maintain records of any per-  
20 son who has—

21 “(A) previously served as a fiduciary; and

22 “(B) had such fiduciary status revoked by the  
23 Secretary.

24 “(6)(A) If a fiduciary appointed by the Secretary is  
25 convicted of a crime described in subparagraph (B), the

1 Secretary shall notify the beneficiary of such conviction  
2 by not later than 14 days after the date on which the Sec-  
3 retary learns of such conviction.

4 “(B) A crime described in this subparagraph is a  
5 crime—

6 “(i) for which the fiduciary is convicted while  
7 serving as a fiduciary for any person;

8 “(ii) that is not included in a report submitted  
9 by the fiduciary under section 5509(a) of this title;  
10 and

11 “(iii) that the Secretary determines could affect  
12 the ability of the fiduciary to act on behalf of the  
13 beneficiary.

14 “(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In  
15 the case of a proposed fiduciary described in paragraph  
16 (2), the Secretary, in conducting an inquiry or investiga-  
17 tion under subsection (a)(1), may carry out such inquiry  
18 or investigation on an expedited basis that may include  
19 giving priority to conducting such inquiry or investigation.  
20 Any such inquiry or investigation carried out on such an  
21 expedited basis shall be carried out under regulations pre-  
22 scribed for purposes of this section.

23 “(2) Paragraph (1) applies with respect to a proposed  
24 fiduciary who is—

1           “(A) the parent (natural, adopted, or step-  
2           parent) of a beneficiary who is a minor;

3           “(B) the spouse or parent of an incompetent  
4           beneficiary;

5           “(C) a person who has been appointed a fidu-  
6           ciary of the beneficiary by a court of competent ju-  
7           risdiction;

8           “(D) being appointed to manage an estate  
9           where the annual amount of veterans benefits to be  
10          managed by the proposed fiduciary does not exceed  
11          \$3,600, as adjusted pursuant to section 5312 of this  
12          title; or

13          “(E) a person who is authorized to act on be-  
14          half of the beneficiary under a durable power of at-  
15          torney.

16          “(d) PROTECTION OF PRIVATE INFORMATION.—(1)  
17          A fiduciary shall take all reasonable precautions to—

18                 “(A) protect the private information of a bene-  
19                 ficiary, including personally identifiable information;  
20                 and

21                 “(B) securely conducts financial transactions.

22          “(2) A fiduciary shall notify the Secretary of any ac-  
23          tion of the fiduciary that compromises or potentially com-  
24          promises the private information of a beneficiary.

1           “(e) POTENTIAL MISUSE OF FUNDS.—(1) If the Sec-  
2 retary has reason to believe that a fiduciary may be mis-  
3 using all or part of the benefit of a beneficiary, the Sec-  
4 retary shall—

5           “(A) conduct a thorough investigation to deter-  
6 mine the veracity of such belief; and

7           “(B) if such veracity is established, transmit to  
8 the officials described in paragraph (2) a report of  
9 such investigation.

10          “(2) The officials described in this paragraph are the  
11 following:

12           “(A) The Attorney General.

13           “(B) Each head of a Federal department or  
14 agency that pays to a fiduciary or other person ben-  
15 efits under any law administered by such depart-  
16 ment of agency for the use and benefit of a minor,  
17 incompetent, or other beneficiary.

18          “(f) BOND.—In requiring the furnishing of a bond  
19 under subsection (a)(4), the Secretary shall—

20           “(1) ensure that any such bond is not paid  
21 using any funds of the beneficiary; and

22           “(2) consider—

23           “(A) the care a proposed fiduciary has  
24 taken to protect the interests of the beneficiary;  
25 and

1           “(B) the capacity of the proposed fiduciary  
2           to meet the financial requirements of the bond  
3           without sustaining hardship.

4           “(g) LIST OF FIDUCIARIES.—Each regional office of  
5 the Veterans Benefits Administration shall maintain a list  
6 of the following:

7           “(1) The name and contact information of each  
8           fiduciary, including address, telephone number, and  
9           email address.

10           “(2) With respect to each fiduciary described in  
11 paragraph (1)—

12           “(A) the date of the most recent back-  
13           ground check and credit check performed by the  
14           Secretary under this section;

15           “(B) the date that any bond was paid  
16           under this section;

17           “(C) the name, address, and telephone  
18           number of each beneficiary the fiduciary acts on  
19           behalf of; and

20           “(D) the amount that the fiduciary con-  
21           trols with respect to each beneficiary described  
22           in subparagraph (C).”.

23           (e) ANNUAL RECEIPT OF PAYMENTS.—

24           (1) IN GENERAL.—Section 5509 of title 38,  
25           United States Code, is amended—

1 (A) in subsection (a)——

2 (i) by striking “may require a fidu-  
3 ciary to file a” and inserting “, subject to  
4 regulations prescribed pursuant to sub-  
5 section (f), shall require a fiduciary to file  
6 an annual”; and

7 (ii) by adding at the end the following  
8 new sentence: “The Secretary shall trans-  
9 mit such annual report or accounting to  
10 the beneficiary and any legal guardian of  
11 such beneficiary.”;

12 (B) by adding at the end the following new  
13 subsections:

14 “(c) MATTERS INCLUDED.—An annual report or ac-  
15 counting under subsection (a) shall include the following:

16 “(1) For each beneficiary that a fiduciary acts  
17 on behalf of—

18 “(A) the amount of the benefits of the ben-  
19 eficiary accrued during the year, the amount  
20 spent, and the amount remaining; and

21 “(B) if the fiduciary serves the beneficiary  
22 with respect to benefits not administered by the  
23 Secretary, an accounting of all sources of bene-  
24 fits or other income the fiduciary oversees for  
25 the beneficiary.

1           “(2) A list of events that occurred during the  
2           year covered by the report that could affect the abil-  
3           ity of the fiduciary to act on behalf of the bene-  
4           ficiary, including—

5                   “(A) the fiduciary being convicted of any  
6           crime;

7                   “(B) the fiduciary declaring bankruptcy;  
8           and

9                   “(C) any judgments entered against the fi-  
10          duciary.

11          “(d) RANDOM AUDITS.—The Secretary shall annu-  
12          ally conduct random audits of fiduciaries who receive a  
13          commission pursuant to subsection 5502A(a)(1) of this  
14          title.

15          “(e) STATUS OF FIDUCIARY.—If a fiduciary includes  
16          in the annual report events described in subsection (c)(2),  
17          the Secretary may take appropriate action to adjust the  
18          status of the fiduciary as the Secretary determines appro-  
19          priate, including by revoking the fiduciary status of the  
20          fiduciary.

21          “(f) REGULATIONS.—(1) In prescribing regulations  
22          to carry out this section, the Secretary, in consultation  
23          with the Under Secretary for Benefits and the Under Sec-  
24          retary for Health, shall ensure that the care provided by  
25          a fiduciary described in paragraph (2) to a beneficiary is

1 not diminished or otherwise worsened by the fiduciary  
2 complying with this section.

3 “(2) A fiduciary described in this paragraph is a fidu-  
4 ciary who, in addition to acting as a fiduciary for a bene-  
5 ficiary, provides care to the beneficiary pursuant to this  
6 title (including such care provided under section 1720G  
7 of this title).”; and

8 (C) by striking the section heading and in-  
9 serting the following: “**Annual reports and**  
10 **accountings of fiduciaries**”.

11 (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions at the beginning of chapter 55 of title 38,  
13 United States Code, is amended by striking the item  
14 relating to section 5509 and inserting the following  
15 new item:

“5509. Annual reports and accountings of fiduciaries.”.

16 (f) REPAYMENT OF MISUSED BENEFITS.—Section  
17 6107(a)(2)(C) of title 38, United States Code, is amended  
18 by inserting before the period the following: “, including  
19 by the Secretary not acting in accordance with section  
20 5507 of this title”.

21 (g) ANNUAL REPORTS.—Section 5510 of title 38,  
22 United States Code, is amended by striking “The Sec-  
23 retary shall include in the Annual Benefits Report of the  
24 Veterans Benefits Administration or the Secretary’s An-  
25 nual Performance and Accountability Report” and insert-

1 ing “Not later than July 1 of each year, the Secretary  
2 shall submit to the Committees on Veterans’ Affairs of  
3 the House of Representatives and the Senate a separate  
4 report containing”.

5 (h) REPORT.—Not later than one year after the date  
6 of the enactment of this Act, the Secretary of Veterans  
7 Affairs shall submit to the Committee on Veterans’ Affairs  
8 of the Senate and the Committee on Veterans’ Affairs of  
9 the House of Representatives a comprehensive report on  
10 the implementation of the amendments made by this Act,  
11 including—

12 (1) detailed information on the establishment of  
13 new policies and procedures pursuant to such  
14 amendments and training provided on such policies  
15 and procedures; and

16 (2) a discussion of whether the Secretary  
17 should provide fiduciaries with standardized finan-  
18 cial software to simplify reporting requirements.

19 **SEC. 2. CONDITIONS FOR TREATMENT OF CERTAIN PER-**  
20 **SONS AS ADJUDICATED MENTALLY INCOM-**  
21 **PETENT FOR CERTAIN PURPOSES.**

22 (a) IN GENERAL.—Chapter 55 of title 38, United  
23 States Code, is amended by adding at the end the fol-  
24 lowing new section:

1 **“§ 5511. Conditions for treatment of certain persons**  
2 **as adjudicated mentally incompetent for**  
3 **certain purposes**

4 “In any case arising out of the administration by the  
5 Secretary of laws and benefits under this title, a person  
6 who is mentally incapacitated, deemed mentally incom-  
7 petent, or experiencing an extended loss of consciousness  
8 shall not be considered adjudicated as a mental defective  
9 under subsection (d)(4) or (g)(4) of section 922 of title  
10 18 unless a judge, magistrate, or other judicial authority  
11 of competent jurisdiction issues an order or finding, after  
12 such person is afforded appropriate due process proce-  
13 dures, that such person is a danger to himself or herself  
14 or others. This section shall not apply to a person who  
15 willfully fails to participate in such procedures regarding  
16 such an order or finding.”.

17 (b) CLERICAL AMENDMENT.—The table of sections  
18 at the beginning of chapter 55 of such title is amended  
19 by adding at the end the following new item:

“5511. Conditions for treatment of certain persons as adjudicated mentally in-  
competent for certain purposes.”.

