



NICS REFERRAL PROCESS FOR INCOMPETENT BENEFICIARIES JOB AID

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INTRODUCTION

- Overview: This job aid provides guidance on the updated process for referring incompetent beneficiaries to the National Instant Criminal Background Check System (NICS) in accordance with H.R. 4366 - Consolidated Appropriations Act, 2024.
- Scope: The job aid covers the responsibilities of the fiduciary hub in reviewing VA determinations, orders or findings of a judge, magistrate, or other judicial authority of competent jurisdiction, updating VBMS records, and ensuring proper notification to beneficiaries. It also includes references to relevant manual sections and resources.



PROCESS FLOW

While the Fid Hub finalizes the determination of the beneficiary's inability to manage VA benefits, it follows the steps in the table below to determine whether referral to NICS is necessary and the associated required actions.

Step	Action
1	<p>Did VA determine that a fiduciary is required because the beneficiary is unable to manage their VA benefits?</p> <ul style="list-style-type: none"> • If <i>yes</i>, go to the next step. • If <i>no</i>, disregard the remaining steps in this table.
2	<p>Review the eFolder for an order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to self or others. Does such a finding exist within the eFolder?</p> <ul style="list-style-type: none"> • If <i>yes</i>, go to the next step. • If <i>no</i>, disregard the remaining steps in this table. <p>Important: The court documentation must specifically state that the beneficiary is a danger to self or others. The hub must not make their own determination based on other, non-specific language within the court documentation.</p>
3	<ul style="list-style-type: none"> • In VBMS, update the SUBJECT field of the court document(s) showing that the beneficiary is a danger to self or others with the following text: <i>Incompetency – Danger to Self or Others</i>. • Go to the next step.
4	<p>If the beneficiary is a</p> <ul style="list-style-type: none"> • Veteran, add the <i>Incompetency Veteran – Danger to Self or Others</i> corporate flash, or • non-Veteran, add the <i>Incompetency Survivor – Danger to Self or Others</i> corporate flash.



VA FILE DOCUMENT REVIEW

- Checklist for fiduciary hub's review of file documents:
 - Look for VA's determination that the beneficiary is unable to manage VA benefits. This may be made through a final rating of incompetency or the receipt of a judicial finding of incompetency.
 - Look for order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to self or others.
- Criteria for determining inability to manage affairs:
 - VA determined that a fiduciary appointment is required because the beneficiary is unable to manage their VA benefits.
 - Court documents explicitly state the beneficiary cannot manage their financial affairs, assets, or benefits.
 - Court appoints a legal guardian, conservator, or other representative to manage the beneficiary's affairs.
- Criteria for determining danger to self or others:
 - Documentation of order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction explicitly states the beneficiary poses a risk or danger to themselves or others.
 - Documentation of order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction explicitly includes language such as "threat to public safety," "risk of harm," or similar phrasing.
- Examples of language or findings to look for:
 - "The defendant is a danger to themselves and others."
 - "Due to the individual's mental state, they are a threat to public safety."
 - "The individual is a danger to the public."

VBMS UPDATES

- Step 1: In the eFolder, update the VBMS subject line of the relevant court document(s) with the following text: "Incompetency–Danger to Self or Others"

Actions		Upload Document	Last Opened Document	Table preferences					
Showing 1-3 of 3 documents									
	New Mail ↓	Indicators	Subject ↓	Content Source ↓	Document Title ↓	Document Type ↓	Document Category ↓	Receipt Date ↓	Storage Date
<input checked="" type="checkbox"/>			Incompetency-Danger to Self or Others	VBMS	Test_Court Documents .pdf	Court Documents - General	Correspondence	04/01/2024	04/02/2024

- Step 2: Add the appropriate corporate flash:
 - For Veteran beneficiaries, add the "Incompetency Veteran – Danger to Self or Others" corporate flash

Flashes

Flash Name: +

- For non-Veteran beneficiaries, add the "Incompetency Survivor – Danger to Self or Others" corporate flash

Flashes

Flash Name: +



NOTIFICATION REQUIREMENTS

- Checklist for notifying beneficiaries determined incompetent:
 - Include notice in the proposed adverse action letter (use PCGL GP5 Pre: Incompetency template)
 - Include notice in the final/contemporaneous decision notice (use PCGL GP6 Post: Incompetency template or VBMS decision notice)



REFERENCES AND RESOURCES

- M21-1, Part X, Subpart ii, 6.D: Guidance on the NICS referral process and relief requests
- FPM, Part I, 1.B: Instructions for the fiduciary hub's responsibilities
- M21-4, Appendix E: Information on new corporate flashes

Contact: Questions should be filtered through your QRT team. They will submit your questions to the [Field Inquiry Tool](#) (FIT) on your behalf.

User Guides: Refer to the VBMS User Guide or Share User Guide for assistance with system functions.

Frequently Asked Questions:

Q: What if the documentation is unclear or doesn't explicitly state the required criteria?

A: Do not make assumptions. If the criteria are not clearly stated, do not proceed with a NICS referral.

Q: Can the fiduciary hub make their own determination of danger to self or others?

A: No, the determination must come from the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction. The hub cannot make this determination based on other evidence.