



Congressional Relations

Veterans Policy Overview: Who is a Veteran and the Criteria for VA Health Care

**National Academies of Science, Engineering, and Medicine
Workshop on Identifying and Managing Veteran Suicide Risk
in Non-VA Healthcare Settings
May 23, 2023**

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**Vietnam-era
herbicide-
exposed veteran**

38 U.S.C.
§1710(e)(4)(A)

**Radiation-
exposed veteran**

38 U.S.C.
§1710(e)(4)(B)

**Covered
Veteran**

38 U.S.C.
§1119(c)(1)

Veteran

38 U.S.C.
§101(2)

**Toxic-Exposed
Veteran**

38 U.S.C. §101(2)
& 1710(e)(1)

How is a *veteran* defined?

- Definition is used to determine basic eligibility for VA benefits.
- 38 U.S.C. §101(2) and 38 C.F.R. §3.1(d)* definition of a *veteran*
 - “person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.”
- 2 requirements within the *veteran* definition that must be met
 - “active military, naval, air, or space service”
 - May encompass one or a combination of three types of service: **Active Duty for Training** (in certain circumstances), **Inactive Duty for Training** (in certain circumstances), and **Active Duty**
 - These terms are defined in 38 U.S.C. §101(21) – §101(23)
 - discharged under “conditions other than dishonorable”
 - definition includes discharge statuses that have been upgraded from dishonorable to something other than dishonorable or reviewed by VA through its character of discharge process



*The definition was amended by Section 926 of P.L.116-283 include “space service.” This means service with the U.S. Space Force and not as an employee of NASA.

Military Discharge Status Determines Access to VA Benefits, including Health Care

- Dept. of Defense determines servicemember's type of discharge.
 - Reported on the Certificate of Release or Discharge (DD Form 214)

Type of Discharge	Access to VA Programs	VA Review
Honorable	Yes	No
General (under Honorable Conditions)	Yes (except for G.I. benefits)	No
Other than Honorable	Some	Yes
Bad Conduct	No	Yes
Dishonorable	No	Yes



- Discharge Upgrades
 - Only available through the DoD military review board process.

VA Character of Discharge Determination

- VA assesses the veteran's entire period of military service.
- If a veteran has multiple periods of service with different discharge statuses, VA will review each period of service.

Types of VA Determinations	
Honorable for VA Benefits	<ul style="list-style-type: none">- Evidence supports that the veteran's service was honorable for VA purposes.- Establishes basic eligibility for all VA benefits; other requirements must be met
Eligible for Health Care	<ul style="list-style-type: none">- Individuals with other than honorable discharges who may not be eligible for other VA benefits, but VA determines they qualify for health care for service-connected disabilities.
Dishonorable for VA Benefits	<ul style="list-style-type: none">- Circumstances of discharge make the individual ineligible for VA benefits- Statutory bar to benefits: 38 U.S.C. §5303- Regulatory bar to benefits: 38 CFR § 3.12(d)

VA Health Care Has Two Steps: Eligibility and Enrollment

	Eligibility (generally based on military service)	Enrollment (based on various factors)
Criteria	Meet statutory definition of “veteran”	Service connection conditions
	Meet statutory definition of “active duty”	Income level (national and geographic)
	Served minimum period of active duty* (24 continuous months or full period called to active duty)	Combat status
		Special statutory authorities
Exceptions or Limitations	Discharged due to service-connected disabilities	Availability of Funds
	Members of the Reserve and National Guard (under certain circumstances)	Some veterans without service-connected disabilities
	Those eligible under special treatment authorities	Those with income that exceeds the threshold

*Length of service requirement is for those who enlisted after 9/7/80 or entered active duty after 10/16/81.

VA Health Care Package

- Coverage of service-connected and non-service-connected disabilities and the requirement of copays is based on priority group and availability of coverage
- Types of care provided include:
 - Preventive Care
 - Primary Care
 - Inpatient Hospital Services
 - Emergency Care
 - Medical & Surgical Specialty Care
 - Prescription medications
 - Durable medical equipment
 - Prosthetic devices



- Also, generally includes:
 - Audiology and Eye Care (preventive services and routine vision testing)
 - Eyeglasses and hearing aids provided only to veterans meeting certain criteria

VA Health Care Priority Groups

Group	Veterans' Criteria	
1	<ul style="list-style-type: none"> - Service-connected disabilities rated at 50% or greater - Determined to be unemployable due to service-connected disability 	<ul style="list-style-type: none"> - Received Medal of Honor
2	<ul style="list-style-type: none"> - Service-connected disabilities rated at 30% or 40% 	
3	<ul style="list-style-type: none"> - Service-connected disabilities rated at 10% or 20% - Discharged for a disability incurred or aggravated in the line of duty - "Disabled by treatment or vocational rehabilitation" 	<ul style="list-style-type: none"> - Former Prisoner of War (POW) - Received Purple Heart
4	<ul style="list-style-type: none"> - Receiving aid and attendance - Determined to be catastrophically disabled 	<ul style="list-style-type: none"> - Receiving housebound benefits
5	<ul style="list-style-type: none"> - Receiving VA pension benefits - No service-connected disability or a non-compensable service-connected disability rated at 0% and annual income level below VA adjusted income limits 	
6	<ul style="list-style-type: none"> - Compensable service-connected disability rated 0% - Certain statutory authorities - Currently/newly enrolled and served in specific theater of combat operations and discharged less than 10 year ago+ 	<ul style="list-style-type: none"> - Toxic-exposed veterans* - Combat veterans
7	<ul style="list-style-type: none"> - Gross household income is below geographically adjusted income limits and agree to pay applicable copays 	
8	<ul style="list-style-type: none"> - Gross household income above VA income limits and geographic income limits and agreement to pay copayments, and meet one of the subcategory requirements of this group 	

* Defined in 38 U.S.C. § 101(38) per the PACT Act

+Enhanced enrollment period for 10 years after discharge on a rolling basis per the provisions of the PACT Act.

At end of this period, veteran will be assigned highest priority group qualified for. Veterans will also have a phased in enrollment period based on discharge date.

Unique Patients¹ per Priority Groups

Description	2022 Actual	2023		2024
		Budget Estimate	Current Estimate	Revised Request
Priority Levels				
Priority 1.....	2,785,827	2,823,222	2,922,581	3,046,068
Priority 2.....	461,559	477,761	456,195	450,901
Priority 3.....	792,685	825,168	797,945	801,753
Priority 4.....	132,160	133,757	124,441	117,418
Priority 5.....	892,601	921,895	834,536	778,893
Priority 6.....	226,581	241,995	222,103	218,096
Priority 7.....	234,087	248,892	242,542	250,279
Priority 8.....	771,330	818,845	740,240	714,186
Veterans [Subtotal].....	6,296,830	6,491,535	6,340,582	6,377,593

1/ Unique patients are uniquely identified individuals treated by VA or whose treatment is paid for by VA.

Screenshot data from VA's FY2023 Budget Submission Vol. II Medical Programs

VA Health Care Copayments

SC = Service Connected

NSC = Nonservice-connected

Type of Care	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
Primary Care (SC)	No copayment							
Primary Care (NSC)	No copayment						\$15 per visit	
Specialty Care (SC)	No copayment							
Specialty Care (NSC)	No copayment						\$50 per visit	
Urgent Care (1 st three visits per year)	No copayment					\$0 or \$30*	\$30 per visit	
Urgent Care (subsequent visits per year)	\$30 per visit					\$30 per visit	\$30 per visit	
Medication (Up to a 30-day supply)	No copayment	Tier 1 - \$5 Tier 2 - \$8 Tier 3 - \$11						

*If visit is related to a condition covered by a special authority, there is no copay. If the visit is related to a non-covered condition, the copay is \$30.

Major Legislative Initiatives to Expand VA Health Care

- Agent Orange Act of 1991 (P.L. 102-4)
- Health Care for Veterans of Persian Gulf War (P.L. 103-210)
- Veterans' Health Care Eligibility Reform Act of 1996 (P.L.104-262)
- Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (P.L. 116-171)
- Blue Water Navy Act of 2019
- Veterans Comprehensive Prevention, Access to Care, and Treatment Act of 2020 (COMPACT Act; P.L. 116-214)
- SFC Heath Robinson Honoring Our PACT Act of 2022 (P.L. 117-168)

Expansion of VA Health Care: Blue Water Navy Act of 2019

- Public Law 116-23
 - VA began processing claims January 1, 2020
- Provisions related to Benefits and Health Care
 - Added 38 U.S.C. §1116A to the *U.S. Code*
 - Expanded eligibility for presumption of service connection due to herbicide exposure conditions already determined to be presumptive
- Requirements for Vietnam Era Veterans
 - Served between January 9, 1962, and May 7, 1975
 - Served aboard a U.S. Navy or Coast Guard vessel in the offshore waters of Republic of Vietnam
 - 12 nautical miles seaward from the coordinates listed in the law
 - Have one or more condition listed in 38 C.F.R §3.309(e)
- Requirements for Near Korean DMZ
 - Served in or near the Korean Demilitarized Zone (DMZ) between September 1, 1967, to August 31, 1971



Expansion of VA Health Care: SFC Heath Robinson Honoring Our PACT Act

- Public Law 117-168
 - VA began processing claims January 1, 2023
- **Vietnam Era Veterans**
 - New Agent Orange presumptions: Hypertension and Monoclonal Gammopathy of Undetermined Significance
 - Amended definition of “Vietnam-era herbicide exposed veteran” to include
 - Republic of Vietnam = January 9, 1962, and May 7, 1975
 - Thailand at any U.S. or Royal Thai base = January 9, 1962, and June 30, 1976
 - Laos = December 1, 1965, and September 30, 1969
 - Certain provinces in Cambodia = April 16, 1969, and April 30, 1969
 - Guam or American Samoa (or territorial waters) = January 9, 1962, and July 31, 1980
 - Johnston Atoll (or on a ship that called there) = January 1, 1972, and September 30, 1977
 - Those who served in above locations are eligible for presumption of service connection and could begin enrolling in Health Care on October 1, 2022
- **Radiation-Exposed Veterans**
 - Expanded definition of “radiation-risk activity”
 - Groups added within the definition include:
 - Cleanup of Enewetak Atoll = January 1, 1977, through December 31, 1980
 - Cleanup of USAF B-52 bomber collision near Palomares, Spain = January 17, 1966, through March 31, 1967
 - Cleanup and decontamination of USAF Air Force B-52 bomber crash near Thule Air Force Base in Greenland = January 21, 1968, to September 25, 1968
 - Eligible for health care for any condition listed as presumptive for this group

Honoring Our PACT Act (cont'd)

• Gulf War and Post-9/11 Era Veterans

- Adds 20+ new presumptions related to toxic exposures
- Presumptive exposure during specific times and locations
 - On or after August 2, 1990 – Bahrain; Iraq; Kuwait; Oman; Qatar; Saudi Arabia; Somalia; United Arab Emirates; or the airspace above any of these locations
 - On or after September 11, 2001 – Afghanistan; Djibouti; Egypt; Jordan; Lebanon; Syria; Uzbekistan; Yemen; or the airspace above any of these locations
- Health Care for Post-9/11 Veterans
 - Requirements for those separated after October 1, 2013
 - Served in theater of combat operations during a period of war after Persian Gulf War, **OR**
 - Served in combat against a hostile force during a period of hostilities after November 11, 1998
 - **AND** Discharged or released on or after October 1, 2013
 - Eligible for VA health care for any condition related to service for up to 10 years from date of most recent discharge or separation.
 - Requirements for those separated before October 1, 2013
 - Served in theater of combat operations during a period of war after Persian Gulf War, **OR**
 - Served in combat against a hostile force during a period of hostilities after November 11, 1998
 - **AND** Discharged or released between September 11, 2001, and October 1, 2013 **AND**
 - Have not enrolled in VA health care previously
 - Special enrollment period between October 1, 2022, and October 1, 2023



Mental Health Care for Veterans in Crisis

- Commander John Scott Hannon Veterans Mental Health Improvement Act of 2019 (Public Law 116-171)
- Veterans Comprehensive Prevention, Access to Care, and Treatment (COMPACT) Act of 2020 (Public Law 116-214)
- VA Interim Final Rule – Emergent Suicide Care
 - Published in *Federal Register* and went into effect on January 17, 2023
 - Regulation implemented in response to COMPACT Act requirement
 - Eligibility
 - Discharged from military under other than dishonorable conditions **AND**
 - Service requirements prior to discharge
 - Served 24 months of active service **OR**
 - Served at least 100 days under a combat exclusion **OR**
 - Served in support of a contingency operation either directly **OR** by operating an unmanned aerial vehicle from another location
 - Former servicemembers who were the victim of a physical assault of a sexual nature, a battery of a sexual nature, or sexual harassment while serving are also eligible
 - VA's Role
 - Provide, pay for, or reimburse for treatment of eligible individuals' emergency suicide care, transportation costs, and follow-up care at VA or non-VA facility for up to 30 days of inpatient care & 90 days of outpatient
 - Make referrals for care after emergency care and treatment
 - Determine and refer eligible veterans for other appropriate VA services and benefits after emergency care



Key Take-Aways

- A main requirement for VA health care is for the individual to meet the statutory definition of a *veteran*.
- Occasionally Congress steps in to pass legislation to expand eligibility and enrollment for VA Health Care to various groups of veterans.
- There are multiple determinants that decide where a veteran is placed within the VA Health Care System.
- VA Health Care is not an insurance program and therefore veterans do not pay premiums like a private insurance policy.

Questions & Contact



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AND
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References and Resources

- Title 38 of *U.S. Code* and *Code of Federal Regulations*
- Public Laws
 - Blue Water Navy - <https://www.congress.gov/116/plaws/publ23/PLAW-116publ23.pdf>
 - PACT Act - <https://www.congress.gov/117/plaws/publ168/PLAW-117publ168.pdf>
 - Hannon Act - <https://www.congress.gov/116/plaws/publ171/PLAW-116publ171.pdf>
 - COMPACT Act - <https://www.congress.gov/116/plaws/publ214/PLAW-116publ214.pdf>
- VA Resources
 - Suicide Prevention - <https://www.va.gov/health-care/health-needs-conditions/mental-health/suicide-prevention/>
 - Blue Water Navy Act Factsheet - https://www.va.gov/Blue_Water_Navy_Factsheet.pdf#
 - Pact Act Overview of Benefits and Claims - <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/>
 - Health Care Priority Groups - <https://www.va.gov/health-care/eligibility/priority-groups/>
 - Copayments - <https://www.va.gov/health-care/copay-rates/>
- *Federal Register* Emergent Suicide Care Interim Final Rule - <https://www.congress.gov/116/plaws/publ214/PLAW-116publ214.pdf>
- Dept. of Defense Resource: DOD, Instruction 1332.14, Enlisted Administrative Separations, April 12, 2019; DOD, Instruction 1332.30, Commissioned Officer Administrative Separations, September 9, 2021.