

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-23, §2(g), June 25, 2019, 133 Stat. 969, provided that: "The amendments made by this section [enacting this section and amending section 1710 of this title] shall take effect on January 1, 2020."

IMPLEMENTATION

Pub. L. 116-23, §2(c), June 25, 2019, 133 Stat. 968, provided that:

"(1) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement section 1116A of title 38, United States Code, as added by subsection (a), before prescribing new regulations under such section.

"(2) UPDATES.—(A) Not later than 120 days after the date of the enactment of this Act [June 25, 2019], the Secretary shall submit a report to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding the plans of the Secretary—

"(i) to conduct outreach under subsection (d); and

"(ii) to respond to inquiries from veterans regarding claims for disability compensation under section 1116A of title 38, United States Code, as added by subsection (a) of this section.

"(B) On a quarterly basis during the period beginning on the date of the enactment of this Act and ending on the date on which regulations are prescribed to carry out such section 1116A, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate updates on the status of such regulations.

"(3) PENDING CASES.—

"(A) AUTHORITY TO STAY.—The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of such section 1116A.

"(B) CLAIMS DESCRIBED.—A claim described in this subparagraph is a claim for disability compensation—

"(i) relating to the service and diseases covered by such section 1116A; and

"(ii) that is pending at the Veterans Benefits Administration or the Board of Veterans' Appeals on or after the date of the enactment of this Act and before the date on which the Secretary commences the implementation of such section 1116A."

OUTREACH

Pub. L. 116-23, §2(d), June 25, 2019, 133 Stat. 968, provided that:

"(1) REQUIREMENT.—The Secretary of Veterans Affairs shall conduct outreach to inform veterans described in paragraph (2) of the ability to submit a claim for disability compensation under section 1116A of title 38, United States Code, as added by subsection (a). Such outreach shall include the following:

"(A) The Secretary shall publish on the website of the Department a notice that a veterans [sic] described in paragraph (2) may submit or resubmit a claim for disability compensation under such section 1116A.

"(B) The Secretary shall notify in writing the veteran service organization community of the ability of veterans described in paragraph (2) to submit or resubmit claims for disability compensation under such section 1116A.

"(2) VETERAN DESCRIBED.—A veteran described in this paragraph is a veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975."

§ 1116B. Presumption of herbicide exposure for certain veterans who served in Korea

(a) PRESUMPTION OF SERVICE-CONNECTION.—(1) For the purposes of section 1110 of this title, and subject to section 1113 of this title, a disease

specified in subsection (b) that becomes manifest as specified in that subsection in a veteran described in paragraph (2) shall be considered to have been incurred or aggravated in the line of duty in the active military, naval, or air service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) A veteran described in this paragraph is a veteran who, during active military, naval, or air service, served in or near the Korean Demilitarized Zone (DMZ), during the period beginning on September 1, 1967, and ending on August 31, 1971.

(b) DISEASES.—A disease specified in this subsection is—

(1) a disease specified in paragraph (2) of subsection (a) of section 1116 of this title that becomes manifest as specified in that paragraph; or

(2) any additional disease that—

(A) pursuant to subchapter VII of this chapter, the Secretary determines in regulations warrants a presumption of service-connection by reason of having positive association with exposure to an herbicide agent; and

(B) becomes manifest within any period prescribed in such regulations.

(c) HERBICIDE AGENT.—For purposes of this section, the term "herbicide agent" has the meaning given such term in section 1821(d) of this title.

(Added Pub. L. 116-23, §3(a), June 25, 2019, 133 Stat. 969; amended Pub. L. 117-168, title II, §202(d)(2), Aug. 10, 2022, 136 Stat. 1775.)

Editorial Notes

AMENDMENTS

2022—Subsec. (b)(2)(A). Pub. L. 117-168 inserted "pursuant to subchapter VII of this chapter," before "the Secretary determines".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-23, §3(d), June 25, 2019, 133 Stat. 970, provided that: "The amendments made by this section [enacting this section] shall take effect on January 1, 2020."

IMPLEMENTATION

Pub. L. 116-23, §3(c), June 25, 2019, 133 Stat. 970, provided that:

"(1) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement section 1116B of title 38, United States Code, as added by subsection (a), before prescribing new regulations under such section.

"(2) UPDATES.—(A) Not later than 120 days after the date of the enactment of this Act [June 25, 2019], the Secretary shall submit a report to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding the plans of the Secretary to respond to inquiries from veterans regarding claims for disability compensation under section 1116B of title 38, United States Code, as added by subsection (a) of this section.

"(B) On a quarterly basis during the period beginning on the date of the enactment of this Act and ending on the date on which regulations are prescribed to carry out such section 1116B, the Secretary shall submit to

the Committees on Veterans' Affairs of the House of Representatives and the Senate updates on the status of such regulations.

“(3) PENDING CASES.—

“(A) AUTHORITY TO STAY.—The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of section 1116B of title 38, United States Code, as added by subsection (a).

“(B) CLAIMS DESCRIBED.—A claim described in this subparagraph is a claim for disability compensation—

“(i) relating to the service and diseases covered by such section 1116B; and

“(ii) that is pending at the Veterans Benefits Administration or the Board of Veterans' Appeals on or after the date of the enactment of this Act and before the date on which the Secretary commences the implementation of such section 1116B.”

§ 1117. Compensation for disabilities occurring in Persian Gulf War veterans

(a)(1) The Secretary may pay compensation under this subchapter to a Persian Gulf veteran with a qualifying chronic disability that became manifest to any degree at any time.

(2) For purposes of this subsection, the term “qualifying chronic disability” means a chronic disability resulting from any of the following (or any combination of any of the following):

(A) An undiagnosed illness.

(B) A medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms.

(C) Any diagnosed illness that the Secretary determines in regulations prescribed under subsection (c) warrants a presumption of service-connection.

(b)(1) Whenever the Secretary determines under section 1118(c)¹ of this title that a presumption of service connection previously established under this section is no longer warranted—

(A) a veteran who was awarded compensation under this section on the basis of the presumption shall continue to be entitled to receive compensation under this section on that basis; and

(B) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the disease on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

(2) This subsection shall cease to be effective on September 30, 2011.

(c)(1) The Secretary shall prescribe regulations to carry out this section.

(2) Those regulations shall include the following:

(A) A description of the period and geographical area or areas of military service in connection with which compensation under this section may be paid.

(B) A description of the illnesses for which compensation under this section may be paid.

(C) A description of any relevant medical characteristic (such as a latency period) associated with each such illness.

(d) If a Persian Gulf veteran at a medical facility of the Department presents with any one symptom associated with Gulf War Illness, the Secretary shall ensure that health care personnel of the Department use a disability benefits questionnaire, or successor questionnaire, designed to identify Gulf War Illness, in addition to any other diagnostic actions the personnel determine appropriate.

(e) A disability for which compensation under this subchapter is payable shall be considered to be service connected for purposes of all other laws of the United States.

(f) For purposes of this section, the term “Persian Gulf veteran” means a veteran who served on active duty in the Armed Forces in the Southwest Asia theater of operations, Afghanistan, Israel, Egypt, Turkey, Syria, or Jordan, during the Persian Gulf War.

(g) For purposes of this section, signs or symptoms that may be a manifestation of an undiagnosed illness or a chronic multisymptom illness include the following:

(1) Fatigue.

(2) Unexplained rashes or other dermatological signs or symptoms.

(3) Headache.

(4) Muscle pain.

(5) Joint pain.

(6) Neurological signs and symptoms.

(7) Neuropsychological signs or symptoms.

(8) Signs or symptoms involving the upper or lower respiratory system.

(9) Sleep disturbances.

(10) Gastrointestinal signs or symptoms.

(11) Cardiovascular signs or symptoms.

(12) Abnormal weight loss.

(13) Menstrual disorders.

(h)(1) If the Secretary determines with respect to a medical research project sponsored by the Department that it is necessary for the conduct of the project that Persian Gulf veterans in receipt of compensation under this section or section 1118 of this title participate in the project without the possibility of loss of service connection under either such section, the Secretary shall provide that service connection granted under either such section for disability of a veteran who participated in the research project may not be terminated. Except as provided in paragraph (2), notwithstanding any other provision of law any grant of service-connection protected under this subsection shall remain service-connected for purposes of all provisions of law under this title.

(2) Paragraph (1) does not apply in a case in which—

(A) the original award of compensation or service connection was based on fraud; or

(B) it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge.

(3) The Secretary shall publish in the Federal Register a list of medical research projects sponsored by the Department for which service connection granted under this section or section 1118 of this title may not be terminated pursuant to paragraph (1).

(i)(1) The Secretary shall take such actions as may be necessary to ensure that health care per-

¹ See References in Text note below.