

Subsec. (c)(4). Pub. L. 100-687, §1301(b)(1), struck out par. (4) which read as follows: "This subsection does not apply with respect to a veteran as to whom the Administrator determines that an evaluation of vocational rehabilitation potential or achievement of a vocational goal is not reasonably feasible."

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-291, §2(d), May 20, 1992, 106 Stat. 178, provided that: "The amendments made by subsections (a) through (c) [amending this section and sections 1524 and 1525 of this title] shall take effect as of January 31, 1992."

RATIFICATION OF ACTIONS OF SECRETARY OF VETERANS AFFAIRS DURING LAPSED PERIOD

Pub. L. 102-291, §2(e), May 20, 1992, 106 Stat. 178, provided that: "The following actions of the Secretary of Veterans Affairs during the period beginning on February 1, 1992, and ending on the date of the enactment of this Act [May 20, 1992] are hereby ratified with respect to that period:

"(1) A failure to reduce the disability rating of a veteran who began to engage in a substantially gainful occupation during that period.

"(2) The provision of a vocational training program (including related evaluations and other related services) to a veteran under section 1524 of title 38, United States Code, and the making of related determinations under that section.

"(3) The provision of health care and services to a veteran pursuant to section 1525 of title 38, United States Code."

INFORMATION; TEMPORARY PROGRAM; ADMINISTRATOR

Pub. L. 98-543, title I, §111(b), Oct. 24, 1984, 98 Stat. 2739, directed Administrator of Veterans' Affairs to provide, not later than Apr. 1, 1985, to certain veterans with service-connected disabilities, a statement containing information explaining subsec. (b) of this section, information explaining purposes and availability of and eligibility for, and procedures for pursuing, a vocational rehabilitation program under chapter 31 of this title, and a summary description of scope of services and assistance available under chapter 31.

REPORT TO CONGRESSIONAL COMMITTEES; TRIAL PROGRAM

Pub. L. 98-543, title I, §111(c), Oct. 24, 1984, 98 Stat. 2739, as amended by Pub. L. 99-576, title VII, §703(a)(2), Oct. 28, 1986, 100 Stat. 3303, directed Administrator of Veterans' Affairs to submit, not later than Apr. 15, 1988, to Committees on Veterans' Affairs of Senate and House of Representatives a report on results of implementation of this section during the three-year period beginning on Feb. 1, 1985.

§ 1164. Presumptions of service-connection for Coronavirus Disease 2019

(a) PRESUMPTIONS GENERALLY.—(1) For purposes of laws administered by the Secretary and subject to section 1113 of this title, if symptoms of Coronavirus Disease 2019 (in this section referred to as "COVID-19") described in subsection (d) manifest within one of the manifestation periods described in paragraph (2) in an individual who served in a qualifying period of duty described in subsection (b)—

(A) infection with severe acute respiratory syndrome coronavirus 2 (in this section referred to as "SARS-CoV-2") shall be presumed to have occurred during the qualifying period of duty;

(B) COVID-19 shall be presumed to have been incurred during the qualifying period of duty; and

(C) if the individual becomes disabled or dies as a result of COVID-19, it shall be presumed that the individual became disabled or died during the qualifying period of duty for purposes of establishing that the individual served in the active military, naval, or air service.

(2)(A) The manifestation periods described in this paragraph are the following:

(i) During a qualifying period of duty described in subsection (b), if that period of duty was more than 48 continuous hours in duration.

(ii) Within 14 days after the individual's completion of a qualifying period of duty described in subsection (b).

(iii) An additional period prescribed under subparagraph (B).

(B)(i) If the Secretary determines that a manifestation period of more than 14 days after completion of a qualifying period of service is appropriate for the presumptions under paragraph (1), the Secretary may prescribe that additional period by regulation.

(ii) A determination under clause (i) shall be made in consultation with the Director of the Centers for Disease Control and Prevention.

(b) QUALIFYING PERIOD OF DUTY DESCRIBED.—A qualifying period of duty described in this subsection is—

(1) a period of active duty performed—

(A) during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.); and

(B) before the date that is three years after the date of the enactment of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020; or

(2) training duty under title 10 or full-time National Guard duty (as defined in section 101 of title 10), performed under orders issued on or after March 13, 2020—

(A) during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.); and

(B) before the date that is three years after the date of the enactment of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020.

(c) APPLICATION OF PRESUMPTIONS FOR TRAINING DUTY.—When, pursuant to subsection (a), COVID-19 is presumed to have been incurred during a qualifying period of duty described in subsection (b)(2)—

(1) COVID-19 shall be deemed to have been incurred in the line of duty during a period of active military, naval, or air service; and

(2) where entitlement to benefits under this title is predicated on the individual who was disabled or died being a veteran, benefits for disability or death resulting from COVID-19 as described in subsection (a) shall be paid or furnished as if the individual was a veteran, without regard to whether the period of duty would constitute active military, naval, or air service under section 101 of this title.

(d) SYMPTOMS OF COVID-19.—For purposes of subsection (a), symptoms of COVID-19 are those

symptoms that competent medical evidence demonstrates are experienced by an individual affected and directly related to COVID-19.

(e) **MEDICAL EXAMINATIONS AND OPINIONS.**—If there is a question of whether the symptoms experienced by an individual described in paragraph (1) of subsection (a) during a manifestation period described in paragraph (2) of such subsection are attributable to COVID-19 resulting from infection with SARS-CoV-2 during the qualifying period of duty, in determining whether a medical examination or medical opinion is necessary to make a decision on the claim within the meaning of section 5103A(d) of this title, a qualifying period of duty described in subsection (b) of this section shall be treated as if it were active military, naval, or air service for purposes of section 5103A(d)(2)(B) of this title.

(Added Pub. L. 116-315, title IV, § 4101(a), Jan. 5, 2021, 134 Stat. 5006.)

Editorial Notes

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b)(1)(A), (2)(A), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The date of the enactment of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, referred to in subsec. (b)(1)(B), (2)(B), is the date of enactment of Pub. L. 116-315, which was approved Jan. 5, 2021.

CODIFICATION

Another section 1164 was renumbered section 1166 of this title.

Statutory Notes and Related Subsidiaries

MEDICAL OPINIONS FOR CERTAIN VETERANS WITH SERVICE-CONNECTED DISABILITIES WHO DIE OF COVID-19

Pub. L. 117-328, div. U, title II, § 202(a), (b), Dec. 29, 2022, 136 Stat. 5447, provided that:

“(a) **IN GENERAL.**—The Secretary of Veterans Affairs shall secure a medical opinion to determine if a service-connected disability was the principal or contributory cause of death before notifying the survivor of the final decision in any case in which all of the following factors are met:

“(1) A claim for compensation is filed under chapter 13 of title 38, United States Code, with respect to a veteran with one or more service-connected disabilities who dies.

“(2) The death certificate for the veteran identifies Coronavirus Disease 2019 (COVID-19) as the principal or contributory cause of death.

“(3) The death certificate does not clearly identify any of the service-connected disabilities of the veteran as the principal or contributory cause of death.

“(4) A service-connected disability of the veteran includes a condition more likely to cause severe illness from COVID-19 as determined by the Centers for Disease Control and Prevention.

“(5) The claimant is not entitled to benefits under section 1318 of such title.

“(6) The evidence to support the claim does not result in a preliminary finding in favor of the claimant.

“(b) **OUTREACH.**—The Secretary shall provide information to veterans, dependents, and veterans service organizations about applying to dependency and indemnity compensation when a veteran dies from COVID-19. The Secretary shall provide such information through

the website of the Department of Veterans Affairs and via other outreach mechanisms.”

§ 1165. Choice of sex of medical examiner for certain disabilities

(a) **IN GENERAL.**—The Secretary shall ensure that a veteran who requires a medical examination from a covered medical provider in support of a claim for compensation under this chapter for a mental or physical health condition that resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment may designate the sex of the medical provider who provides such medical examination.

(b) **COVERED MEDICAL PROVIDERS.**—For purposes of this section, a covered medical provider is any medical provider who is employed by the Department or is under any contract with the Department to provide a medical examination or a medical opinion when such an examination or opinion is necessary to make a decision on a claim.

(c) **NOTICE.**—Before providing any medical examination for a veteran in support for a claim described in subsection (a), the Secretary shall notify the veteran of the veteran's rights under subsection (a).

(Added Pub. L. 116-315, title V, § 5502(a), Jan. 5, 2021, 134 Stat. 5050.)

§ 1166. Claims involving military sexual trauma

(a) **PROCESSING.**—(1) The Secretary shall establish specialized teams to process claims for compensation for a covered mental health condition based on military sexual trauma experienced by a veteran during active military, naval, air, or space service.

(2) A peer support specialist of the Department—

(A) shall not be responsible for providing any assistance to a veteran regarding a claim described in paragraph (1), other than counseling services, guidance, and support, pursuant to duties determined by the Under Secretary for Health; and

(B) shall not participate in the adjudication of such a claim.

(b) **REFERRALS TO MST COORDINATORS.**—The Secretary shall include, in forms for claims described in subsection (a), an option for a veteran to elect to be referred to a military sexual trauma coordinator of the Veterans Health Administration at the facility of the Department nearest to the residence of such veteran.

(c) **TRAINING.**—(1) The Secretary shall ensure that members of teams established under subsection (a) are trained to identify markers indicating military sexual trauma.

(2) The Secretary shall ensure that peer support specialists of the Department receive annual training on how to provide peer support regarding military sexual trauma.

(3) The Secretary shall provide annual training, regarding the processing of claims described in subsection (a), to the following individuals:

(A) Military sexual trauma coordinators of the Veterans Health Administration.

(B) Peer support specialists of the Department.