

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.

(d) DEFINITIONS.—In this section:

(1) The term “covered mental health condition” means post-traumatic stress disorder, anxiety, depression, or other mental health diagnosis described in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association that the Secretary determines to be related to military sexual trauma.

(2) The term “military sexual trauma” means, with respect to a veteran, a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment during active military, naval, air, or space service.

(Added Pub. L. 116–315, title V, §5501(a)(1), Jan. 5, 2021, 134 Stat. 5048, §1164; renumbered §1166 and amended Pub. L. 117–16, §7(a)(1), (b)(4)(A), June 8, 2021, 135 Stat. 284, 285; Pub. L. 117–271, §1(a), (b)(1), Dec. 27, 2022, 136 Stat. 4179, 4180.)

### Editorial Notes

#### AMENDMENTS

2022—Pub. L. 117–271, §1(b)(1), substituted “Claims” for “Specialized teams to evaluate claims” in section catchline.

Subsec. (a). Pub. L. 117–271, §1(a)(2)(B), (C), designated existing provisions as par. (1) and added par. (2).

Pub. L. 117–271, §1(a)(1), (2)(A), substituted “Processing” for “In General” in heading and “air, or space service” for “or air service” in text.

Subsec. (b). Pub. L. 117–271, §1(a)(4), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 117–271, §1(a)(5), designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 117–271, §1(a)(3), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2). Pub. L. 117–271, §1(a)(1), substituted “air, or space service” for “or air service”.

Subsec. (d). Pub. L. 117–271, §1(a)(3), redesignated subsec. (c) as (d).

2021—Pub. L. 117–16, §7(b)(4)(A), made technical correction to directory language of Pub. L. 116–315, §5501(a)(1), which enacted this section.

Pub. L. 117–16, §7(a)(1), renumbered section 1164 of this title, relating to specialized teams to evaluate claims involving military sexual trauma, as this section.

### Statutory Notes and Related Subsidiaries

#### MILITARY SEXUAL TRAUMA CLAIMS COORDINATION

Pub. L. 117–303, Dec. 27, 2022, 136 Stat. 4387, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘MST Claims Coordination Act’.

“SEC. 2. VETERANS HEALTH ADMINISTRATION AND VETERANS BENEFITS ADMINISTRATION COORDINATION FOR CERTAIN CLAIMS ARISING FROM MILITARY SEXUAL TRAUMA.

“(a) COORDINATED PROVISION OF MATERIALS.—

“(1) REQUIRED MATERIALS.—During or immediately after each covered event, and together with each covered document, in a claim for compensation arising from military sexual trauma experienced by a covered individual, the Under Secretary for Benefits of the Veterans Benefits Administration, in coordination with the Under Secretary for Health of the Veterans Health Administration, shall provide, to the covered individual—

“(A) outreach letters;

“(B) information on the Veterans Crisis Line;

“(C) information on how to make an appointment with a mental health provider; and

“(D) other information on available resources relating to military sexual trauma (including information on military sexual trauma coordinators of the Veterans Health Administration, mental health providers trained in military sexual trauma issues, and peer support specialists).

“(2) FORMAT OF MATERIALS.—Materials described in paragraph (1) may be provided electronically.

“(b) AUTOMATIC NOTIFICATION SYSTEM.—In a claim for compensation arising from military sexual trauma experienced by a veteran, if the veteran is enrolled in the patient enrollment system of the Department of Veterans Affairs under section 1705 of title 38, United States Code, and consents to the notification system under this subsection, the Under Secretary for Benefits shall automatically notify the Under Secretary for Health shortly before the veteran—

“(1) participates in any covered event; or

“(2) receives any covered document.

“(c) IMPLEMENTATION DEADLINE.—The Secretary of Veterans Affairs shall implement this Act not later than 18 months after the date of the enactment of this Act [Dec. 27, 2022].

“(d) DEFINITIONS.—In this section:

“(1) The term ‘compensation’ has the meaning given that term in section 101 of title 38, United States Code.

“(2) The term ‘covered document’ means a determination (including a rating determination) that the Secretary of Veterans Affairs provides to the claimant in connection with a claim for compensation.

“(3) The term ‘covered event’ includes, with respect to a claim for compensation—

“(A) a medical examination under section 5103A of title 38, United States Code;

“(B) a hearing before the Board of Veterans’ Appeals under section 7107 of such title; and

“(C) any other event determined relevant by the Secretary of Veterans Affairs.

“(4) The term ‘covered individual’ means a former member of the Armed Forces (as that term is defined in section 1720D of title 38, United States Code) who elects to receive materials under subsection (a).

“(5) The term ‘military sexual trauma’ has the meaning given that term in section 1166 of title 38, United States Code.

“(6) The term ‘Veterans Crisis Line’ means the toll-free hotline for veterans established under section 1720F(h) of title 38, United States Code.”

#### REVIEW OF LANGUAGE AND PRACTICES USED IN CONNECTION WITH CLAIMS INVOLVING MILITARY SEXUAL TRAUMA

Pub. L. 117–300, §2, Dec. 27, 2022, 136 Stat. 4379, provided that:

“(a) BOARD OF VETERANS’ APPEALS.—

“(1) IN GENERAL.—[Amended section 7112 of this title.]

“(2) CLERICAL AMENDMENTS.—

“(A) SECTION HEADING.—[Amended section 7112 of this title.]

“(B) TABLE OF SECTIONS.—[Amended analysis preceding section 7101 of this title.]

“(b) AUDIT AND MODIFICATION OF DENIAL LETTERS.—

“(1) REQUIREMENT.—The Secretary of Veterans Affairs shall conduct an audit of the language used in letters sent to individuals to explain the decision by the Secretary to deny covered claims. Not later than 180 days after the date of the enactment of this Act [Dec. 27, 2022], the Secretary shall modify the letters to ensure that—

“(A) the letters use trauma-informed language; and

“(B) veterans are not re-traumatized through insensitive language.

“(2) CONSULTATION.—The Secretary shall carry out paragraph (1) in consultation with veterans service organizations and other stakeholders as the Secretary determines appropriate.

“(c) EXAMINATIONS.—The Secretary shall establish protocols for Department of Veterans Affairs medical

providers and contract medical providers to ensure that the medical providers conduct examinations regarding covered claims using trauma-informed practices.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘compensation’ has the meaning given that term in section 101 of title 38, United States Code.

“(2) The term ‘contract medical provider’ means a medical provider who contracts with the Department of Veterans Affairs to provide a medical examination or a medical opinion when such an examination or opinion is necessary to make a decision on a claim under the laws administered by the Secretary of Veterans Affairs.

“(3) The term ‘covered claim’ means a claim for compensation based on military sexual trauma experienced by a veteran.

“(4) The term ‘military sexual trauma’ has the meaning given that term in section 1166 of title 38, United States Code.

“(5) The term ‘trauma-informed’ means, with respect to language or practices, using language or carrying out practices in a manner that—

“(A) is based on a knowledge of the awareness of the prevalence and impact of trauma on the physical, emotional, and mental health of an individual, the behaviors of the individual, and the engagement by the individual to services;

“(B) is aimed at ensuring environments and services are welcoming and engaging to the individual who receives such services and the staff who provide such services; and

“(C) ensures that the language or practices do not retraumatize the individual.”

#### § 1167.<sup>1</sup> Outreach pursuant to changes in presumptions of service connection

(a) IN GENERAL.—Whenever a law, including through a regulation or Federal court decision or settlement, establishes or modifies a presumption of service connection, the Secretary shall—

(1) identify all claims for compensation under this chapter that—

(A) were submitted to the Secretary;

(B) were evaluated and denied by the Secretary before the date on which such provision of law went into effect; and

(C) might have been evaluated differently had the establishment or modification been applicable to the claim; and

(2) pursuant to subsection (b), conduct outreach to the claimants.

(b) OUTREACH.—(1) The Secretary shall conduct outreach to inform claimants identified under subsection (a) that they may submit a supplemental claim in light of the establishment or modification of a presumption of service connection described in subsection (a).

(2) Outreach under paragraph (1) shall include the following:

(A) The Secretary shall publish on the internet website of the Department a notice that such veterans may elect to file a supplemental claim.

(B) The Secretary shall notify, in writing or by electronic means, veterans service organizations of the ability of such veterans to file a supplemental claim.

(C) The Secretary shall contact each claimant identified under subsection (a) in the same

manner that the Department last provided notice of a decision.

(Added Pub. L. 117-168, title II, §203(a), Aug. 10, 2022, 136 Stat. 1775.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 117-168, title II, §203(b), Aug. 10, 2022, 136 Stat. 1776, provided that: “Section 1167 of title 38, United States Code, as added by subsection (a), shall apply with respect to presumptions of service connection established or modified on or after the date of the enactment of this Act [Aug. 10, 2022], including pursuant to amendments made by this Act [see Short Title of 2022 Amendment note set out under section 101 of this title].”

##### RULE OF CONSTRUCTION

Pub. L. 117-168, title II, §203(c), Aug. 10, 2022, 136 Stat. 1776, provided that: “Nothing in this section [enacting this section and provisions set out as a note above] shall be construed as—

“(1) modifying the obligations of the Department of Veterans Affairs under Federal court decisions or settlements in effect as of the date of the enactment of this Act [Aug. 10, 2022]; or

“(2) requiring a retroactively applied effective date of a supplemental claim earlier than the date a presumption of service connection is established or modified.”

#### § 1168. Medical nexus examinations for toxic exposure risk activities

(a) MEDICAL EXAMINATIONS AND MEDICAL OPINIONS.—(1) Except as provided in subsection (b), if a veteran submits to the Secretary a claim for compensation for a service-connected disability under section 1110 of this title with evidence of a disability and evidence of participation in a toxic exposure risk activity during active military, naval, air, or space service, and such evidence is not sufficient to establish a service connection for the disability, the Secretary shall—

(A) provide the veteran with a medical examination under section 5103A(d) of this title; and

(B) obtain a medical opinion (to be requested by the Secretary in connection with the medical examination under subparagraph (A)) as to whether it is at least as likely as not that there is a nexus between the disability and the toxic exposure risk activity.

(2) When providing the Secretary with a medical opinion under paragraph (1)(B) for a veteran, the health care provider shall consider—

(A) the total potential exposure through all applicable military deployments of the veteran; and

(B) the synergistic, combined effect of all toxic exposure risk activities of the veteran.

(3) The requirement under paragraph (2)(B) shall not be construed as requiring a health care provider to consider the synergistic, combined effect of each of the substances, chemicals, and airborne hazards identified in the list under section 1119(b)(2) of this title.

(b) EXCEPTION.—Subsection (a) shall not apply if the Secretary determines there is no indication of an association between the disability claimed by the veteran and the toxic exposure risk activity for which the veteran submitted evidence.

<sup>1</sup> Another section 1167 is set out after section 1168.