

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.”

§ 1167.¹ 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.

¹ Another section 1167 is set out after section 1168.

(c) TOXIC EXPOSURE RISK ACTIVITY DEFINED.—In this section, the term “toxic exposure risk activity” has the meaning given that term in section 1710(e)(4) of this title.

(Added Pub. L. 117-168, title III, §303, Aug. 10, 2022, 136 Stat. 1779.)

§ 1167.¹ Mental health consultations

(a) IN GENERAL.—Not later than 30 days after the date on which a veteran submits to the Secretary a claim for compensation under this chapter for a service-connected disability relating to a mental health diagnosis, the Secretary shall offer the veteran a mental health consultation to assess the mental health needs of, and care options for, the veteran.

(b) AVAILABILITY.—The Secretary shall—

(1) offer a veteran a consultation under subsection (a) without regard to any previous denial or approval of a claim of that veteran for a service-connected disability relating to a mental health diagnosis; and

(2) ensure that a veteran offered a mental health consultation under subsection (a) may elect to receive such consultation during the one-year period beginning on the date on which the consultation is offered or during such longer period beginning on such date as the Secretary considers appropriate.

(c) RULE OF CONSTRUCTION.—A consultation provided to a veteran under this section shall not be construed as a determination that any disability of such veteran is service-connected for the purposes of any benefit under the laws administered by the Secretary.

(Added Pub. L. 117-328, div. V, title IV, §404(a)(1), Dec. 29, 2022, 136 Stat. 5512.)

SUBCHAPTER VII—DETERMINATIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION BASED ON TOXIC EXPOSURE

§ 1171. Procedures to determine presumptions of service connection based on toxic exposure; definitions

(a) PROCEDURES.—The Secretary shall determine whether to establish, or to remove, presumptions of service connection based on toxic exposure pursuant to this subchapter, whereby—

(1) under section 1172 of this title—

(A) the Secretary provides—

(i) public notice regarding what formal evaluations the Secretary plans to conduct; and

(ii) the public an opportunity to comment on the proposed formal evaluations;

(B) the working group established under subsection (b) of such section provides—

(i) advice to the Secretary on toxic-exposed veterans and cases in which veterans who, during active military, naval, air, or space service, may have experienced a toxic exposure or their dependents may have experienced a toxic exposure while the veterans were serving in the active military, naval, air, or space service;

(ii) recommendations to the Secretary on corrections needed in the Individual Longitudinal Exposure Record to better reflect veterans and dependents described in clause (i); and

(iii) recommendations to the Secretary regarding which cases of possible toxic exposure should be reviewed;

(2) the Secretary provides for formal evaluations of such recommendations under section 1173 of this title and takes into account reports received by the Secretary from the National Academies of Sciences, Engineering, and Medicine under section 1176 of this title; and

(3) the Secretary issues regulations under section 1174 of this title.

(b) DEFINITIONS.—In this subchapter:

(1) The term “illness” includes a disease or other condition affecting the health of an individual, including mental and physical health.

(2) The term “Individual Longitudinal Exposure Record” includes—

(A) service records;

(B) any database maintained by the Department of Defense and shared with the Department of Veterans Affairs to serve as a central portal for exposure-related data that compiles, collates, presents, and provides available occupational and environmental exposure information to support the needs of the Department of Defense and the Department of Veterans Affairs; or

(C) any successor system to a database described in subparagraph (B).

(Added Pub. L. 117-168, title II, §202(a), Aug. 10, 2022, 136 Stat. 1767.)

Statutory Notes and Related Subsidiaries

CORRECTION OF EXPOSURE RECORDS BY MEMBERS OF THE ARMED FORCES AND VETERANS

Pub. L. 117-168, title VIII, §803, Aug. 10, 2022, 136 Stat. 1802, provided that:

“(a) IN GENERAL.—The Secretary of Veterans Affairs shall coordinate with the Secretary of Defense to provide a means for veterans to update their records as necessary to reflect exposures to occupational or environmental hazards by such member or veteran in the Individual Longitudinal Exposure Record.

“(b) EVIDENCE.—

“(1) PROVISION OF EVIDENCE.—To update a record under subsection (a), a veteran shall provide such evidence as the Secretary of Veterans Affairs considers necessary.

“(2) REGULATIONS.—The Secretary of Veterans Affairs shall prescribe by regulation the evidence considered necessary under paragraph (1).

“(c) DEFINITIONS.—In this section:

“(1) INDIVIDUAL LONGITUDINAL EXPOSURE RECORD.—The term ‘Individual Longitudinal Exposure Record’ has the meaning given such term in section 1171 of title 38, United States Code, as added by section 202.

“(2) TOXIC EXPOSURE.—The term ‘toxic exposure’ has the meaning given such term in section 101 of title 38, United States Code, as amended by section 102(b).”

§ 1172. Annual notice and opportunity for public comment

(a) NOTICE REQUIRED.—(1)(A) Not less frequently than once each year, the Secretary shall

¹ Another section 1167 is set out preceding section 1168.