

Service Bulletin

April 2010

DEPARTMENT OF VETERANS AFFAIRS (VA)

<http://www.va.gov>

Proposed Regulation Change Adds Illnesses to List of Diseases Subject to Presumptive Service Connection for Herbicide Exposure

www.publichealth.va.gov/exposures/agentorange

A proposed regulation published by VA adds three new illnesses to the list of health problems found to be related to Agent Orange and other herbicide exposures. The regulation follows the October 2009 decision by Secretary of Veterans Affairs Erik K. Shinseki to add three illnesses to the current list of diseases for which service connection for Vietnam veterans is presumed. The illnesses are **B cell leukemias**, such as hairy cell leukemia; **Parkinson's disease**; and **ischemic heart disease**.

The Secretary's decision is based on the latest evidence of an association with widely used herbicides such as Agent Orange during the Vietnam War, as determined in an independent study by the Institute of Medicine. A final regulation will not become effective until after a period for public comment which ends April 26, 2010. The final regulation will be published after consideration of all comments received. Vietnam veterans with these three diseases are encouraged to submit their applications for compensation now so VA can begin development of their claims before the rule becomes final.

Over 80,000 veterans will have their past claims reviewed and may be eligible for retroactive payment, and all who are not currently eligible for enrollment into the VA healthcare system will become eligible. Veterans who served in Vietnam anytime during the period beginning January 9, 1962, and ending on May 7, 1975, are presumed to have been exposed to herbicides. The new rule will bring the number of illnesses presumed to be associated with herbicide exposure to 14 and significantly expand the current leukemia definition to include a much broader range of leukemias beyond chronic lymphocytic leukemia previously recognized by VA.

**Infectious Diseases to be Added as
Presumptive Disabilities for Gulf War Veterans**
www.publichealth.va.gov/exposures/gulfwar/

VA is taking steps to make it easier for veterans to obtain disability compensation for certain diseases associated with service in the Persian Gulf War or Afghanistan. Following recommendations made by VA's Gulf War Veterans Illnesses Task Force, VA is publishing a proposed regulation in the *Federal Register* that will establish new presumptions of service connection for nine specific infectious diseases associated with military service in Southwest Asia during the Persian Gulf War, or in Afghanistan on or after September 19, 2001.

The proposed rule includes information about the long-term health effects potentially associated with the nine diseases: **Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), malaria, Mycobacterium tuberculosis, Nontyphoid Salmonella, Shigella, Visceral leishmaniasis and West Nile virus.**

For non-presumptive conditions, a veteran is required to provide medical evidence that can be used to establish an actual connection between military service in Southwest Asia or in Afghanistan, and a specific disease. With the proposed rule, a veteran will only have to show service in Southwest Asia or Afghanistan, and a current diagnosis of one of the nine diseases. Comments on the proposed rule will be accepted over the next 60 days. A final regulation will be published after consideration of all comments received.

Because the Persian Gulf War has not officially been declared ended, veterans serving in Operation Iraqi Freedom are eligible for VA's new presumptions. VA decided to include Afghanistan veterans in these presumptions because the National Academy of Sciences found that the nine diseases are prevalent in that country.

Wounded Warrior Web Site Upgraded
<http://www.NationalResourceDirectory.gov>

The National Resource Directory (NRD) Web site for wounded, ill and injured service members, veterans, their families and those who support them, recently received a comprehensive system upgrade to provide users with easier access. The Web site is a collaborative effort between the Departments of Defense, VA and Labor (DOL), and compiles federal, state, local and non-profit resources for wounded warriors, veterans, family members and caregivers in a single, searchable site.

The upgrade makes the latest wounded warrior and veteran issues easier to locate and follow. A new "bookmark and share" application helps visitors alert others to the content they've found most helpful through social bookmarking, Facebook, Twitter, and other social networking tools. Visitors can also subscribe to Really Simple Syndication (RSS) or e-mail updates to receive new content, events and features based on their specific interests and needs.

A faster, enhanced search engine ranks information based on the popularity of the sources among other site users, so the most valuable resources rise to the top of the search results. Visitors can tailor searches for resources in specific states and territories, and apply filters to narrow their searches. The re-designed site also highlights resources to assist homeless veterans. NRD users can also recommend additional resources.

DEPARTMENT OF DEFENSE (DoD)

<http://www.defense.gov/>

Troops Required to Have Mandatory Head-Injury Evaluations

<http://www.defense.gov/news/newsarticle.aspx?id=58264>

The Defense Department officials will launch a new policy in the coming months to make head-injury evaluations mandatory for all troops who suffer possible concussions. The current guidelines for treating troops with such injuries allows for them to come forward on their own. Troops in combat and in close contact with explosions or blasts make the decision on whether they need to be evaluated for concussions or head injuries. Under the new policy, every service member exposed to such an incident will be required to seek attention. Those troops also will be required to rest and will be excluded from their unit's mission cycle for at least 24 hours.

The policy is intended to address the culture of troops who are so dedicated to their mission that they often shrug off their symptoms and simply learn to deal with them. Since 2006, servicemembers exposed to roadside bombs, sports injuries and other incidents that could result in head injuries have participated in the military acute concussion evaluation.

New Social Media Site Policy Issued

www.defense.gov/RegisteredSites/SocialMediaSites.aspx

A new Defense Department social media policy opens doors that can provide a morale boost for families and troops serving in a war zone. Web sites such as Facebook and Skype are available for keeping in touch with their deployed family members. Issued in February, the new policy authorizes access to Web 2.0 platforms from nonclassified government computers, as long as it doesn't compromise operational security or involve prohibited activities or Web sites. Access also is subject to local bandwidth availability.

A new training program is available on the Defense Department's Web site that serves to educate users how to use social media tools such as Twitter and Facebook responsibly. The policy memorandum directs that the DoD non-classified network be configured to provide access to Internet-based capabilities across all DoD components. Commanders at all levels and heads of DoD components will continue to defend against malicious activity on military information networks, deny access to prohibited content sites (e.g.,

gambling, pornography, hate-crime related activities), and take immediate and commensurate actions, as required, to safeguard missions (e.g., temporarily limiting access to the Internet to preserve operations security or to address bandwidth constraints). The new policy is at: <http://www.defense.gov/NEWS/DTM%2009-026.pdf>.

U.S. Department of Labor (DOL)

<http://www.dol.gov/>

\$8 Million Grant Competition to Serve Homeless Veterans

<http://www.dol.gov/vets>

DOL's Veterans' Employment and Training Service has announced an \$8.3 million grant competition to provide job training, counseling and placement services to expedite the reintegration of homeless veterans into the labor force through its Homeless Veterans Reintegration Program. The grants are intended to provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force and to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

DOL is soliciting applicants to design programs that help eligible veterans by providing job placement services, job training, counseling, supportive services and other assistance to expedite the reintegration of homeless individuals into the labor force. Successful programs also will be flexible in addressing universal as well as local or regional problems that have had a negative impact on homeless veterans re-entering the workforce.

U.S. Court of Appeals for Veterans Claims (CAVC)

<http://www.vetapp.gov/>

Swinney v. Shinseki, 23 Vet.App. 257

<http://www.uscourts.cavc.gov/documents/Swinney-531.pdf>

Swinney appealed a Board of Veterans' Appeals (Board) decision denying entitlement to reimbursement or payment for unauthorized private medical expenses. On appeal, Swinney made a single argument: that the Board applied the wrong standard when it considered whether reimbursement or payment was warranted under 38 U.S.C. § 1725 and 38 C.F.R. §§ 17.1000-1003. Specifically, she contended that the Board erroneously required medical evidence of a medical emergency, instead of considering whether a "reasonable prudent layperson" would believe that a delay in seeking medical treatment for her condition would result in serious jeopardy to health, impairment to bodily functions, or dysfunction of any body part. 38 U.S.C. § 1725(f)(1)(B) and 38 C.F.R. § 17.1002(b).

The statute at issue here, 38 U.S.C. § 1725, was introduced as part of the Millennium Health Care and Benefits Act, Pub. L. No. 106-117, (1999). Under this statute, Congress authorized the Secretary to reimburse a non-service-connected veteran for unauthorized emergency medical treatment where the veteran meets certain eligibility requirements. For purposes of the statute, and relevant to the appeal, "emergency treatment" is defined as medical care or services furnished, in the judgment of the Secretary—

(A) when Department or other Federal facilities are not feasibly available and an attempt to use them beforehand would not be reasonable; [and]

(B) when such care or services are rendered in a medical emergency of such nature

that a prudent layperson reasonably expects that delay in seeking immediate medical attention would be hazardous to life or health.

38 U.S.C. § 1725(f)(1)(A-B) (emphasis added).

The implementing regulation contains a corresponding "prudent layperson" standard. The claim for payment or reimbursement for the initial evaluation and treatment is for a condition of such a nature that *a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health* (this standard would be met if there were an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part); (emphasis added). Ms. Swinney's only argument was that the Board incorrectly applied this regulation. The Court agreed.

Section 17.1002(b) does not require that the treatment the veteran receives from the private facility be for an emergent condition. That portion of the regulation clearly requires only that the VA determine whether, under the circumstances present at the time the veteran sought treatment at the private facility, a prudent layperson would reasonably expect that the condition was such that delay in seeking treatment would be hazardous to health or life.



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