

February 2021 VFW NVS UPDATE

The purpose of this update is to inform VFW accredited representatives about key changes happening within the VA and VFW NVS that may affect your service office.

In this update the following topics will be covered:

- 1. Please continue to keep NVS informed of your office operating status during COVID-19**
- 2. Changes to the Musculoskeletal Rating Schedule**
- 3. Continue to review VA rating Decisions in order to demonstrate the need for reinstatement of the 48 hour VSO pre-decision review**
- 4. Congress adds three new conditions to the Agent Orange Presumptive List**
- 5. Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 Signed into Law**
- 6. VA releases five new forms intended for use in lieu of VA Form 21-4138, Statement in Support of Claim.**
- 7. M21-1 Updates**
- 8. VA creates new contact number for veterans**
- 9. VA Office of Community Care Contact Center employees can assist Veterans resolve adverse debt collection actions resulting from authorized VA community care claims.**

1. Please continue to keep NVS informed of your office operating status during COVID-19

Many VFW employees are currently in the process of developing plans to return their offices in the wake of COVID-19. While we agree that resuming in-person operations is a good thing, we urge you to continue safe practices as recommended by the Center for Disease Control (CDC) and your local leadership. Please remember that if your office is located in a building that is



The Veterans of Foreign Wars National Veterans Service operates out of the VFW Memorial Building in Washington, DC and oversees a network of approximately 2,000 professionally trained accredited representatives. If you need assistance from an NVS staff member, please contact us using the DSO Helpdesk at DSOHelpdesk@vfw.org or by phone at (202) 543-2239.

not owned by the VFW, you must follow your facility’s sanitization and reopening procedures.

Service Officer Note: If you have not already done so, we ask that each Department Service Officer notify NVS of their current office operation status by emailing Brad Hazell, Assistant Director for Compensation and Pension Policy at BRHazell@vfw.org. Additionally, you may be contacted periodically by NVS to update your current office operating status. If you receive this email, please respond in a timely manner as it is essential for NVS to be aware of each office’s current operating status.

Remember, communication is key in times like this. Updating your out of office replies, door signs, websites, and outgoing voicemail messages with your most current operating status is vital.

2. Changes to the Musculoskeletal Rating Schedule

On February 7th, 2021, updates to the Musculoskeletal Section (38 CFR 4.71a & 38 CFR 4.73) of the VA Schedule for Rating Disabilities (VASRD) will go into effect. Though much of the rating criteria remains the same, there are many key updates to common disabilities for which veterans routinely file claims such as:

- **DC 5054 Hip Replacements or Resurfacing:** Reduced the normal convalescence time following surgery from 1 year to 4 months
- **DC 5055 Knee Replacements or Resurfacing:** Reduced the normal convalescence time following surgery from 1 year to 4 months
- **DC 5257 Knee, other impairment of:** Updated evaluation criteria requiring a more accurate diagnosis of instability of the knee
- **DC 5269 Plantar Fasciitis:** New diagnostic code and rating criteria
- **DC 5271 Ankle, limited motion of:** Added clearer guidance on the difference between “Marked” and “Moderate” limitation of motion by adding range of motion measurements
- **DC 5330 Compartment Syndrome:** New diagnostic code and rating criteria



Service Officer Note: Please note that **the above list does not include all of the changes to the rating schedule**, rather it is a brief summary of some of the most common types of claims that would be affected by these changes.

For a complete listing of the changes to the VASRD please review the attached List of Changes to the Musculoskeletal System VASRD, Musculoskeletal Changes Side by Side Comparison, and Musculoskeletal System Training Slides.

Additionally, it is important to remember that a change in the rating schedule is not grounds for a reduction of a disability, unless the medical evidence shows that the condition has actually improved.

3. Continue to review VA rating Decisions in order to demonstrate the need for reinstatement of the 48 hour VSO pre-decision review

On April 26, 2020, against strong opposition from the VFW and other service organizations, VA eliminated the 48 hour VSO pre-decision review period which removed an integral benefit of representation. This review allows VSOs such as the VFW the ability to review decisions for errors prior to the veteran being notified of the decision. This review period has helped countless veterans avoid the appeals process for obvious errors by having them corrected prior to notification.

Service Officer Note: In order to provide data to law makers who are also working to correct this change, **we are asking you to continue to review rating decisions AFTER VA has issued decision notices**. If an error is found in a rating decision, contact the claimant to notify them of the error and to obtain the claimant's consent to submit a request for either a Higher Level Review via form 20-0996 or a Supplemental Claim via form 20-0995 (whichever is most appropriate for the individual claim).

For those using VetraSpec: Please continue to use the "Current Ratings" tab and select "Rating Review" for type. In the notes text block, please write either HLR for Higher Level Review or SUP for Supplemental claim.

For offices not using VetraSpec: Please track these occurrences using an excel spreadsheet. The spreadsheet should include claimant's name, c-file number, date of decision, & date the HLR or SUP was submitted.



When the data can be used to rectify this change, VFW NVS will pull the data from VetraSpec. When doing so, we will ask offices not using VetraSpec to email the spreadsheets via encrypted VA emails.

4. Congress adds three new conditions to the Agent Orange Presumptive List

As part of the National Defense Authorization Act for Fiscal Year 2021, (NDAA) the following three conditions have been authorized by congress to be added to the Agent Orange presumptive conditions list:

- Bladder Cancer
- Hypothyroidism
- Parkinsonism or Parkinson-like symptoms

We are still waiting for VA to officially announce these additions to the presumptive conditions list and for information on how they will process these claims; once that information becomes available we will pass it along to you. However, if you are working with a veteran who has been diagnosed with one of the above listed conditions due to herbicide exposure, we encourage you to file a claim or Intent to File as soon as possible in order to protect the veteran's effective date.

For more information: please read the attached document “*New Agent Orange Conditions January 2021*”.

For the current listing of presumptive conditions related to herbicide exposure please visit:

<https://www.publichealth.va.gov/exposures/agentorange/conditions/index.asp>

(Please note that VA has **not** updated their website to reflect the new additions to this list yet.)

Service Officer Note: If a veteran has a diagnosis of one of the above listed conditions and has proof of exposure to herbicides, VA should grant the claim. However, if the veteran's claim is denied due to the regulation not being established yet, file a Higher Level Review (VA Form 21-0996) with a statement explaining that according to the recently passed National Defense Authorization Act for Fiscal Year 2021 the claim should be granted as the veteran has a diagnosed disability that congress has deemed presumptive to herbicide exposure.



We are currently addressing denials of these conditions with VA's Central Office and hope to have a resolution soon. Examples of erroneous denials are extremely helpful when approaching VA with an issue such as this therefore:

If you are in an office that uses the VFW National VetraSpec solution: Please add a communication to the veteran's file under "Other" stating "NDAA denial" along with the date of denial and the veteran's diagnosed condition.

If you are in an office that does not use VetraSpec: please send an email the DSO Helpdesk (DSOHelpdesk@vfw.org) with the veteran's name, last 4 of the SSN, the diagnosed condition, and the date of the denial. Please use NDAA Denial as the subject of your email.

If you have any questions about these new presumptive conditions, please direct them to the DSO Helpdesk at DSOHelpdesk@vfw.org.

5. Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 Signed into Law

On Tuesday January 5, 2021, former President Donald Trump signed H.R. 7105, *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* into law. This new legislation includes many needed improvements to veteran's care and benefits including:

- *Deborah Sampson Act:* will make many improvements to women veterans' health care.
- Will require VA to make Disability Benefits Questionnaires available for public use again.
- Will lower the age from 57 to 55 to remarry without incurring penalties for surviving spouses receiving Dependency and Indemnity Compensation.
- Will modernize the Service-Disabled Veterans Insurance (SDVI) program.
- Will require VA to study incidents of cancer and other illnesses experienced by service members who served at the Karshi-Khanabad (K2) Air Base in Uzbekistan between Oct. 1, 2001, and Sept. 30, 2005.



- Will change the statutory definition of Vietnam veteran to include individuals who served in the Republic of Vietnam from Nov. 1, 1955, to Feb. 27, 1961.
- Will increase certain veteran funeral benefits and authorize VA to add spouses and eligible dependent children to VA-furnished headstones.
- Will increase the maximum amount VA may grant in a fiscal year to states and tribal organizations for maintaining veterans' cemeteries from \$5 million to \$10 million.
- Will call for the elimination of the 12-year limit on using Veteran Readiness and Employment (VR&E) benefits.
- Will require VA to create a database on its website to explain public institution requirements for in-state tuition.
- Will expand benefits and services for homeless veterans.
- Will create certain education, employment, and housing protections for veterans impacted by the COVID-19 pandemic.
- Extends the payment of the Medal of Honor Special Pension to surviving spouses that are not already receiving Dependency & Indemnity Compensation (DIC)

Service Officer Note: Please be aware that the above list is not all inclusive of the changes enacted by this new law. Rather, it is a brief snapshot of some of the key elements of the legislation. More in depth discussions and training on this topic will be provided by NVS during upcoming training sessions.

For more information on this legislation please visit:

<https://www.congress.gov/bill/116th-congress/house-bill/7105/text/enr?q=%7B%22search%22%3A%22S+7105%22%7D&r=2#toc-HB7A17413408D4D8FB84905D248BC084A>

6. VA releases five new forms intended for use in lieu of VA Form 21-4138, Statement in Support of Claim.

In late 2020, VA released 5 new forms intended to be used in lieu of VA Form 21-4138, Statement in Support of Claim. These new forms are tailored to specific requests, allowing veterans to clearly identify what type of assistance they are requesting, what type of evidence they are submitting and why, or



provide a more organized approach to submitting lay or witness statements in support of a claim. The new forms will also help VA expedite the form submission process by providing issue specific forms that can be easily read by automation systems and reach the veteran or claimant's file sooner. The majority of the forms are available in the forms section of VetraSpec or via the VA forms website: <https://www.va.gov/find-forms/>

VA Form 20-10206, FOIA/Privacy Act Request – specifically designed for veterans or claimants that would like to request agency records under the Freedom of Information Act, or for veterans or claimants that would like to request records about themselves such as claims files, education loan information, or beneficiary records. The form is four pages, including instructions, and allows the requestor to clearly identify the records they are requesting from VA. The form is available on the VA forms website.

VA Form 20-10207, Priority Processing Request – specifically designed to submit a request for priority processing due to terminal illness, advanced age, former Prisoners of War, or any other approved reason for priority processing. The form is 5 pages, including instructions, and allows the claimant to clearly identify the type and reason for the request and outlines evidence requirements for priority processing. The form is available in the forms section of VetraSpec.

VA Form 20-10208, Document Evidence Submission - specifically designed to be used in conjunction with the submission of additional documents or evidence in support of a claim. It consists of 2 pages and offers the opportunity to clearly identify the type and reason for the submission of the additional evidence. The form is available in the forms section of VetraSpec.

VA Form 21-10210, Lay/Witness Statement - specifically designed to be used when submitting a statement from a veteran/claimant, or lay person or witness writing a statement on their behalf. The form provides a more organized approach to submitting lay or witness statements, consists of 3 pages, and offers a large amount of space for written statements. The form also organizes the contact information for the veteran or claimant and/or the lay person or witness providing the statement. The form is available in the forms section of VetraSpec.

VA Form 20-10212, Chapter 31 Request for Assistance - specifically designed for requesting assistance with Chapter 31, Veteran Readiness and Employment benefits. The two-page form offers the veteran the opportunity to



clearly identify the reason for a request for assistance with Chapter 31 benefits such as withdrawing their application, requesting reimbursements, and other circumstances for which they require assistance. The form is available in the forms section of VetraSpec.

Service Officer Note: Although use of these forms is not currently required, they may be required in the future. You should begin to use these forms when necessary to help ensure faster processing of claims and ultimately faster decisions and receipt of benefits.

7. M21-1 Updates

Update on Schedular Minimum Disabilities

In a 2020 update to VA’s M21-1 Adjudication Manual, VA clarified its guidance regarding assigning minimum ratings for disabilities. M21-1, Part III, Subpart iv, Chapter 5, Section B, Topic 2, Block f states: *“In every instance where the schedule does not provide a zero-percent evaluation for a DC, a zero-percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.”*

However, based on this updated guidance, raters should NOT assign a zero-percent rating if the rating schedule in 38 CFR Part 4 directs a prescribed schedular minimum rating. Some examples of this include:

- [38 CFR 4.124a, DC 8009](#), which requires that residuals of brain vessel hemorrhage be assigned a minimum rating of 10 percent
- [38 CFR 4.116, DC 7617](#), which requires that postoperative removal of the uterus and both ovaries be assigned a minimum rating of 50 percent.

Service Officer Note: If the rating schedule in 38 CFR Part 4 directs that a minimum rating be assigned, ensure the veteran is not assigned a zero-percent rating for that disability and instead receives the minimum rating according to 38CFR.

Rating Residuals of Active Cancers

Recently, VA updated its M21-1 Adjudication Manual to reflect that when rated 100% for an active cancer, veterans may receive concurrent, separate ratings for residuals if the residuals are not specifically mentioned in the rating criteria for the active cancer.



Example: A veteran receives a 100% evaluation for active prostate cancer assigned under [38 CFR 4.115b, DC 7528](#), and is also diagnosed with erectile dysfunction as a result of the prostate cancer. Since 38 CFR directs that prostate cancer is evaluated based on residuals consisting of voiding dysfunction or urinary tract infection, the veteran should also be rated for erectile dysfunction concurrently with the 100% evaluation, even though it is a residual of the veteran's prostate cancer.

For More Information on both of these updates please read [M21-1, Part III, Subpart iv, Chapter 5, Section B](#)

Convicted Felons Applying for IU Serving at Mental Care Facilities

In an October 2020 update to VA's M21-1 Adjudication Manual, VA concluded that if a veteran is sentenced to a mental institution or other institution for care, custody, or treatment as a result of a conviction for a felony, Individual Unemployability may not be awarded even though the facility may not be generally viewed as a correctional institution consistent with a prison or jail-type setting.

It is important to note this only applies to veterans who are sentenced to a mental institution or similar care facility. VA will treat these cases just like they would with incarcerated veterans. If a veteran admits themselves into a facility at will, this update does not apply.

For more information please read: [M21-1, Part IV, Subpart ii, Chapter 2, Section F](#)

8. VA Creates New Contact Number for Veterans

In December 2020, VA announced the creation of a new phone number intended to be used as a single point of contact for all VA related inquiries. The new phone number 1-800-MyVA411 (1-800-698-2411) is available 24/7 and offers the following assistance to veterans:

- *Information on COVID-19 and the MISSION Act*
- *Health care eligibility and enrollment*
- *Information on VA benefits*



- *Information about the nearest VA facilities, directory assistance, and connection to VA Medical Center operators*
- *Technical support for www.VA.gov*
- *Financial information, such as debt and payment options*
- *Referrals to VA specialists during business hours*
- *Immediate transfer to the Veterans Crisis Line or the National Call Center for Homeless Veterans for services and support*

For more information: Please visit <https://blogs.va.gov/VAntage/82379/1-800-myva411/>

9. VA Office of Community Care Contact Center employees can assist Veterans resolve adverse debt collection actions resulting from authorized VA community care claims.

Recently, The VA Office of Community Care (OCC) contact center announced that specially trained call center staff are now available to work one on one with veterans to research and resolve collection-specific issues resulting from authorized VA community care claims. Affected veterans should gather any letters, notices or information regarding debt collection or adverse credit reports related to authorized use of VA community care and call the toll-free number at 877-881-7618 (option 1), from 8 am to 9 pm, Eastern time. VA staff will collect the veteran's information, investigate the issue, and follow up with details of the final resolution.

For more information, please visit:

https://www.va.gov/COMMUNITYCARE/about_us/contacts.asp.

