

**Department of
Veterans Affairs**

Memorandum

Date: January 28, 2021

From: Office of Field Operations

To: All Veterans Benefits Administration (VBA) Regional Offices (ROs) and Centers

Subj: New Agent Orange Presumptive Conditions

Background Information

On January 1, 2020, the [William M. Thornberry National Defense Authorization Act for Fiscal Year 2021](#) was passed into law. The new law adds three diseases to the list of those that are presumptively associated with exposure to herbicide agents, such as Agent Orange. The new conditions are:

- bladder cancer,
- hypothyroidism, and
- Parkinsonism, or Parkinson-like symptoms

VA is committed to implementing the change in law and efforts are underway to develop procedures on the appropriate processing for these claims. For cases impacted by the change in law, until further procedural guidance is provided to the field, claims adjudicators should refrain from granting service connection based on herbicide exposure for any of the three new conditions. Claims processors should fully develop for the evidence necessary to adjudicate the claim, to include ordering of any examinations, for all conditions claimed, following current guidance. Rating decisions for the three new conditions should be deferred following the procedures below pending final procedures for granting these conditions on a presumptive basis. However, as discussed below, in situations where the claim can be granted on any basis other than a presumptive basis due to Agent Orange exposure, claims adjudicators *should not delay making a decision* on the claim.

Purpose

This memorandum provides the following guidance to ROs:

- Reviewing claims for the three new presumptive conditions (*bladder cancer, hypothyroidism, and Parkinsonism, or Parkinson-like symptoms*) for Veterans with Republic of Vietnam Service, or service where they were otherwise exposed to tactical herbicides like Agent Orange.
- Deferring or otherwise holding any decision on a claim for one or any of the three new presumptive conditions where herbicide exposure has been conceded.

- Properly establishing EP controls to ensure that any deferred or otherwise unprocessed claim associated with the three new presumptive conditions is appropriately tracked for future claims processing
- Processing to the maximum extent possible any other issues or claims that can be resolved

Important Note: In addition to the above, the following guidance is intended to be applied for Blue Water Navy cases that meet the following criteria:

- the claim has been referred for centralized processing following guidance contained in M21-1, Part IV, Subpart ii, Chapter 1, Section H
- all development actions have been completed
- herbicide exposure can be conceded in accordance with the BWN SOP, and
- one of the three new presumptive conditions have been claimed.

If herbicide exposure cannot be conceded, the claims adjudicator should follow established procedural guidance to make a decision on the claim.

Reviewing Claims Impacted by the Change in Law

When reviewing claims that might be affected, VA claims adjudicators should apply this guidance for any claims related to the new conditions where a:

- Veteran has filed a claim for one of the new conditions, and would only be eligible for a presumption of service connection (SC) on the basis of exposure to herbicides,
- survivor is claiming that the principal or contributory cause of the Veteran's death is, or is secondary to, one of the new presumptive conditions,
- where the claimant has a specific allegation of eligibility under the new law

Important Note: In situations where service connection can be established on any basis other than presumptive basis (e.g. direct basis), claims adjudicators *should not delay making a decision* on the claim. If service connection on a presumptive basis due to herbicide exposure is the only viable option, claims adjudicators should properly utilize EP controls to ensure that any deferred or otherwise unprocessed claim associated with the three new presumptive conditions is appropriately tracked for future claims processing.

Example: A Vietnam Veteran is claiming residuals of bladder cancer, and evidence in file shows an in-service diagnosis of bladder cancer. In this situation, assuming all other elements are met for VA to grant the condition on a direct basis, VA should not delay a decision on the claim; the claim should be granted.

General Processing and Establishing EP Controls for Claims Impacted by the Change in Law

Claims adjudicators should refer the claim for centralized processing following M21-1, Part IV, Subpart ii, Chapter 1, Section H, where development to determine if herbicide exposure can be conceded will be completed. For any of the new AO presumptive conditions where exposure can be conceded and service connection cannot be established on any other basis (e.g. direct), claims adjudicators should take the following steps:

1. If the claim contains only the new AO presumptive issue(s), the adjudicator should complete development actions, and:
 - a. Apply "VACO Special Issue 7" to the EP and,
 - b. Add a VBMS Note indicating with "NDAA 2021 AO Issues(s) – awaiting final guidance"

Note: The special issue should only be added at this stage if the claim contains only the new AO presumptive issue(s). NWQ will recall the claim prior to moving to rating once the special issue is attached. If additional issues are associated with the claim, the claims adjudicator should not add the special issue at this stage and should continue to develop and decide all other issues.

2. For claims with additional issue(s) ready for decision, the corresponding new AO issue(s) should be deferred on the code sheet, but the decision maker should not use the VBMS Core deferral functionality for any of the three new presumptive conditions.
 - a. When deferring on the code sheet, the decision maker should notate in the Special Notation field: "NDAA 2021 AO Issues(s)"
 - b. Otherwise, for partial rating decisions and deferred issues follow the guidance contained in M21-1, Part III, Subpart iv, Chapter 6, Section A.
3. Prior to authorization, if there are no unadjudicated issues beyond those involving any of the three new presumptive conditions, the authorizer will:
 - a. Apply "VACO Special Issue 7" to the EP and,
 - b. Add a VBMS Note indicating with "NDAA 2021 AO Issues(s) – awaiting final guidance"
4. The authorizer will then continue the claim at authorization.

Note: The special issue will allow NWQ to hold the claim until VA releases additional guidance.

Processing and Establishing EP Controls for Claims for Service-Connected Death Implicated by the Change in Law

For service-connected death claims based on the new AO presumptive conditions that cannot otherwise be granted on another basis (e.g., direct service-connection), the claims adjudicator reviewing the claim should take the following steps:

1. Apply "VACO Special Issue 7" to the EP and,
2. Add a VBMS Note indicating with "NDAA 2021 AO Issues(s) – awaiting final guidance"

Note: The claims adjudicator reviewing the claim in this scenario will generally be a VSR responsible for gathering evidence necessary for a rating determination. If other entitlement decisions are at issue that may require a rating determination, then a partial rating may need to be completed as indicated in the preceding section.

Sites Completing Higher-level Reviews (HLRs):

For any of the new AO presumptive conditions that VA cannot otherwise granted on another basis (e.g. direct service-connection), reviewers should take the following steps for HLRs containing a newly added AO presumptive condition:

1. If VA may grant the AO presumptive issue based upon herbicide exposure, then do not decide any of the issues pending on the HLR.
 - a. Apply the "VACO Special Issue 7" to the applicable AO issues and,
 - b. Add a VBMS Note indicating "NDAA 2021 AO Issues(s) – awaiting final guidance"

Note: The special issue will allow NWQ to hold the claim until VA releases additional guidance.

2. If the review requires further development, such as verification of herbicide exposure or a medical examination to determine the evaluation of the disability, then return the issue as a duty-to-assist error for appropriate development.
3. If the review still warrants a denial based upon VA's inability to verify herbicide exposure and/or due to the lack of diagnosis of the newly presumptive condition, then decide the review by normal procedures for herbicide issues.

Sites Completing AMA Board Grants, AMA Remands, or HLR DTA Errors:

Follow the guidance under *General Processing and Establishing EP Controls for Claims Implicated by the Change in Law*.

Sites Completing Legacy Appeals:

For any of the new AO presumptive conditions that VA cannot otherwise granted on another basis (e.g. direct service-connection), claims adjudicators should take the following steps:

1. If the appeal requires further development, such as verification of herbicide exposure or an examination to determine the evaluation of the disability, then

develop as necessary. If the appeal is ready for decision because VA has completed all development, then follow guidance in steps 2 or 3, below.

2. If VA may grant the appeal based upon herbicide exposure, then do not decide the appeal at this time. VA may decide any other appeal issues if the decisions result in a grant of benefits. Otherwise, complete no (SOC), or SSOC at this time.
 - a. Apply the "VACO Special Issue 7" to the applicable AO issues and,
 - b. Add a VBMS Note indicating "NDAA 2021 AO Issues(s) – awaiting final guidance"

Note: The special issue and VBMS Note will allow for identification and workload management of the locally held inventory for legacy appeals. NWQ will not recall the Legacy Appeals claims for holding.

3. If VA will deny the appeal based upon VA's inability to verify herbicide exposure or the lack of diagnosis of the newly presumptive condition, then address the decision using normal procedures for herbicide-related disabilities. Recertify the remand to the Board of Veterans' Appeals remands after expiration of the 30-day period following the SSOC.

Questions

Questions concerning this memorandum's guidance should be directed via e-mail through station leadership to Districts/OFO.