



VETERANS

LEGAL SERVICES

VA Healthcare Benefits

Anna S. Richardson, Esq.
*Co-Executive Director & Chief Counsel
Veterans Legal Services*

April 19, 2023

MCLE/MLRI



VA Healthcare System - Overview

- Veterans Health Administration - 3 parts
 - VA Hospitals
 - Community Based Outpatient Clinics
 - Vet Centers
- Separate from Military Healthcare System – Some integrations but lack of communication between them is often the norm
- Largest integrated healthcare system in the U.S.
- Provides care to almost 9 million veterans annually
- 171 medical care centers and 1,300 medical care sites overall
- Expends approx. \$118 billion annually on medical care
- Direct provided care on a space-available basis

VA Healthcare System - Overview

–Services provided can include:

- Outpatient Care
- Inpatient Care
- Prescription Drugs
- Emergency Care
- Medical Equipment
- Home Health Services
- Nursing Home
- Hospice Care

VA Healthcare – Eligibility

- Requires veteran status
- Must meet minimum service requirements:
 - If enlisted after 9/7/1980, or entered active duty after 10/16/1981, must have served 24 continuous months or the full period for which they were called to active duty in order to be eligible.
- Minimum requirements may not apply to Veterans who were discharged:
 - for a disability incurred or aggravated in the line of duty,
 - for a hardship or “early out,” or
 - for those who served prior to September 7, 1980.
- Lots of exceptions so all vets should apply.

VA Healthcare – Eligibility

- Not every veteran is automatically eligible for VA healthcare
- Greatest level of eligibility/access for “free” care is focused on:
 - Veterans with service-connected disabilities
 - Combat veterans
 - Low-income veterans
 - Elderly veterans with wartime service
- Other veterans may be able to access VA care, but may have access to less comprehensive care and/or must pay for portions of the care they receive.

VA Healthcare – Eligibility for Family Members

- Some family members and caregivers may be eligible for care.
- The most common family program is the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).
- Eligibility requirements:
 - The spouse or child of a Veteran who's been rated permanently and totally disabled for a service-connected disability by a VA regional office, **or**
 - The surviving spouse or child of a Veteran who died from a VA-rated service-connected disability, **or**
 - The surviving spouse or child of a Veteran who was at the time of death rated permanently and totally disabled from a service-connected disability, **or**
 - The surviving spouse or child of a service member who died in the line of duty, not due to misconduct (in most of these cases, family members qualify for TRICARE, not CHAMPVA).
- Other benefits include Family Caregiver Program, and benefits for family members with certain medical conditions such as spina bifida in children of veterans exposed to Agent Orange.

VA Healthcare – Guard and Reserves

- Not every veteran is automatically eligible for VA healthcare
- Reserve components must have been called to active duty by a federal order and completed the full period for which they were called or ordered to active duty.
- Reserve components who had or have active-duty status for training purposes only, generally do not qualify for VA health care.

VA Healthcare - Enrollment

- Most Veterans Must Enroll in VA Care
- Can apply in person, via Internet, mail, or phone
 - <https://www.va.gov/health-care/apply/application/>
 - VA Form 10-10EZ
 - Successful enrollment doesn't guarantee care or timely care—see priority groups
- Certain Categories of Veterans Not Subject to Enrollment Requirement
 - 12 categories (e.g., $\geq 50\%$ SC disability; medical care for a SC disability; etc.)

VA Healthcare – Priority Groups

- Priority Groups: 8 categories of veterans with different priority for enrollment
 - Category (1) is best access; Category (8) is least access among those with any priority
 - Examples:
 - Category (1): $\geq 50\%$ SC disability or Total Disability based on Individual Unemployability (TDIU)
 - Category (8): noncompensable SC disability or no SC disability
 - Some Categories are means-tested
 - VA adjusts enrollment yearly based on priority groups; depends on VA funding levels

VA Healthcare – Priority Groups

- Special Categories of Veterans Entitled to Some Form of VA Healthcare
 - Five-year eligibility for VA healthcare related to service for veterans who served in theater of combat operations after 11/11/98 and discharged after 01/28/03
 - Veterans who have experienced Military Sexual Trauma (MST)
 - Other specialized categories
- VA provides access to care based on priority groups and medical need

VA Healthcare – Co-pays/Costs

- Cost to Veterans of VA Healthcare
 - Some veterans receive “free” healthcare
 - Some veterans required to make co-pays
 - Some veterans required to make co-pays for certain VA healthcare services and not for other VA healthcare services
- Costs Depends on Veteran’s priority group and type of care sought
- Co-pays range from \$15 for primary care to \$50 for specialists
<https://www.va.gov/health-care/copay-rates/>
- Prescription co-pays range from \$5 - \$11 depending on the tier of the drug in VA formulary
- Some co-pays are subject to caps on annual basis
 - Many co-pays and co-pay debts were waived during COVID
- If the veteran has another form of insurance it may be billed for non-service connected care

VA Healthcare – MST Survivors

- Special Considerations for Healthcare for Military Sexual Trauma (MST) – see 38 USC § 1720D
 - According to VA patient screening data, 1 in 4 female veterans seeking VA care experienced MST; for male veterans, the figure is 1 in 100.
- VA must provide “counseling & appropriate care & services” to help veterans who experienced MST to “overcome” the psychological trauma related MST
- These services are at no cost to the veteran, provided irrespective of the veteran’s length of service, and do not require that service-connection for a disability be established

VA Healthcare – Urgent Mental Healthcare & PTSD

- VA crisis line is available 24/7 to provide immediate mental health support. Call 988 and press 1, Text to 838255, or chat online at VeteransCrisisLine.net/Chat.
- As of July 5, 2017, veterans with urgent mental health needs can access VA care for up to 90 days, even if they are not otherwise eligible for healthcare.
- Combat veterans can access mental health treatment through their local Vet Centers, even if they are not otherwise eligible for healthcare.
- Veterans who are homeless or at-risk of homelessness may be eligible for a range of supportive services. Call the National Call Center for Homeless Veterans at 877-424-3838 for more information.

VA Healthcare

- VA Healthcare is creditable coverage for the purposes of MA Healthcare laws – Admin. Bulletin 04-07, and Federal Affordable Care Act (“Obamacare”)
- VA may provide mileage reimbursement for travel for some veterans to access care
- VA may cover glasses, hearing aids, uninsured medicals, diabetes supplies, etc.
- VA Healthcare is direct-provided care, not insurance
- Eligible veterans should still apply for MassHealth to cover care at non-VA facilities

VA Healthcare – Family Caregiver Program

- VA has a program to support family caregivers of veterans when:
 - The veteran has a VA disability rating (individual or combined) of 70% or higher, and
 - The veteran was discharged from the U.S. military or has a date of medical discharge, and
 - The veteran needs at least 6 months of continuous, in-person personal care services
- To be eligible caregivers must:
 - Be at least 18 years old
 - Be the spouse, child, parent, stepfamily member, or extended family member of the veteran, or
 - Live full time with the veteran, or be willing to live full time with the veteran if VA designates them as a family caregiver
- As of October 1, 2022, the VA Family Caregiver Program is available to veterans of all eras of service

VA Healthcare – Family Caregiver Program

- VA can provide eligible family caregivers with:
 - Education and training
 - Mental health counseling
 - Travel, lodging, and financial assistance when traveling with the Veteran to receive care
 - A monthly stipend (payment)
 - Access to health care benefits through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)—if you don't already qualify for care or services under another health care plan
Learn more about CHAMPVA
 - At least 30 days per year of respite care for the Veteran
- <https://www.va.gov/family-member-benefits/comprehensive-assistance-for-family-caregivers/>

VA Healthcare - Registries

- VA has registries to track health impacts of environmental exposures and other aspects of military service that can increase the likelihood of veterans developing certain medical conditions. You do not need to be enrolled in VA health care to participate in a registry.
- Current registries include:
 - Agent Orange Registry
 - Airborne Hazards and Open Burn Pit Registry
 - Gulf War Registry (includes Operations Iraqi Freedom and New Dawn)
 - Ionizing Radiation Registry
 - Depleted Uranium Follow-Up Program
 - Toxic Embedded Fragment Surveillance Center
- Registry participation is free and the paperwork burden is minimal.
- Apply by contacting the VA Environmental Health Coordinator closest to you. <https://www.publichealth.va.gov/exposures/coordinators.asp>

VA Healthcare – PACT ACT

- In 2022 Congress passed the The Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act.
- Largest expansion of VA benefits and healthcare in the agency’s history.
 - Expands and extends eligibility for VA health care for Veterans with toxic exposures and Veterans of the Vietnam, Gulf War, and post-9/11 eras
 - Adds 20+ more presumptive conditions for burn pit, Agent Orange, and other toxic exposures
 - Adds more presumptive-exposure locations for Agent Orange and radiation
 - Requires VA to provide a toxic exposure screening to every Veteran enrolled in VA health care at enrollment and every 5 years
 - Helps VA improve research, staff education, and treatment related to toxic exposures
- <https://www.va.gov/resources/the-pact-act-and-your-va-benefits>

Using care outside VA at VA expense

- If VA facilities are not available, VA can pay for non-VA care in some circumstances. <https://www.va.gov/communitycare/>
- Most common is emergency care – 38 USC §§ 1725, 1728.
- Wolfe v. Wilkie, U.S. Vet. App. No. 18-6091 (September 9, 2019) ordered VA to reimburse emergency room costs for care at non-VA facilities. Decision applies prospectively and retroactively for up to three years.
- Different standard applies for service connected vs. non-service connected emergency claims.
- Generally, you need to notify local VAMC within 72 hours. Call 877-222-8387 to find the nearest facility. Treating ER can also email: VHAEmergencyNotification@va.gov or call: (844)724-7842. Be sure to document contact occurred within 72 hours.
- VA may transfer veteran to VA care.
- Ambulance Services can be covered in certain circumstances.

Using care outside VA at VA expense

- Service-Connected Emergency Care:
 - A Veteran who receives emergency treatment of a service-connected, or adjunct condition in a community emergency department; **OR**
 - A Veteran who is Permanently and Totally disabled (P&T) as the result of a service-connected condition is eligible for emergency treatment of ANY condition; **OR**
 - A Veteran who is participating in a VA Vocational Rehabilitation Program, and who requires emergency treatment to expedite their return to the program, is eligible for emergency treatment for any condition; **AND** (scenarios 1-3 must all meet #4)
 - The emergency was of such a nature that the Veteran (or other prudent layperson without medical training) would reasonably believe that any delay in seeking immediate medical attention would cause their life or health to be placed in jeopardy.

Using care outside VA at VA expense

- Non-Service-Connected Emergency Care:
 - Care was provided in a hospital emergency department (or similar public facility held to provide emergency treatment to the public); **AND**
 - The emergency was of such a nature that the Veteran (or other prudent layperson without medical training) would reasonably believe that any delay in seeking immediate medical attention would cause their life or health to be placed in jeopardy; **AND**
 - A VA medical facility or another Federal facility was not reasonably available to provide the care; **AND**
 - The Veteran is enrolled and has received care within a VA facility during the 24 months before the emergency care; **AND**
 - The Veteran is financially liable to the provider of emergency treatment.

Using care outside VA at VA expense

- General Community Care:
 - Replaced the prior Choice Program per the MISSION ACT in June 2018. Created Community Care Networks, 6 regional contracts for administration. Massachusetts is in region 1.
- Veterans must receive approval from VA prior to obtaining care from a community provider, in most circumstances.
- Veterans must either be enrolled in VA health care or be automatically eligible for VA care without needing to enroll, in order to be eligible for community care.
- VA staff members generally make all eligibility determinations.
 - Generally, requires VA cannot reasonably provide care at a VA facility due to services not being offered, facilities are not available in the area, a provider recommending it in the veteran's medical interest, unreasonable drive times or wait times, prior participation in the Choice program, or care at a specific facility is found not to meet VA standards.

VA Healthcare – How to Apply

- How to apply for VA Health Care—
 - Visit nearest VA Medical Center
 - Call 1-877-222-VETS (8387)
 - Apply online <https://www.va.gov/health-care/apply/application/>
 - By mail – download VA form 1010EZ
<http://www.1010ez.med.va.gov> and mail it to Health Eligibility Center, 2957 Clairmont Rd., Suite 200, Atlanta, GA 30329
- If you do not receive a decision within a week, call 877-222-8387.
- Don't assume ineligibility – instead, apply and preserve appeal rights!

Challenging VA Healthcare Decisions

–Medical Determinations: appeal via VHA clinical appeal process. See VHA Directive 1041
<https://www.va.gov/vhapublications/publications.cfm?pub=1>

Eligibility Determinations: appeal initially (via Notice of Disagreement (NOD)) to the VA healthcare facility (which should proceed in same manner as if a Regional Office (RO))

- Further appeal to the Board of Veterans' Appeals (BVA) and U.S. Court of Appeals for Veterans Claims (CAVC)

Special Considerations due to COVID-19

- Many facilities are continuing to use telehealth for certain visits.
- Masks are still required at most facilities.
- Most facilities still limit visits to the veteran and one adult support person.
- Community care appointments are at the discretion of the community-based provider.
- Allow extra time for prescription refills/refills by mail.
- You can check the Facility Operating Status and get up to date information on COVID levels and any restrictions by going to <https://www.va.gov/coronavirus-veteran-frequently-asked-questions/>
 - Once you have found the page for the facility you're looking for, scroll to the bottom and select Facility Operating Status