

MEDICAL REVIEW ASSISTANCE TO BOARD OF VETERANS' APPEALS CASES

- 1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) Directive defines the Department of Veterans Affairs (VA) process by which VHA provides medical reviews for the Board of Veterans Appeals (BVA) cases that require expert advisory medical opinions.
- 2. SUMMARY OF MAJOR CHANGES:** This revised Directive clarifies who can conduct the medical reviews and incorporates guidance regarding electronic claims files.
- 3. RELATED ISSUES:** None.
- 4. RESPONSIBLE OFFICE:** The Office of Disability and Medical Assessment (10NC8) is responsible for the content of this VHA Directive. Questions may be referred to the Office of Disability and Medical Assessment at 202-461-6699.
- 5. RESCISSIONS:** VHA Directive 1602.01 dated February 4, 2013, is rescinded.
- 6. RECERTIFICATION:** This VHA Directive is scheduled for recertification on or before the last working day of February 2021.

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1. PURPOSE

This Veterans Health Administration (VHA) Directive defines the Department of Veterans Affairs (VA) process by which VHA provides medical reviews for the Board of Veterans' Appeals (BVA) cases that require expert advisory medical opinions.

AUTHORITY: 38 U.S.C. 5103A(d) and 7109.

2. BACKGROUND

a. Prior to the Veterans' Judicial Review Act in 1988, BVA was permitted to use both its own staff clinicians and outside medical resources to provide expert medical opinions for use in adjudicating appeals cases. In July 1994, the United States Court of Appeals for Veterans Claims issued a decision that significantly constrained the role of BVA staff clinicians in the appellate process.

b. Appeal cases requiring expert medical opinions must now be referred to sources outside of BVA, to include but not limited to selected medical schools and VHA to provide the necessary medical reviews.

c. For purposes of assisting BVA in providing timely and high-quality decisions to Veterans and other claimants, VHA clinicians are able to provide thorough and evidence supported medical reviews. VHA clinicians have significant experience in diagnosing and treating the sometimes unique health problems of Veterans, as well as familiarity with VA processes and requirements. The majority of cases requiring medical expert opinions fall within the clinical practice areas: internal medicine, cardiology, psychiatry and psychology, orthopedic surgery, and neurology. Although less frequent, there are appreciable numbers of requests for opinions in the clinical areas: rheumatology; ear, nose, and throat; pulmonary medicine; environmental medicine; and other sub-specialties.

3. POLICY

It is VHA policy that all VA medical facilities are to assist and collaborate with BVA's requests for medical reviews within 60 days, starting from the date all pertinent medical case review material is received.

4. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health, or designee, is responsible for providing BVA with access to a consolidated listing of tertiary and affiliated VA medical facilities, including current contact information for the facility Director. See VA's Facilities Locator Web site at: http://vaww.va.gov/directory/guide/rpt_triad.cfm (**NOTE:** This is an internal VA Web site and is not available to the public) and VA's Office of Academic Affiliations Web site at: <http://www.va.gov/oa/>.

b. **Office of Disability and Medical Assessment.** The Office of Disability and Medical Assessment is responsible for providing expert medical opinions regarding occupational and environmental exposures and assisting in finding subject matter experts in fields that are not listed on the Web sites described in paragraph 4.a.

c. **Veterans Integrated Service Network Director.** Each Veterans Integrated Service Network (VISN) Director is responsible for providing BVA with an alternate facility within their VISN to complete an advisory medical opinion when either workload or staffing precludes the original facility from assigning the case to a specialist at that facility.

d. **VA Medical Facility Director.** Each VA medical facility Director is responsible for:

(1) Ensuring that the requested medical advisory opinions are prepared by clinicians employed by, or under contract to VA medical facilities.

(2) Facilitating prompt resolutions of Veterans' appeals by ensuring that a completed medical advisory opinion is provided to BVA within 60 days (starting from the date all pertinent medical case review material is received).

(3) Ensuring that information regarding the completion of the medical advisory opinion is provided to BVA along with the return of any paper claims file to Veterans Benefits Administration (VBA) or inclusion of the medical advisory opinion in the electronic claims file as appropriate depending on whether the Veteran's claims file is in electronic or paper format.

e. **Board of Veterans' Appeals.** BVA is responsible for:

(1) Initiating and submitting all requests for medical advisory opinions to the office of the Director at a VA medical facility selected from the approved VHA listing (see paragraph 4.a.), to include ensuring each request:

(a) Clearly and concisely states the medical question(s) for which a medical advisory opinion is being sought;

(b) Contains operational procedures including where the completed advisory opinions are located in the electronic claims file and communication regarding completion of the opinion to BVA for their review in the electronic claims file, or where the completed advisory opinions are to be sent and how the opinion and the related Veteran's claim folder are to be returned to BVA, as appropriate depending on whether the Veteran's claims file is in electronic or paper format.

(c) Provides a BVA point of contact for questions concerning the expert opinion request or the medical advisory opinion process.

(2) Provides information on accessing the Veteran's claims file in the electronic records applications or forwarding a complete claims file to the VA medical facility

conducting the review as appropriate depending on whether the Veteran's claims file is in electronic or paper format.

(3) Distributing the caseload across appropriate VA medical facilities in an equitable manner, based on specialty needs, geographical location, and facility size, thereby placing minimal burden on any individual VA medical facility.

(4) Sending Title 38 United States Code (U.S.C.) 1151 appeal cases to a facility not involved with the medical case in question.

(5) Contacting the VA medical facility Director, or designee, to update operational guidelines and procedures as necessary.

(6) Providing a quarterly report on the 30th of October, January, April, and July to the Office of the Principal Deputy Under Secretary for Health and the Office of Disability and Medical Assessment (to be shared with the Deputy Under Secretary for Health for Operations and Management) on the:

(a) Participation by VA medical facilities (number of medical advisory opinions referred, accepted, and valid reasons for non-acceptance);

(b) Number and type of cases referred by medical facility and VISN;

(c) Timeliness of responses (individual medical facility and aggregative percent of goal of less than or equal to 60 days);

(d) Quality of the medical advisory opinions in facilitating the adjudication process;
and

(e) Number of cases returned for additional comments.