



THE UNDER SECRETARY OF VETERANS AFFAIRS FOR BENEFITS
WASHINGTON, D.C. 20420

DEC 11 2019

Mr. John Rowan
National President/Chief Executive Officer
Vietnam Veterans of America
8719 Colesville Road, Suite 100
Silver Spring, MD 20910

Dear Mr. Rowan:

Thank you for your September 16, 2019, letter to the Department of Veterans Affairs (VA) regarding your concerns about the benefits and health care for the children of Vietnam Veterans born with spina bifida and certain other birth defects. Your letter also includes several action items for VA's Spina Bifida and Birth Defects Program. I appreciate the opportunity to respond to the issues you have raised. Enclosed is an information document that responds to your concerns and each of the action items.

Should you have additional questions, please contact Mr. Jason Beardsley, Veterans Service Organization Liaison, at (202) 461-4884 or by email at Jason.Beardsley@va.gov.

Thank you for your continued support of our Nation's Veterans and their dependents.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul R. Lawrence".

Paul R. Lawrence, PhD

Enclosure

**Department of Veterans Affairs (VA) Response to
Vietnam Veterans of America (VVA) Spina Bifida and Birth Defects Program
Action Items**

Research

Action Item 1: VVA urges VA to immediately act pursuant to Subtitle C ("Toxic Exposure") of *The Veterans Health Care and Benefits Improvement Act of 2016* to ensure legislative deadlines are timely met. As you know, this law requires VA to prioritize the study of health conditions affecting descendants of veterans who were exposed to toxic substances during their service in the armed forces. Timely implementation of this law remains a top priority for VVA.

VA Response: Pursuant to the Veterans Health Improvement Act of 2016, Public Law (P.L.)114-315, the Secretary is required to enter into an agreement with the National Academy of Medicine (NAM) to conduct an assessment of the status of scientific research relating to the descendants of Veterans with toxic exposure. The assessment should include the following: scope, methodology, who should be studied, and the resources needed to conduct such research. VA received that assessment entitled *Gulf War and Health: Volume 11: Generational Effects of Serving in the Gulf War Era* from NAM on November 28, 2018, and has reviewed the report in depth.

The scope of the recommended research is vast. Specifically, it includes health monitoring for Servicemembers, Veterans, their partners, and descendants over the course of their lives and across generations, as well as the collection of biospecimens and longitudinal data for basic, clinical, and epidemiologic research. After reviewing the report, the Secretary submitted a letter to the House and Senate Committees on Veterans' Affairs concluding that additional discussions with Federal partners who have subject matter expertise in toxicology, genetics, human development, birth defects, and other disciplines is necessary before the research could begin. These discussions are in process.

Communication Issues

Action Item 2: VVA urges VA to create a process to share beneficiaries' information between VBA and VHA. Currently, VBA and VHA does not have a process to share beneficiaries' VBA decisions, POA forms, and other relevant documents.

- a) EX: VBA does not transfer the Power of Attorney Form (VA Form 21-22) to VHA when applicable. VHA requests that the beneficiary or representative mail and/or fax in the form to VHA separately. VVA has been told that it can take 3-4 weeks for the form to be added to the beneficiary's file. This is unacceptable.
- b) EX: VBA does not transfer updated Rating Decisions to VHA when the level of disability approved by VBA changes.

VA Response: The Veterans Benefits Administration (VBA) and the Veterans Health Administration (VHA) work together closely to share information. When VBA receives a

VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, and a VA Form 21-22a, *VA Appointment of Individual as Claimant's Representative*, the regional office (RO) uploads the form into the child's electronic claims folder. VA Forms 21-22 and 21-22a are used to appoint an individual or organization to prepare, present, and prosecute claim(s) for benefits. This is separate from the VA Form 10-0137, *VA Advance Directive Durable Power of Attorney for Health Care and Living Will*, which is used to designate a power of attorney for health care purposes. However, VBA will provide the information to VHA if requested. VBA immediately notifies VHA on every initial grant for service-connection. VBA does not notify VHA of changes in the level of disability as VHA only needs to know the date of the initial grant of benefits for the purposes of health care.

Action Item 3: VVA urges VA to update VA Form 21-0304 to ensure erroneous information does not remain and to increase the Form's clarity. Despite VVA submitting suggested change to the Federal Register when VA published a notice requesting suggested edits, VA chose to not change anything. Erroneous, unclear, and confusing information remains on the Form.

VA Response: The Denver RO sent a request to update the VA Form 21-0304, *Application for Benefits for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans*, to the ~~Forms and Records Division~~ on August 26, 2019. This request included updates based on P.L.116-23, suggestions to clarify how to claim disabilities, clarifications about service information, and updates to the mailing information for the centralized mail portal. The RO also provided VVA Representative, Ms. Kelsey Yoon, with suggestions for updates to the form, which included gender and signature block information.

Action Item 4: VVA urges VA to conduct a complete review of all information on VA's websites, brochures, and Program Guides to fix erroneous, misleading, and incomplete information. VVA is willing to work with VA on identifying erroneous information and areas in need of further information.

VA Response: Based on P. L. 116-23, VA has been working to update all Web sites, brochures, and program guides. For example, in 2017, the Denver RO worked with Ms. Yoon, and VHA to create a fact sheet specifically for outreach purposes that explained the VBA and VHA portions of the processes.

Action Item 5: VVA urges VA to conduct a comprehensive retraining of all VHA Office of Community Care (OCC) employees. VVA has personally experienced and has heard countless stories of VHA OCC employees who have lied, mislead, and ignored beneficiaries and accredited representatives who are trying to access health care benefits available under the law.

VA Response: Over the past year, the Office of Community Care Customer Experience (CX) has completely redeveloped its training curriculum for the Spina Bifida and Birth Defects Program. CX sent all Customer Service Representatives (CSR) who

receive spina bifida calls to a 1-week refresher course. Current call volume has been spread over 21 CSRs and weekly call evaluations are conducted by the quality assurance team which provides additional oversight. The internal training material is used as reference material while knowledge management system articles and job aids are updated.

Written Guidelines and Procedures

Action Item 6: VVA urges VA to create written guidelines for how to apply for each health care entitlement available under the law. The generic program guide is wholly insufficient and lacks practical and necessary information to beneficiaries.

VA Response: Our internal training materials are used as reference material while knowledge management system articles and job aids are updated to reflect more specific information.

Data and Preservation of Files

Action Item 7: VVA urges VA to ensure VBA is properly, consistently, and accurately tracking grandchildren applications. Over several years, VA consistently provided inaccurate data for grandchildren applicants to VVA despite promising to "track them" for years. Most recently, VVA was told by the Denver RO that they can no longer give us data when we inquired about the inaccuracies, and said we needed to file a formal FOIA request. VVA filed a formal FOIA request for the data on May 7, 2019, and we are still waiting for the requested data. VVA is skeptical that VBA has been preserving and tracking grandchildren applications since February 2014, the date that VA indicated to VVA that it would preserve and track these applications.

VA Response: VBA has been tracking grandchildren claims since February 2017 and has had ongoing communication with VVA regarding this action since 2016. The Denver RO has been uploading claims into the grandparents' Veterans Benefits Management System records, completing a decision on each claim, and providing appellant rights. It was determined that data requests for VVA would be more appropriately handled through Freedom of Information Act requests rather than the Denver RO providing data directly.

Action Item 8: VVA urges VA to develop written procedures that are available to the public as to how VBA is handling grandchildren applications. VA is unwilling to share OGC guidance with VVA that was issued to VBA concerning how VBA is to handle grandchildren applications. VA's policies and procedures for how it is processing certain applications should not be hidden from the public.

VA Response: The current law and regulations do not support an entitlement to Chapter 18 benefits for a grandchild of a Veteran with qualifying service in Vietnam or Korea. As such, VBA adjudicates spina bifida claims from grandchildren claimants, to include rendering a formal decision with appeal rights, in accordance with existing

claims processing procedures. The development of additional procedures to specifically address the disposition of Chapter 18 claims submitted by grandchildren is unwarranted, as the subject is subsumed under a general reading of existing guidelines. VA's policies and procedures are available to the public online at <https://www.benefits.va.gov/warms/>.

Department of Veterans Affairs
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