Department of Veterans Affairs **VHA NOTICE 2023-03**
Veterans Health Administration
Washington, DC 20420 **April 27, 2023**

THE APPEALS MODERNIZATION ACT IN THE VETERANS HEALTH ADMINISTRATION

1. By direction of the Office of the Under Secretary for Health, Veterans Health Administration (VHA), this VHA notice updates interim policy implementing the Veterans Appeals Improvement and Modernization Act of 2017 (AMA) and other legal requirements related to appeals until a full directive is published.

2. The Department of Veterans Affairs (VA) provides various benefits to millions of eligible Veterans, their dependents and survivors, as well as certain caregivers and community providers (referred to as "Claimants" throughout this notice). VHA provides VA's health care and related benefits, both in VA medical facilities and in the community. As an agency of the Federal government, VHA is bound by the rules and regulations governing delivery of health care, as well as the statutes and regulations governing VA benefits, claims and appeals. ***NOTE:*** *Benefits decisions covered by this notice are distinct from medical determinations covered by VHA Directive 1041, Appeal of Veterans Health Administration Clinical Decisions, dated September 28, 2020.*

3. Benefits laws and regulations establish universal requirements that apply to all VA benefits claims. Under these laws and regulations:

a. VA has a duty to help Claimants complete the necessary applications.

b. VA has a duty to notify Claimants of the evidence necessary to prove their claims.

c. VA has a duty to help Claimants gather relevant evidence from Federal and other sources.

d. VA has a duty to decide Claimants' claims for benefits quickly and accurately and to provide Veterans, dependents, survivors, caregivers and their accredited representatives detailed notice explaining VA's decisions and the requirements for initiating reviews of these decision.

4. AMA permits a dissatisfied Claimant three options when contesting a VA benefit decision: a Higher-Level Review; a Supplemental Claim; or an appeal to the Board of Veterans' Appeals (Board). The three options, also known as lanes, are independent of one another and do not have to be utilized in a specific order; however, any particular issue can reside in only one of those lanes at a time. If a Claimant is dissatisfied with the outcome of a decision in a lane, the Claimant is free to pursue the issue through the other two lanes. See Appendix A for certain exceptions that apply. ***NOTE:*** *A Claimant on whose behalf a written (including electronic where available) post-decision review request is filed with VHA or the Board, depending on the lane selected, may utilize any or all of the three lanes of review, but may only elect one lane at a time for any discrete issue. A Claimant has 1 calendar year from the date on the notice of VHA's decision to*

submit a request for Higher-Level review or Board Appeal. A Supplemental Claim may be filed at any time following a VHA benefits decision. More information on the three lanes of review is in Appendix A.

a. **Higher-Level Review.** A Higher-Level Review is a second review of a claim by VHA. A Higher-Level Review is initiated by timely submission of the prescribed election form to the address prescribed within the decision-notice letter and is performed by a higher-level adjudicator. VHA will not consider new evidence or allow a hearing but will hold an informal conference with a Claimant and representative if requested. Submitting a Higher-Level Review requires the use of VA Form 20-0996, Decision Review Request: Higher-Level Review, available at https://www.vba.va.gov/pubs/forms/VBA-20-0996-ARE.pdf. ***NOTE:*** *Timely is defined as 1 year from the date of the VHA decision for which the Claimant is seeking Higher-Level Review.*

b. **Supplemental Claim.** A Supplemental Claim is a written application for a benefit previously denied by VHA. VHA requires new and relevant evidence before it will reopen and readjudicate a Supplemental Claim. Submitting a Supplemental Claim requires the use of VA Form 20-0995, Decision Review Request: Supplemental Claim, available at https://www.vba.va.gov/pubs/forms/VBA-20-0995-ARE.pdf.

c. **Board Appeal.** A Board Appeal is initiated by a Claimant (then called an Appellant) or their authorized representative seeking review by a Veterans Law Judge of one or more issues previously denied by VHA. Submitting a Board Appeal requires the use of VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), available at https://www.va.gov/VAFORMS/va/pdf/VA10182.pdf.

5. EIGHT POINT NOTICE

Any time VHA issues a decision regarding benefits, VHA must provide the Claimant an eight-point notice that:

a. Identifies the issues adjudicated.

b. Summarizes the evidence considered.

c. Summarizes the applicable laws and regulations.

d. Identifies findings favorable to the Claimant.

e. Identifies elements not satisfied leading to a denial of benefits.

f. Explains how to obtain or access evidence used in making the decision.

g. Explains the procedure for obtaining review of the decision.

h. If applicable, identifies the criteria that must be satisfied to grant service connection or the next higher level of compensation. ***NOTE:*** *This point does not apply to VHA.*

6. The VHA business lines who make determinations of law or fact that affect VHA health care benefits, and are so bound by the requirements in paragraphs 4 and 5 and the legal requirements of AMA, include:

NOTE: *Under each program office, the types of claims, Higher-Level Review requests and appeals handled by that office are listed. This is not intended to be an exhaustive list.*

a. **Office of Member Services.**

(1) **Health Eligibility Center.**

(a) Eligibility and Enrollment.

(b) Income Verification Program.

(2) **Veterans Transportation Program.**

(a) Beneficiary Travel Claims.

(b) Beneficiary Travel Mileage Reimbursement.

(c) Special Mode Transportation Reimbursement.

b. **Office of Dentistry.** Dental Eligibility.

c. **Office of Prosthetics and Sensory Aids Services.**

(1) Clothing Allowance.

(2) The Home Improvement Structural (HISA) Program.

(3) Under 38 C.F.R. § 20.104(b), appellate jurisdiction extends to questions of eligibility for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes and similar appliances.

d. **The Caregiver Support Program**. Program of Comprehensive Assistance for Family Caregivers (PCAFC) decisions are subject to clinical appeal upon request, but review may also be sought under AMA. Options available for further review or appeal of PCAFC decisions are described in VA Form 10-305, Your Rights to Seek Further Review of Program of Comprehensive Assistance for Family Caregivers (PCAFC) Decisions, available at https://www.va.gov/vaforms/medical/pdf/VA_Form_10-305.pdf. ***NOTE:*** *For more information on review of clinical decisions, see VHA Directive 1041.*

e. **VHA Office of Finance.**

(1) **Payment Operations.** Under 38 U.S.C. §§ 1725 and 1728, VA is authorized to reimburse non-VA emergency care when applicable requirements are met. ***NOTE:*** *Non-VA emergency care claims and appeals are only covered if not handled by the*

Community Care National Contract (CCN). All CCN claims and appeals and Veterans Care Agreement (VCA) disputes are excluded from AMA processes and procedures. See 38 C.F.R. § 17.4135 for more information on VCA disputes, and VHA Directive 1041 for more information on community care eligibility appeals, which are considered medical determinations.

(2) **Revenue Operations.** Consolidated Patient Accounting Centers (CPACs).

f. **VHA Office of Integrated Veteran Care.** Veteran and Family Member Programs.

(1) Civilian Health and Medical Programs of the Department of Veterans Affairs (CHAMPVA).

(2) Foreign Medical Program.

(3) Camp Lejeune Family Member Programs.

(4) Spina Bifida Program.

(5) Children of Women Vietnam Veterans.

g. **VHA State Home Per Diem Program Office.**

h. **Office of Women's Services.**

(1) Infertility and Assisted Reproductive Technology, to include in vitro fertilization, as included in the medical benefits package at 38 C.F.R. § 1738(c)(2) and governed by 38 C.F.R. § 17.380. ***NOTE:*** *For more information on review of clinical decisions, see VHA Directive 1334.*

(2) Adoption Reimbursement.

7. REQUIRED SYSTEMS FOR AMA PROCESSING

a. VHA utilizes three different systems for processing AMA documents (Higher-Level Reviews, Supplemental Claims, and file requests from the Board related to Board Appeals).

(1) **The Centralized Mail Portal.** The Centralized Mail Portal (CMP) is the pathway through which VHA receives mail related to Higher-Level Reviews, Supplemental Claims and through which VHA receives file requests for Board Appeals that have been submitted to the Board. VHA utilizes the CMP to receive these packets and, in the case of file requests, return requested documents to the Board. ***NOTE:*** *The CMP may also be referred to as the Janesville mail portal or evidence intake center. Some file requests may come through email from VHABENEFITAPPEALS@va.gov before being routed to the appropriate business line. Non-appeals related mail may also be received through the CMP and routed to the appropriate business line for resolution.*

(2) **Caseflow.** Caseflow is a workload management system designed to support accurate and timely processing of modern appeals and other review lanes established by AMA. VHA utilizes Caseflow to record received Higher-Level Reviews, Supplemental Claims and Board Appeals, and to track those documents to completion. ***NOTE:*** *Caseflow is currently used by VHA Program Offices, Veterans Integrated Service Networks (VISNs) and VA medical facilities to manage Higher-Level Review and Supplemental Claim workload; full use of the Caseflow Pre-Docket queue for management of appeals workload is targeted to roll out to VHA over the course of fiscal year (FY) 23.*

(3) **Veterans Benefit Management System.** Veterans Benefit Management System (VBMS) is VBA's system of record and is utilized by the Board to review most documents. VBMS often contains information relevant to a VHA Higher-Level Review, Supplemental Claim or Board Appeal, for example, information on whether a Veteran has an authorized representative. VHA staff responsible for work associated with VHA decision reviews or appeals should be reviewing VBMS for additional information on every Higher-Level Review, Supplemental Claim and Board Appeal that they work, as applicable.

b. VHA staff responsible for work associated with VHA decision reviews or appeals at the VHA Central Office, VA program office, VISN and VA medical facility level must use the CMP, VBMS and Caseflow to process VHA mail and other relevant records as applicable. ***NOTE:*** *Any questions about the above systems or requests for access should be submitted via the VHA Appeals Access Request/Issue Reporting SharePoint site at https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/ClaimsandAppealsModernization/SitePages/VHA-Appeals-Access-Requests-Issue-Reporting.aspx. This is an internal VA website that is not available to the public.*

8. The Appeals Governance Council (AGC) provides centralized oversight of AMA implementation within VHA. AGC is comprised of select VHA executive leaders responsible for policies, processes and workload management across program areas affected by AMA. AGC works with the Claims and Appeals Modernization Office (CAMO) to provide overall VHA strategy and oversight of AMA implementation in VHA.

9. The AGC works with the CAMO to provide overall VHA strategy and oversight of AMA implementation in VHA. CAMO is VHA's lead for policy implementing AMA and works with affected VHA program offices to draft policy and procedures establishing new health benefits appeals infrastructure, as well as appropriate oversight and tracking to ensure that VHA benefits claims and appeals are processed efficiently and accurately.

10. CAMO is developing recommended training for individuals in all VHA business lines who make determinations of law or fact that affect VHA health care benefits. This includes individuals who process and adjudicate claims and appeals in the program offices listed in paragraph 6, and those at the VISN and VA medical facility level. This training will ensure that AMA's procedures and legal requirements are known

throughout VHA. Generalized training produced by CAMO will include informational documents and a forthcoming nationally available Training Management System module.

11. All VHA policy will be read to conform with this notice if possible. This notice supersedes all conflicting VHA policy. This notice serves as interim VHA policy on health benefits appeals until the full directive can be drafted and published.

12. Additional information on AMA can be found at https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/ClaimsAndAppealsModernization/SitePages/ProjectHome.aspx. ***NOTE:*** *This is an internal VA website that is not available to the public.*

13. All inquiries concerning this action should be addressed to VHABENEFITAPPEALS@va.gov.

14. This VHA notice will expire and be archived as of April 30, 2024.

BY DIRECTION OF THE OFFICE OF THE UNDER SECRETARY FOR HEALTH:

/s/ Maureen L. Marks, PhD
Acting VHA Chief of Staff

DISTRIBUTION: Emailed to the VHA Publications Distribution List on May 1, 2023.

VHA APPEALS MODERNIZATION

The appeals modernization process allows Veterans, their dependents and survivors; certain caregivers; and community providers to seek faster resolution of their disagreement with a Department of Veterans Affairs (VA) decision. If a Veteran receives an initial claim decision on or after February 19, 2019, and disagrees, they can choose one of three lanes to have their disagreement reviewed: a Supplemental Claim, a Higher-Level Review, or appeal to the Board of Veterans' Appeals (the Board).

1. WHICH LANE IS MOST APPROPRIATE FOR THE VETERAN?

a. **Higher-Level Review Lane.**

(1) A Higher-Level Review consists of an entirely new review of a claim by a new, experienced claim adjudicator.

(2) Claimants should select this option if they have no additional evidence to submit but believe the benefit was denied in error.

(3) Veterans Health Administration (VHA) cannot assist a Claimant in gathering new evidence, but if the adjudicator discovers a duty to assist error in VA's prior decision, the claim will be returned to the original decisionmaker to correct the error and issue a new decision.

(4) A Claimant or their representative can request an optional, one-time informal telephone conference with the adjudicator to identify specific errors in the decision.

b. **Supplemental Claim Lane.**

(1) Claimants should select this option if they can provide or identify new and relevant evidence to support their health benefits claim.

(2) Appropriate VHA staff members have the duty to assist the Claimant in gathering such evidence.

(3) VHA's review will include any new and relevant evidence obtained since the claim was last decided.

c. **Board Appeal.**

(1) A Board appeal is accomplished by completing VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), and submitting it according to the instructions on the form.

(2) Claimants should select this option if they want review by a Veterans Law Judge (VLJ).

(3) There are three options, or “dockets”, that an Appellant may select with a Board appeal:

(a) Direct Review docket: The fastest way to receive a decision when a Veteran or Appellant believes everything needed to approve their claim is already in the file. The Board will not consider any new evidence, and the VLJ will decide their case based on the evidence in the record at the time of the decision they are appealing.

(b) Evidence Submission docket: Some Veterans know they want or need to add additional evidence into their file for consideration by a VLJ. In that case, the Evidence Submission docket allows for additional evidence to be submitted by the Veteran or their representative within 90 days of appealing to the Board.

(c) Hearing docket: This option is best if a Veteran wants to appear personally before a VLJ. In most cases, this is done over video.

2. WHAT IF A CLAIMANT STILL DISAGREES WITH A DECISION?

a. If a Claimant disagrees with a decision from the Higher-Level Review lane, they may choose to submit a Supplemental Claim or Board appeal.

b. If a Claimant disagrees with a decision from Supplemental Claim lane, they may choose to submit another Supplemental Claim with new and relevant evidence, or elect either Higher-Level Review or Board appeal.

c. If a Claimant disagrees with a decision by the Board, they may either submit a Supplemental Claim with new and relevant evidence, file a motion for reconsideration with the Board, or appeal to the U.S. Court of Appeals for Veterans Claims.

d. A discrete issue can only occupy one review lane at a time. For example, a Claimant filing a Supplemental Claim with new and relevant evidence following denial of enrollment must either wait until they receive a decision on that Supplemental Claim or withdraw the Supplemental Claim before submitting a request for a Higher-Level Review or Board appeal regarding that denial.