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 rescinds existing policy on VHA health benefits appeals and establishes interim policy implementing the Veterans Appeals Modernization and Improvement Act of 2017 (AMA) and other legal requirements related to appeals until a full directive can be developed and published. Amendment dated February 23, 2021 established the Appeals Governance Council (AGC).

2. The Department of Veterans Affairs (VA) provides various benefits to millions of eligible Veterans, their dependents and survivors. 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 Veterans, dependents and survivors complete the necessary applications.
   b. VA has a duty to notify Veterans, dependents and survivors of the evidence necessary to prove their claims.
   c. VA has a duty to help Veterans, dependents and survivors gather relevant evidence from federal and other sources.
   d. VA has a duty to quickly and accurately decide Veterans’, dependents’ and survivors’ claims for benefits and to provide Veterans, dependents and survivors and their accredited representatives detailed notice explaining VA’s decisions and the requirements for initiating reviews of these decision.

4. Public Law 115-55, AMA, was passed in 2017 and took effect on February 19, 2019. This law revises the VA appeals system and permits a dissatisfied Veteran, dependent or survivor three options when contesting a VA benefit decision: a Higher-Level Review; a Supplemental Claim; or a Notice of Disagreement (NOD). 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. NOTE: A claimant (defined as a
Veteran, dependent or survivor) on whose behalf a written (including electronic where available) claim for health care benefits is filed with VHA or BVA, 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 one calendar year from the date on the notice of VHA’s decision to submit a request for higher level review or notice of disagreement. 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 on 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 an applicant and representative if requested. Submitting a Higher-Level Review requires VA Form 20-0996, Decision Review Request: Higher-Level Review, can be accessed at [https://www.vba.va.gov/pubs/forms/VBA-20-0996-ARE.pdf.](https://www.vba.va.gov/pubs/forms/VBA-20-0996-ARE.pdf). **NOTE:** Timely is defined as one 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 VA Form 20-0995, Decision Review Request: Supplemental Claim may be accessed at [https://www.vba.va.gov/pubs/forms/VBA-20-0995-ARE.pdf.](https://www.vba.va.gov/pubs/forms/VBA-20-0995-ARE.pdf.)

   c. **Notice of Disagreement.** A NOD is a form completed and submitted by a claimant or authorized representative of a claimant seeking review by a Veterans Law Judge of one or more issues previously denied by VHA. Submitting a notice of disagreement requires VA Form 10182 may be accessed at [https://www.va.gov/VAFORMS/va/pdf/VA10182.pdf.](https://www.va.gov/VAFORMS/va/pdf/VA10182.pdf.)

5. EIGHT POINT NOTICE

   Any time VHA decides a claim for benefits, VHA must provide the applicant an 8-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 effect VHA health care benefits, and are so bound by the requirements in paragraphs 5 and 6 and the new legal requirements under the AMA include:

**NOTE:** Under each program office, the types of claims, Higher-Level Review requests and appeals handled by each office is 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) Devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes and similar appliances.

d. **Office of Community Care, Delivery Operations.**

(1) Payment Operations and Management. Title 38 United States Code (U.S.C.) §§ 1725 and 1728 authorize VA 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 Code of Federal Regulations § 17.4135, Disputes
for more information VCA disputes and VHA Directive 1041, Appeals of Veterans Health Administration Clinical Decisions, for more information on community care eligibility appeals, which are considered medical determinations.

(2) Veteran and Family Member Programs.

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

(b) Foreign Medical Program.

(c) Camp Lejeune Family Member Programs.

(d) Spina Bifida Program.

(e) Children of Women Vietnam Veterans.

(3) Office of Community Care, Revenue Operations. Consolidated Patient Accounting Centers (CPACs).

e. VHA State Home Per Diem Program Office (SHPDGP).

7. The Office of Regulations, Appeals and Policy (RAP) 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, higher level reviews and appeals are processed efficiently and accurately.

8. VHA Directive 1032, Health Benefit Appeals Processing, dated August 16, 2013, is rescinded. All VHA policy will be read to conform with this notice if possible or, if not possible, such policy will be superseded by this notice. This notice will service as interim VHA policy on health benefits appeals until the full directive can be drafted and published.

9. The Appeals Governance Council (AGC) was established by the Deputy Under Secretary for Health to provide centralized oversight of AMA implementation within VHA. The AGC is comprised of select VHA Executive leaders responsible for policies, processes, and workload management across program areas affected by AMA. The AGC works with RAP to provide overall VHA strategy and oversight of AMA implementation in VHA.

10. All inquiries concerning this action should be addressed to VHABENEFITSAPPEALS@va.gov.

11. This VHA notice will expire and be archived as of January 31, 2021. However, the rescission information will stay in effect.
January 4, 2021

VHA NOTICE 2021-01(1)

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

/s/ Jon Jensen
Chief of Staff

VHA APPEALS MODERNIZATION

The new Appeals Modernization process allows Veterans, their dependents and survivors 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 new lanes to have their disagreement reviewed: as a supplemental claim, through a Higher-Level Review or by appealing directly to the Board of Veterans’ Appeals (BVA).

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, more senior 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 Higher-Level Reviewer discovers a duty to assist error in VA's prior decision, the Higher Level reviewer will return the claim 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 Higher-Level Reviewer to identify specific errors in the case.

b. Supplemental Claim Lane.

(1) Claimants should select this option if they have additional evidence that is new and relevant to support their health benefits claim.

(2) Appropriate VHA staff have the duty to assist the claimant in gathering new and relevant evidence to support the claim.

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

c. Notice of Disagreement.

(1) A Notice of Disagreement (NOD) is an appeal to the BVA by completing VA Form 10182 and submitting it to the mailing address or fax number listed on the form.

(2) Claimants should select this option if they want review by a Veterans Law Judge.
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 a NOD to appeal to BVA.

   b. If a claimant disagrees with a decision from the Supplemental Claim Lane, they may choose to submit another Supplemental Claim with new, relevant evidence, elect Higher-Level Review or a NOD to appeal to BVA.

   c. If a claimant disagrees with a BVA decision they may either submit a Supplemental Claim with new, relevant evidence, file a motion for reconsideration with BVA 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 and new, relevant evidence following denial of enrollment must either withdraw that Supplemental Claim in writing or wait until they receive a decision on that Supplemental Claim before submitting a request for a Higher-Level Review or a Notice of Disagreement regarding enrollment.