



DEPARTMENT OF VETERANS AFFAIRS

Implementation of the Dr. Kate Hendricks Thomas Supporting Expanded Review for Veterans in Combat Environments (SERVICE) Act

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing this notice to inform the public about how it is implementing the SERVICE Act.

DATES: This notice is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Office of Women's Health, Acting Chief Officer, Dr. Sally Haskell, at 202-461-7671. This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION: The SERVICE Act was signed into law by the President on June 7, 2022 (Pub. L. 117-133, 136 stat. 1238). The SERVICE Act amended 38 U.S.C. 7322 to ensure that certain Veterans who were deployed in support of a contingency operation in certain locations and during certain time periods can receive a breast cancer risk assessment and clinically appropriate mammography screening. As added by the SERVICE Act, 38 U.S.C. 7322(c) requires this eligibility expansion to be included in the national mammography policy mandated by subsection (a). This notice provides information on how VA will implement the amendments made by the SERVICE Act and is not a solicitation for public comment or request for information regarding VA's implementation of the SERVICE Act as described in this notice. Therefore, responses to this notice may not be used to inform VA's implementation of the SERVICE Act.

VA is announcing its program for breast cancer risk assessment and clinically appropriate mammography screening for any individual covered by the SERVICE Act.

VA considers the amendments made by the SERVICE Act to be self-executing. We will therefore issue no regulations but instead provide this notice to announce operationally how VA will implement these new authorities. This notice includes sections on eligible Veterans, eligible services, eligible providers and other matters.

Eligible Veterans

General Discussion

The SERVICE Act includes as Veterans eligible for a breast cancer risk assessment and clinically appropriate mammography screening those Veterans who have "a record of service in a location and during a period specified in subsection (d)". See 38 U.S.C. 7322(b)(2)(B). This authority allows Veterans under the age of 40 who were not otherwise previously eligible to be included in VA's National mammography screening policy but who may have an elevated risk due to in-service toxic exposures such as an open burn pit. As amended, section 7322(b)(2) requires VA's National policy to include Veterans who are over the age of 39 and Veterans, without regard to age, who have clinical symptoms, risk factors, a family history of breast cancer, or a record of service in a location and during a period specified in subsection (d). A record is defined as a DD Form 214, Certificate of Release or Discharge from Active Duty, or original Certificate of Discharge, military orders, service records and/or records of awards received. All documentation will be reviewed to determine eligibility. If these documents are not present, VA will follow its standard process to attempt retrieval of relevant documents. This information will be provided to Veterans in the same manner through which they contacted VA to request SERVICE Act care, unless the Veteran has specified a preferred alternate means of contact. In these cases, the policy shall, pursuant to section 7322(b)(3), also provide for clinician discretion when developing the clinical screening recommendations for the Veteran-cohorts covered by

section 7322(b)(2). Breast cancer screening (screening mammogram) is generally applicable only to birth sex female Veterans and transgender women Veterans who have been on hormone therapy for 5 years or more. Birth sex male Veterans who are not symptomatic will not be screened, but those who develop breast symptoms such as breast lump, breast pain, or nipple discharge will be eligible for a risk assessment and diagnostic mammogram.

Locations and Periods of Active-Duty Service

Section 7322(d), as added by the SERVICE Act, establishes the following qualifying locations and service periods:

(A) Iraq during:

(i) The period beginning on August 2, 1990, and ending on February 28, 1991.

(ii) The period beginning on March 19, 2003, and ending on such date as the Secretary determines burn pits are no longer used in Iraq.

(B) The Southwest Asia theater of operations, other than Iraq, during the period beginning on August 2, 1990, and ending on such date as the Secretary determines burn pits are no longer used in such location, including the following locations:

(i) Kuwait.

(ii) Saudi Arabia.

(iii) Oman.

(iv) Qatar.

(C) Afghanistan during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Afghanistan.

- (D) Djibouti during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Djibouti.
- (E) Syria during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Syria.
- (F) Jordan during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Jordan.
- (G) Egypt during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Egypt.
- (H) Lebanon during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Lebanon.
- (I) Yemen during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Yemen.
- (J) Such other locations and corresponding periods as set forth by the Airborne Hazards and Open Burn Pit Registry established under section 201 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Pub. L. 112-260; 38 U.S.C. 527, note).

Section 7322(d)(1)(K) authorizes VA, in collaboration with the Department of Defense, to include such other locations and corresponding periods as determined appropriate in a report to Congress pursuant to section 7322(d)(2). At this time, VA has identified no such locations and has not yet submitted a report to Congress; the first report to Congress is due no later than June 7, 2024. VA will announce any added locations and periods of service, which will only be effective at the time of such announcement. There will be no individual *ad hoc* decisions made by VA providers, making this content self-executing.

Section 7322(d)(3) provides that a location under this subsection does not include any body of water around or any airspace above such location. VA has no discretion in this regard.

Section 7322(d)(4) defines the term “burn pit” to mean an area of land that— (A) is used for disposal of solid waste by burning in the outdoor air; and (B) does not contain a commercially manufactured incinerator or other equipment specifically designed and manufactured for the burning of solid waste. VA has no discretion in this regard.

For any individual who seeks a mammography screening under section 7332(c), VA will confirm an individual's qualifying service under section 7332(d).

Application

This eligibility for mammography screening in section 7322(c) is akin to eligibility for a registry examination. For registry examinations, individuals must apply for such screening. Consistent with this practice, VA will require individuals to apply for a mammography screening pursuant to section 7322. Veterans can choose to either apply for enrollment in VA health care or to apply only for care under the SERVICE Act. If Veterans are seeking SERVICE Act care only, they will need to check the Registration box on the 10-10EZ (under “Type of Benefit(s) Applying for”), and VA will then ensure they are placed in the system as registered only.

VA will provide applicants an eligibility determination in accordance with the requirements set forth in 38 U.S.C. 5104. Eligible Veterans will be provided a mammogram only when clinically appropriate, as determined by a VA clinician. A VA clinician's decision to deny an eligible Veteran's request for a mammogram may be appealed under VA's Clinical Appeals processes.

Eligible Services

Veterans who served in certain locations during specific periods identified by law, regardless of their enrollment in VA health care, may receive clinically appropriate mammography screening, risk evaluation and counseling. We recognize that without these amendments, asymptomatic individuals less than 40 years of age with qualifying service in a covered location would not likely be able to receive mammography screening on that basis outside the VA health care system. Further, section 7322(c) ensures that Veterans who are not enrolled in VA health care or eligible to receive VA health care without enrolling may receive a breast cancer risk assessment and clinically appropriate mammography under this Act. The screening will be furnished to all eligible Veterans at no cost to the individual.

While section 7322(c) refers to eligibility for “a mammography screening by a health care provider of the Department,” this must be clinically indicated in the first place, and if clinically indicated, would require the prior, voluntary informed consent of the individual in accordance with 38 U.S.C. 7331 and 38 CFR 17.32. Each eligible individual who seeks a mammogram under section 7322(c) will receive, in advance of such screening, a breast cancer risk assessment to determine if further evaluation is clinically needed. If so, the individual will receive all relevant clinical information about the nature of the screening, their individual risk assessment for breast cancer based on all relevant clinical factors and histories, reasonably foreseeable associated risks, complications or side effects of the screening, reasonable and available alternatives to undergoing the screening and anticipated results if no screening occurs. In other words, they will receive all the relevant information an individual would want to make a full, informed, consensual decision. The determination of clinical need and informed consent can occur at the same encounter, but the latter is dependent on the former.

Veterans seeking care under this Act are understandably concerned about any long-term adverse health consequences associated with any in-service toxic exposures

they may have experienced while deployed on active duty to a covered location, even if they are not experiencing symptoms. We emphasize, though, the inherent risk in undergoing mammography; mammography screening is not currently recommended by the United States Preventive Services Task Force, the American Cancer Society, or other agencies for average-risk women younger than 40 years of age because interpretation is hindered by dense breast tissue in young women, leading to frequent false positive results. False positive results can lead to unnecessary additional imaging or diagnostic testing through their personal treating providers, including biopsies and unnecessary surgeries, the costs of which may be borne by the subject individual. Veterans seeking a mammography screening under section 7322(c) will be assessed to ensure that further evaluation is clinically needed, and if so, Veterans will receive a risk assessment, along with clinically appropriate discussions before an ultimate decision is made on whether to furnish a mammography.

There are several important limitations regarding the authority in section 7322(c) that should be made clear. First, the expanded eligibility authority in section 7322(c) does not create eligibility for Veterans to obtain mammography screening if it is not determined to be clinically appropriate. Clinical necessity is a threshold requirement for the delivery of all care. If care is clinically indicated, a patient must also provide informed consent to receive such care. Second, section 7322(c) does not independently authorize the provision of any recommended or additional needed medical care through VA; Veterans who are enrolled in VA health care or eligible to receive VA health care without enrolling may receive any necessary follow up care from VA, but Veterans without such eligibility can only receive the breast cancer risk assessment and clinically appropriate mammography screening as authorized by section 7322(c). Section 7322(c) does not authorize the delivery of any care or services for the treatment of breast cancer or any other condition for Veterans who are not enrolled in VA health care.

Asymptomatic Veterans less than 40 years of age may return for the breast cancer risk assessment and mammogram screening as indicated every 5 years until age 40 when they would become eligible for standard breast cancer screening. This is consistent with current national guidelines and standards. Veterans who are eligible for care exclusively under the SERVICE Act will be eligible to present for a breast cancer risk assessment and mammogram screening as indicated more frequently than once every 5 years at any time in which they develop interim symptoms such as breast lump, breast pain or nipple discharge. This is also consistent with current national guidelines and standards. Third, section 7322(c) does not establish a claim for service-connection. Section 7322(c) only authorizes the provision of a breast cancer risk assessment and mammogram screening; it has no effect on establishing eligibility for any other benefits.

The American College of Radiology has established a uniform way for radiologists to describe mammogram findings. See <https://www.cancer.gov/types/breast/mammograms-fact-sheet#what-is-the-breast-imaging-reporting-and-database-system-bi-rads>. The Breast Imaging Reporting and Data System (BI-RADS) categories included in mammography reports help inform radiologists and other providers whether any follow-up testing, or imaging is recommended or needed, including any MRI imaging, biopsy, or sonogram. *Id.* VA will ensure the mammography screening performed is of the quality required for the assigned radiologist to reliably list the appropriate BI-RADS category. BI-RADS are scored from 0-6. BI-RADS 0 represents an incomplete evaluation. In this case, VA must perform additional imaging as needed, such as ultrasound, to assign a final BI-RADS category. VA may perform additional imaging, such as ultrasound, for all SERVICE Act eligible Veterans to reach a “complete” exam designation (BI-RADS 1-6). VA is not authorized under the SERVICE Act to provide further care to Veterans based on the results of the breast cancer risk assessment and/or clinically appropriate mammogram.

If the Veteran is enrolled in VA health care, VA may perform the additional imaging that is required because of an abnormal BI-RADS (3-6). However, if the Veteran is not enrolled in VA health care and additional imaging is needed beyond establishing the final BI-RADS (such as follow up for an abnormal BI-RADS category (3,4,5 or 6), VA will not be able to provide that care and will advise such individuals to pursue follow-up care promptly with their health care provider.

Eligible Providers

Section 7332(c) establishes a Veteran's eligibility for a mammography screening "by a health care provider of the Department." This language allows for screenings to be conducted by VA-authorized community providers who have entered into an appropriate agreement with VA to furnish such care. As mentioned above, many Veterans who qualify under section 7322(c) would not be eligible for a mammography screening in the community (based on applicable screening standards to which the health care system outside of VA is bound). Based on the Veteran's eligibility under section 7322(c), however, VA can provide the mammography screening in-house or through a contractual arrangement. Any service VA is authorized to provide the mammography screening, it may also provide by contract or agreement, subject to other applicable law and regulations. Veterans who are covered under the Veterans Community Care Program (38 U.S.C. 1703 and §§ 17.4000 through 17.4040 of title 38, CFR) may elect to receive their screening in the community if they are eligible to make such an election under that Program. For Veterans who are not covered for purposes of 38 U.S.C. 1703 and §§ 17.4000 through 17.4040 of title 38, CFR, if VA is not able to furnish the mammography screening itself, a VA provider will order such a screening to be performed, and, per the terms of the authorization, receive a report of the imaging results. We do not view this as conflicting with the language of the SERVICE Act

because it is the VA provider who still provides this preventive health care benefit, even if indirectly in some cases.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 20, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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