



## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

#### Processing Applications for Health Care, Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring Our PACT Act of 2022

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notification of sub-regulatory guidance.

**SUMMARY:** This notice informs the public of the Department of Veterans Affairs (VA) implementation of the Honoring our PACT Act of 2022, which expands health care to three new cohorts of toxic-exposed veterans.

**DATES:** The guidance is effective upon publication. VA invites comments on this notice and its plan for implementation. To ensure VA considers your comment, comments are to be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on [www.regulations.gov](http://www.regulations.gov) as soon as possible after they have been received. VA will not post on [www.regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly

identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Ralph Weishaar, Director, Business Support Office, VHA Member Services (15MEM) Business Policy, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202-461-9700 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

On August 10, 2022, the President signed into law the Honoring our PACT Act of 2022 (the PACT Act), Public Law 117-168. Section 103(a)(1) of the PACT Act amended section 1710(e)(1) of title 38, United States Code (U.S.C.) to establish eligibility for hospital care, medical services, and nursing home care for three new cohorts of toxic-exposed veterans. Sections 1710(e)(1)(G) through (I) describe these three new cohorts of toxic-exposed veterans as follows:

- Cohort 1: Veterans who participated in a toxic exposure risk activity while serving on active duty, active duty for training, or inactive duty training. (See 38 U.S.C. 1710(e)(1)(G)).
- Cohort 2: Covered veterans as defined in 38 U.S.C. 1119(c). (See 38 U.S.C. 1710(e)(1)(H)). Covered veterans are those veterans who:
  - Performed active military, naval, air, or space service on or after August 2, 1990, while assigned to a duty station in (including airspace above): Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, or the United Arab Emirates; or
  - Performed active military, naval, air, or space service on or after September 11, 2001, while assigned to a duty station in (including airspace above) Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria,

Yemen, Uzbekistan, or any other country determined relevant by VA

(note: VA has not determined any other country relevant at this time).

- Cohort 3: Veterans who deployed in support of Operation Enduring Freedom, Operation Freedom's Sentinel, Operation Iraqi Freedom, Operation New Dawn, Operation Inherent Resolve, and Resolute Support Mission. (See 38 U.S.C. 1710(e)(1)(I)).

Section 1710(e)(6)(A), as added by section 103(a) of the PACT Act, established a specific schedule for eligibility for these veterans depending upon their cohort and their date of discharge or release from the Armed Forces. However, section 1710(e)(6)(B)(i) authorizes VA to modify, to an earlier date, the start dates of VA health care eligibility for the three new cohorts of toxic-exposed veterans. The Secretary has determined modifying these dates is appropriate based on the number of veterans receiving hospital care, medical services, and nursing home care under section 1710(e)(1)(G) through (I) and the resources available to VA.

Consequently, VA is announcing that, effective March 5, 2024, veterans in the three cohorts described above, corresponding to section 1710(e)(1)(G) through (I), are eligible to enroll in VA health care on this basis. Modifying the phased-in schedule to an earlier single eligibility expansion date will provide an all-at-once approach for newly eligible veterans based on the amendments made by section 103(a) of the PACT Act.

To help expedite the VA health care Priority Group upgrade process, VA is developing and will implement system enhancements to VHA's Enrollment System (VES) to assess the enrollment records of veterans who VA enrolled in Priority Group 6 based on their status as a combat veteran (as described in 38 U.S.C. 1710(e)(1)(D)) to determine their eligibility for continued assignment to Priority Group 6 based on their qualification in Cohort 2 or 3. Additionally, VES will assess the enrollment records of veterans enrolled in Priority Groups 7 and 8 to determine their eligibility for assignment

to Priority Group 6 under Cohort 2 or 3. By the end of fiscal year 2024, VA will begin conducting targeted outreach to veterans currently enrolled in Priority Groups 7 and 8 whom VA could not determine eligibility for assignment to Priority Group 6 based on being in Cohorts 1, 2, or 3. VA will provide guidance to these veterans on the new authorities, along with instructions on how to submit a VA Form 10-10EZR, Health Benefits Update Form, for consideration of an upgrade to their enrollment Priority Group.

### **Eligibility Based on Toxic Exposure Risk Activity (TERA)**

Background: Cohort 1 veterans are those who participated in a toxic exposure risk activity (TERA) while serving on active duty, active duty for training, or inactive duty training. If the veteran only participated in a TERA outside of one of these service periods (e.g., as a civilian or private contractor), the veteran is not eligible as a Cohort 1 veteran. 38 U.S.C. 1710(e)(4)(C) defines TERA as any activity that requires a corresponding entry in an exposure tracking record system (as defined in 38 U.S.C. 1119(c)) or that the Secretary determines qualifies for purposes of this subsection when taking into account what is reasonably prudent to protect the health of veterans. 38 U.S.C. 1119(c) defines the term “exposure tracking record system” as any system, program, or pilot program used by VA or the Department of Defense to track how veterans or members of the Armed Forces have been exposed to various occupational or environmental hazards; this includes the Individual Longitudinal Exposure Record (ILER) or successor system.

Description of TERA: VA has determined under 38 U.S.C. 1710(e)(4)(C)(ii) that veterans who were exposed to one or more of the following hazards or conditions during active duty, active duty for training, or inactive duty training participated in a TERA: air pollutants (burn pits, sand, dust, particulates, oil well fires, sulfur fires), chemicals (pesticides, herbicides, depleted uranium with embedded shrapnel,

contaminated water), occupational hazards (asbestos, industrial solvents, lead, paints including chemical agent resistant coating, firefighting foams), radiation (nuclear weapons handling, maintenance and detonation, radioactive material, calibration and measurement sources, X-rays, radiation from military occupational exposure), and warfare agents (nerve agents, chemical and biological weapons). This list is not comprehensive; if veterans believe they participated in other activities that constitute a TERA, they should identify the TERA in their application so VA can determine whether they qualify. Veterans can locate additional military exposure categories on VA's Public Health website at <https://www.publichealth.va.gov/exposures/>.

Process: Veterans must apply (either as a new enrollee on VA Form 10-10EZ, Application for Health Benefits, or as an existing enrollee on VA Form 10-10EZR, Health Benefits Update Form) for VA to determine whether they participated in a TERA and are eligible for enrollment in Priority Group 6 on that basis. If VA has already determined that a veteran participated in a TERA in the context of a disability claim, that decision will be binding for health care enrollment purposes. If VA has not determined a veteran participated in a TERA, VA will consider required entries in the veteran's ILER, the veteran's Service personnel records, and other sources as necessary, including the veteran's military service record, which may include the veteran's Military Occupational Specialty, and any active military, naval, air, or space service or active duty for training or inactive duty for training to determine whether the veteran participated in a TERA, as described above.

### **Covered Veterans and Veterans Who Deployed in Support of Certain Contingency Operations**

Background: As described above, veterans in Cohorts 2 and 3 served in certain locations during certain time periods (generally, during or after the Persian Gulf War) or in support of certain contingency operations (generally after September 11, 2001).

Process: For current enrollees, VA will review its existing records to determine if the enrollee is a covered veteran or deployed in support of an identified contingency operation. If the veteran's service qualifies, VA will place the veteran in Priority Group 6 unless the veteran qualifies for a higher Priority Group. VA will review new applications for enrollment to determine whether the veteran is eligible for enrollment in Priority Group 6 as a Cohort 2 or Cohort 3 veteran based on qualifying service.

### **Conclusion and Next Steps**

VA is currently drafting a proposed rule to codify in regulation the statutory changes made by section 103(a) of the PACT Act. Due to the time required to promulgate regulations, VA will implement the law and begin processing applications for VA health care pursuant to the amendments made by section 103(a) of the PACT Act on March 5, 2024, based on the sub-regulatory guidance contained in the Under Secretary for Health (USH) Memorandum associated with this Notice. To ensure the enrollment of all veterans eligible under this authority, VA will also begin targeted outreach to current enrollees who may benefit from these changes to provide further information on the amendments made by section 103 of the PACT Act and how to request a Priority Group upgrade. VA will also engage in outreach to unenrolled veterans to encourage them to apply. VA will evaluate the records of veterans applying for VA health care for the first time, if they meet the basic threshold eligibility requirements for VA health care, to determine eligibility under Cohorts 1 through 3 as added by section 103 of the PACT Act (as well as any other bases for eligibility). Issuing the USH Memorandum will allow VA to implement 38 U.S.C. 1710(e)(1)(G) through (I) and deliver health care to veterans as quickly as possible while simultaneously continuing efforts to promulgate the implementing regulations. VA will provide the USH Memorandum to VHA Enrollment and Eligibility staff and VA medical facility directors.

This USH Memorandum is a supporting document and is located at

<http://www.regulations.gov>.

How to Apply: Any veteran who wants to apply for new VA health care enrollment can do so by submitting a VA Form 10-10EZ: (1) in-person or by mail to a VA medical facility; (2) by mail to the Health Eligibility Center, 2957 Clairmont Rd., Suite 200, Atlanta, GA 30329; (3) online at <https://www.va.gov/health-care/how-to-apply/>; or (4) by calling 1-877-222-VETS (8387). Veterans enrolled in VA health care who want to apply for an upgrade to their current Priority Group can do so by submitting a VA Form 10-10EZR using any of the four methods described above. Should a veteran receive an enrollment decision with which they disagree, they can appeal the decision with VA.

For more information about the PACT Act and your benefits, access <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/> or contact 1-877-222-VETS (8387).

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on February 23, 2024, 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.

**Michael P. Shores,**

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