

could have been diagnosed with squamous cell carcinoma, and May 2015, when Culhane was diagnosed, caused the 2017 recurrence of his cancer. The enlargement of a lymph node, nearly double its September 2013 size, showed that Culhane's cancer progressed and that the number of cancer cells increased during the 20-month delay in diagnosis, the judge said, citing the medical testimony. The medical expert noted Culhane's recurrence happened in the area where he had received radiation treatment, evidence of resistant cells.

When Culhane underwent the radical tonsillectomy and a left modified neck dissection in March 2017 at Erie County Medical Center, the surgical procedure took five hours, longer than the usual three to four hours. "Based on these opinions, the court finds that it is more likely that Mr. Culhane will have another recurrence because he has already had a recurrence," Wolford said. "Further, the court finds that if Mr. Culhane does have a second recurrence, it would increase the chances of him dying as a result of the cancer."

On a separate claim, the judge ruled Culhane failed to establish medical malpractice that the medical center failed to timely diagnose his malignant melanoma when a skin lesion on his right temple was examined. The medical center's dermatology clinic determined it was benign in April 2014. Ten months later, a dermatologist in Rochester, seeing Culhane for a different skin issue, noticed the lesion, performed a biopsy and confirmed the diagnosis of a malignant melanoma. Culhane said he hopes the verdict will help other veterans get proper care and treatment. "There's a lot of good people who work there and take veterans' care at heart," he said. "There's a few who don't seem to care, don't seem qualified to do the job they're doing. And they seem to stay on." [Source: The Buffalo News | Patrick Lakamp | January 3, 2021 ++]

VA Presumptive AO Diseases

Update 36: Parkinsonism, Bladder Cancer, & Hypothyroidism

On January 1, 2021, **H.R. 6395**--the FY 2021 NDAA, containing the Tester/Harder Amendment--was passed into law. At long last, Vietnam veterans exposed to Agent Orange who have been diagnosed with Parkinsonism, Bladder cancer, and/or Hypothyroidism will be deemed service-connected and be eligible for healthcare and compensation:

Title XCI--Veterans Affairs Matters, Section 9109 reads as follows: Additional Diseases Associated with Exposure to Certain Herbicide Agents for Which There is a Presumption of Service Connection for Veterans Who Served in the Republic of Vietnam. Section 1116(a) (2) of title 38, United States Code, is amended by adding at the end the following new subparagraphs: (I) Parkinsonism. (J) Bladder cancer. (K) Hypothyroidism. This and the below other highlights of the bill are contained in the conference report at https://republicansveterans.house.gov/uploadedfiles/hr_7105_vets_division_section_summaries_final.pdf:

- Modification of licensure requirements for Department of Veterans Affairs health care professionals providing treatment via telemedicine.
- Additional care for newborn children of veterans.
- Expansion of eligibility for HUD--VASH.
- Study on unemployment rate of women veterans who served on active duty in the Armed Forces after September 11, 2001.
- Access of veterans to Individual Longitudinal Exposure Record.

- Department of Veterans Affairs report on undisbursed funds.
- Transfer of Mare Island Naval Cemetery to Secretary of Veterans Affairs for maintenance by National Cemetery Administration.
- Comptroller General report on Department of Veterans Affairs handling of disability compensation claims by certain veterans.
- Additional diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who served in the Republic of Vietnam.

On Jan. 5, 2021, President Trump signed into law **H.R. 7105**, The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvements Act of 2020. “This is the culmination of two years of bipartisan work,” noted Rep. Phil Roe (R-Tenn.). “There is something in this bill for just about every one of our nation’s veterans and their loved ones.” View bill conference report at: https://republicans-veterans.house.gov/uploadedfiles/hr_7105_vets_division_section_summaries_final.pdf. This bill will:

- Require VA to return Disability Based Questionnaires to their public-facing website and requires the VA to accept Disability Based Questionnaires as evidence in disability compensation claims, even when completed by non-VA medical providers.
- Increase the timeframe of the Vietnam War Era of military service, stating that the Vietnam Era began on November 1, 1955, instead of February 28, 1961, which will extend benefits to the more than 3,200 U.S. Military Assistance Advisory Group (MAAG) who served in the Vietnam War during November 1, 1955 – February 27, 1961.
- Eliminate the 12-year time limit governing applications for Veteran Readiness & Employment (VR&E) benefits for veterans who separated from military service after January 1, 2013 (i.e., making VR&E the same as the “Forever G.I. Bill”).
- Set new limits on when the VA’s Debt Management Center may initiate debt collection proceedings against veterans.
- Lower the age to 55 at which a remarried surviving spouse of a Veteran may still receive Dependency Indemnity Compensation (DIC).
- Agent Orange Exposure Fairness Act S. 332 and H.R. 566; requires a GAO briefing and report on repealing the manifestation period for presumptions of service connection for certain diseases associated with exposure to herbicide agents.
- Increase the federal government’s special pensions for the surviving spouses of Medal of Honor recipients.
- Require the Veterans Benefits Administration to establish specialized teams for processing Military Sexual Trauma claims.
- Allow veterans filing a claim for a physical or mental health condition resulting from sexual trauma to choose the gender of their Compensation & Pension Exam provider.
- Allow National Guard and Reserve service under Title 32 orders to count for VA Home Loan eligibility.
- Require the VA to allow veterans to update dependent information via the eBenefits website.
- Require the VA to study cancer, diseases, or illness experienced by those who served at the Karshi-Khanabad (K2) Air Base in Uzbekistan between October 1, 2001, and September 30, 2005, and expands VA’s open burn pit registry to include burn pits located in Uzbekistan.
- Specify circumstances under which a Service Member, including members of the National Guard and Reserves, is considered service-connected for a disability or death from COVID-19.

- Order the VA's Under Secretary for Benefits to ensure every paper or electronic document relating to the receipt of non-service-connected pension include a notice that the Department does not charge any fee in connection with the filing of an initial claim for benefits.
- *Services for Women Veterans*
 - Devotes \$20 million for retrofitting healthcare facilities "to make it safer and easier for women veterans to get care" and requires the Veterans Health Administration to submit plans for approval regarding how they will designate these funds.
 - Mandates that every VA facility have at least one women's health primary-care provider.
 - Creates a permanent Office of Women's Health within the Veterans Health Administration, tasked with providing oversight over all Women's Health Programs within the VA
 - Requires VA leaders to create "an anti-harassment and anti-sexual assault policy" and designate officials to take responsibility for any related complaints.
 - Requires VA to create a training module for community healthcare providers that is specific to women veterans.
 - Expands the Advisory Committee on Women Veterans' mandate to include examining the effect of intimate partner violence on women veterans, and creates a VA pilot program to care for survivors of intimate partner violence.
 - Ensures that servicemembers and veterans seeking access to care and counseling related to Military Sexual Trauma can seek this care at any VA healthcare facility, not limited to Vet Centers.
 - Requires VA to enter into agreements with public or private entities, to provide free legal services to Women veterans to meet the following unmet needs: Child Support, Eviction & Foreclosure Prevention, Discharge Upgrade Appeals, Financial Guardianship, Credit Counseling, and Family Reconciliation Assistance.
 - Improves access to prosthetic items made specifically for women at VA medical facilities.
- *Enhanced Healthcare Services*
 - Waives VA requirements for receipt of per diem payments for domiciliary care at State Veterans Homes and modification of eligibility for payments.
 - Prohibits the Veterans Health Administration from collecting co-payments from veterans who are members of a Native American tribal nation.
 - Makes permanent a pilot program to provide childcare to veterans enrolled in the VA healthcare system and gives the Veterans Health Administration five years to implement the provision of childcare at every VA medical center.
 - Requires State Veterans Homes to report on COVID-19 cases within these facilities to the VA.
 - Requires the VA to pay for emergency transportation of newborns.
 - Requires VA medical facilities to have drop-off locations for controlled substances medications.
 - Mandates an annual audit of facility-level appointment scheduling, which the Veterans Health Administration must share with Congress.
- *Services for Homeless Veterans & Veterans at Risk of Homelessness*
 - Expands the HUD-VASH voucher program to veterans with Other Than Honorable characterizations of discharge.
 - Increases the amount of grant funds awarded to organizations providing services to homeless veterans to 115 percent of the State Veterans Home domiciliary rate, and allows for additional increases of grant funds in higher cost-of-living areas.

- Allows the VA to award grants to legal services organizations assisting veterans who are homeless and veterans at imminent risk of homelessness.
- Requires the VA to study existing programs that provide assistance to Women veterans who are homeless, with a goal of identifying continued areas of need.
- Extends contracts for VA Homeless Veteran Case Managers to prevent gaps in services for homeless veterans during COVID-19.

[Source: VVA Government Relations Department | News Flash | January 8, 2021++]

VA COVID-19 Cases

Update 10: JAN On Pace to Be the Agency's Deadliest Month

More than 7,000 Department of Veterans Affairs patients had died of the coronavirus as of 7 JAN— equating to about 24 people killed each day since the first veteran's death in March. The VA reported 7,099 total deaths Thursday and nearly 16,000 active coronavirus cases. Only seven days into the new year, January is already on pace to be the agency's deadliest month. About 1,300 VA patients died of the virus in December, and the year ended with 6,500 dead VA patients. The department has recorded about 600 deaths in January with 24 days to go. In addition, the VA has reported 13 employee deaths so far this month, bringing the total employee deaths to 104. December was previously the deadliest month for employees, with 16 deaths.

Deaths and cases are increasing at the same time the department is working to vaccinate its health care staff and most vulnerable patients. The VA had administered 146,000 vaccines as of this week, including to 132,000 health care workers and 14,000 veterans. The vaccines are being administered at 195 VA sites across the country. VA Secretary Robert Wilkie has praised the pace of his agency's efforts to vaccinate employees and veterans. "This is a massive undertaking that is happening at a rapid pace," Wilkie said in a statement 5 JAN.

Other officials, though, have acknowledged that vaccine distribution has gotten off to a sluggish start. About 2 million Americans received their first dose of the coronavirus vaccine by the end of 2020, falling far short of expectations that 20 million people would be vaccinated by that time. "We agree that number is lower than what we hoped for," Dr. Moncef Slaoui, chief adviser to Operation Warp Speed, said 30 DEC. "We know it should be better, and we're working to make it better." The VA is first vaccinating residents and staff of the agency's long-term community living centers, as well as spinal cord injury centers. After that phase, the VA will shift its focus to vaccinating VA employees who treat coronavirus patients.

Of the nearly 16,000 active coronavirus cases among VA patients as of 7 JAN, the facilities reporting the highest numbers were in Loma Linda and Long Beach, California. The numbers reflect nationwide trends showing multiple days of record-setting coronavirus deaths in those areas. The VA's data on cases and deaths does not include all veterans in the United States, nor does it include the hundreds of deaths that have occurred at 162 state-run veterans' homes. Because of a bill signed into law this week, the VA is required to publicize coronavirus deaths and cases at state-run veterans' homes for the first time by 4 FEB. [Source: Stars & Stripes | Nikki Wentling | January 7, 2021 ++]
