

Congress of the United States
Washington, DC 20515

April 22, 2020

The Honorable Robert Wilkie
Secretary of Veterans Affairs
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

Dear Secretary Wilkie,

We write to express our concern about the Department of Veterans Affairs (VA) plan to change the disability claims process in two ways that will make it more difficult for veterans to have meaningful representation and advocacy. A proposed rule change would limit the types of individuals who can access case files, hindering veterans' ability to get effective assistance with the process. Even more concerning is the announcement that the VA is discontinuing the 48-hour review period prior to finalizing a claim determination, a process that helped ensure veterans weren't denied benefits because of small and technical mistakes in documents.

Veterans who sustained injuries in service to our country have earned their benefits, and we should be working together to make it easier for them to receive them, not throwing up new roadblocks. These changes will make the claims process more cumbersome for veterans. Under current regulations, law students, legal interns, paralegals, and veterans' service organization support staff have "read-only" access to the Veterans Benefits Management System -- if the veteran consents. This allows these individuals to assist accredited attorneys or representatives with casework, allowing the primary caseworker to build a stronger case and provide a better outcome for the veteran. The VA's new proposed rule, published on February 18, 2020, restricts access to the electronic system to only accredited attorneys, agents, or representatives. Given that these ancillary, supervised individuals are only allowed access with a veteran's consent, this change seems unnecessary. . Limiting access in the name of efficiency or privacy is unnecessary in a veteran-friendly system where the veteran is the one granting access to his or her own case file.

In addition, Dr. Paul Lawrence, undersecretary for benefits, announced that the VA will end the decades-long practice of providing veteran representatives with 48 hours for a technical review before the VA issues a decision on a claim. This announcement did not specify when the change would take effect. The practice of allowing a technical review by an accredited representative dates back to 1957, and it is the last opportunity for a representative to intervene in the process to fix any errors. This critical quality control step in the claims process ensures that errors in the file are caught before the case is finalized, thereby improving the accuracy of claims and reducing the need for appeals, which are often lengthy and further delay the receipt of benefits to which a veteran is entitled.

The VA claims that digitization of the claims process and modernization of the appeals process negate the need for the review period. Yet, according to statistics provided by some veterans' service organizations, veteran representatives catch errors during that 48-hour review period in approximately 7 percent of cases. Just recently, a New Hampshire veteran's advocate reported an error during that review period. If that error had not been caught, the veteran would have had to

file an appeal and wait months more to receive benefits. This change could lead to more costly appeals and delays for veterans.

We are deeply concerned that the VA is phasing out this quality review mechanism in the midst of the ongoing COVID-19 pandemic. Staff assisting veterans are working at remote locations with fewer resources during an ever-evolving situation. Our country is facing an unprecedented emergency, and confusion during this crisis only leads to further frustration. We fear the timing of this decision may create additional hardships for veterans, and we urge you to postpone any change to the 48-hour review period until the VA and its stakeholders are able to have a more thorough discussion about alternative solutions, rather than a complete elimination of this opportunity for pre-decisional review.

Given our concerns, we request that you provide the following information regarding these rule changes no later than May 4, 2020:

1. According to VA records, what percentage of cases are found to have errors during the 48-hour review period?
2. Did you seek input from public stakeholders, including veterans themselves, before announcing the decision to discontinue the 48-hour review period? How are you engaging with those stakeholders as you move towards this change?
3. How will a veteran's representative be notified when a draft rating decision is uploaded into the Veterans Benefits Management System? Will a draft decision be uploaded in every case? How long will the decision remain in draft form before being finalized?
4. When will these changes go into effect? How are you notifying veterans currently going through the claims process who may be impacted by these changes?
5. How will these changes affect the backlog of claims that are going through the appeals process?
6. Why did the VA announce these changes in the middle of the COVID-19 pandemic, when everyone's resources, including the VA itself, are focused elsewhere?

We are concerned that the VA is taking steps that could harm the equity, accuracy, and timeliness of benefits decisions. In a system that is traditionally friendly toward veterans, we ask the VA to reconsider these changes that limit access and the ability to identify errors and make corrections prior to a veteran's case file. Our veterans deserve a voice during their VA claims determination process to fix any mistaking prior to official promulgation.

Sincerely,



Margaret Wood Hassan
United States Senator



Jeanne Shaheen
United States Senator



Ann McLane Kuster
United States Representative



Chris Pappas
United States Representative