

As Added by Honoring Our PACT Act

38 U.S.C. SUBCHAPTER VII—RESEARCH AND DETERMINATIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION BASED ON TOXIC EXPOSURE

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§ 1171. Procedures to determine presumptions of service connection based on toxic exposure; definitions

(a) PROCEDURES.—The Secretary shall determine whether to establish, or to remove, presumptions of service connection based on toxic exposure pursuant to this subchapter, whereby—

(1) the Formal Advisory Committee on Toxic Exposure under section 1172 of this title—

(A) provides advice to the Secretary on toxic exposed veterans and cases in which veterans who, during active military, naval, or air service, may have experienced a toxic exposure or their dependents may have experienced a toxic exposure while the veterans were serving in the active military, naval, or air service;

(B) provides to the Secretary recommendations on corrections needed in the Individual Longitudinal Exposure Record to better reflect veterans and dependents described in subparagraph (A); and

(C) provides to the Secretary recommendations regarding which cases of possible toxic exposure described in subparagraph (A) the Science Review Board should review;

(2) the Science Review Board under section 1173 of this title—

(A) reviews cases of possible toxic exposure nominated by the Secretary;

(B) reviews research nominated by the Secretary;

(C) develops recommendations for new research; and

(D) determines the strength of association between toxic exposure and an illness;

(3) the Working Group under section 1174 of this title evaluates the conclusions of the Science Review Board and recommends to the Secretary whether to establish or modify a presumption of service connection; and

(4) the Secretary prescribes regulations under section 1175 of this title.

(b) ILLNESS DEFINED.—In this subchapter, the term ‘illness’ includes a disease or other condition affecting the health of an individual.

(c) NONAPPLICATION OF SUNSET REQUIREMENTS.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to an entity established under this subchapter.

§ 1172. Formal Advisory Committee on Toxic Exposure

(a) ESTABLISHMENT.—

(1) There is in the Veterans Health Administration of the Department the Formal Advisory Committee on Toxic Exposure (in this section referred to as the ‘Committee’).

(2)

(A) The Committee shall be composed of nine members appointed as follows:

(i) Five members shall be appointed by the Secretary.

(ii) One member shall be appointed by the Speaker of the House of Representatives.

(iii) One member shall be appointed by the minority leader of the House of Representatives.

(iv) One member shall be appointed by the majority leader of the Senate.

(v) One member shall be appointed by the minority leader of the Senate.

(B) The members appointed under subparagraph (A) shall meet the following criteria:

(i) Not more than three members shall be appointed from among individuals who are officials or employees of the Veterans Benefits Administration or the Veterans Health Administration.

(ii) At least one member shall be appointed from among individuals who are officials or employees of other departments or agencies of the Federal Government, including the Department of Defense and the Agency of Toxic Substances and Disease Registry of the Centers for Disease Control and Prevention.

(iii) At least one member shall be appointed from among individuals who are representatives of disabled veterans.

(iv) At least one member shall be appointed from among individuals in the private sector, State or local government, or academia, who are experts in toxicology and epidemiology.

(3) The Secretary shall determine the pay and allowances of the members, including with respect to any additional pay and allowances for members who are officials or employees of the Federal Government.

(4) Each member of the Committee shall be appointed for a two-year term, and may serve not more than three successive terms.

(5) A vacancy in the Committee shall be filled in the manner in which the original appointment was made.

(b) CONSULTATION.—The Secretary may consult with, and seek the advice of, the Committee with respect to cases in which veterans who, during active military, naval, or air service, are suspected of having experienced a toxic exposure or dependents of veterans who may have experienced a toxic exposure during such service.

(c) ASSESSMENTS.—

(1) The Committee shall assess cases of the toxic exposure of veterans and their dependents that occurred during active military, naval, or air service.

(2) The assessments under paragraph (1) shall cover suspected and known toxic exposures occurring during active military, naval, or air service, including by identifying and evaluating new and emerging toxic exposures that are not recognized under existing presumptions of service connection.

(3) The Committee may conduct an assessment under paragraph (1) in response to a person described in subsection (e)(2), by a majority vote of the members of the Committee.

(4) The Committee shall on a periodic basis assess the Individual Longitudinal Exposure Record to ensure the accuracy of data collected.

(d) RESEARCH RECOMMENDATIONS.—

(1)

(A) Following an assessment of a case of the toxic exposure of veterans or their dependents that occurred during active military, naval, or air service under subsection (c), the Committee may develop a recommendation for the Secretary regarding whether there should be a review of the health effects related to the case of exposure conducted by the Science Review Board established under section 1173 of this title.

(2) Upon receipt of evidence suggesting that previous findings regarding the periods and locations of exposure covered by an existing presumption of service connection are no longer supported, the Committee may nominate such evidence for evaluation by the Working Group to modify the periods and locations.

(e) INPUT.—

(1) Not less than quarterly, the Committee shall provide an opportunity for persons described in paragraph (2) to present written or oral comments to the Committee.

(2) The persons described in this paragraph are persons who may be affected by the actions of the Committee, including—

(A) veterans, the families of veterans, veterans service organizations and representatives, researchers, and other members of the general public; and

(B) departments and agencies of the Federal Government.

(f) REPORTS BY THE COMMITTEE.—Not less frequently than once each year, the Committee shall submit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives, and make publicly available, a report on—

(1) recommendations for research under subsection (d), if any; and

(2) recommendations for such legislative or administrative action as the Committee considers necessary for the Committee to be more effective in carrying out the requirements of this section.

(g) RESPONSES BY SECRETARY.—In response to each report submitted under subsection (f), the Secretary shall submit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives, and make publicly available, a report on—

(1) the findings and opinions of the Secretary with respect to the report most recently submitted under subsection (f); and

(2) whether the Secretary intends to nominate to the Science Review Board the review recommended by the Committee in the report, and if not, an explanation of why, including citations and sources.

§ 1173. Science Review Board

(a) ESTABLISHMENT.—

(1) There is in the Veterans Health Administration of the Department the Science Review Board (in this section referred to as the ‘Board’).

(2)

(A) The members of the Board shall be appointed by the Secretary, in consultation with the National Academy of Science, Engineering, and medicine, from the general public from among individuals who are distinguished in the fields of medicine, biological sciences, or health administration.

(B) An individual may not concurrently serve on the Board and the Formal Advisory Committee on Toxic Exposure under section 1172 of this title.

(C) The Secretary shall determine the number, terms of service, and pay and allowances of members of the Board appointed by the Secretary.

(b) DUTIES.—

(1) Upon receiving a nomination for the evaluation of research on the health effects of toxic exposure of members of the active military, naval, or air service or dependents of such members made by the Secretary, the Board shall—

(A) evaluate the likelihood that a positive association exists between an illness and a toxic exposure while serving in the active military, naval, or air service; and

(B) assess the toxic exposures and illnesses identified by the Secretary and determine whether the evidence supports a finding of a positive association between the toxic exposure and the illness.

(2) In carrying out paragraph (1)(B), the Board shall review all relevant data to determine the strength of evidence for a positive association based on the following four categories:

(A) The ‘sufficient’ category, where the evidence is sufficient to conclude that a positive association exists.

(B) The ‘equipoise and above’ category, where the evidence is sufficient to conclude that a positive association is at least as likely as not, but not sufficient to conclude that a positive association exists.

(C) The ‘below equipoise’ category, where the evidence is not sufficient to conclude that a positive association is at least as likely as not, or is not sufficient to make a scientifically informed judgment.

(D) The ‘against’ category, where the evidence suggests the lack of a positive association.

(3)(A) With respect to an evaluation conducted under this subsection, if the Board determines that the evidence for a positive association is categorized as either the sufficient or

equipoise and above categories, the Board shall estimate the size of the positive association effect among those exposed by calculating the relative risk and exposure prevalence.

(B)(i) The Board shall use the relative risk and exposure prevalence calculated under subparagraph (A) to estimate the service-attributable fraction of illness in a military setting to determine the probability of positive association for an individual.

(ii) In calculating the service-attributable fraction of illness, the Board shall consider the dose-response relationships.

(4)(A) With respect to an evaluation conducted under this subsection, if the Board determines that the evidence for a positive association is categorized as the below equipoise category, the Board shall develop a recommendation as to whether additional data gathering and research are necessary.

(B) If the Board recommends additional data gathering and research pursuant to subparagraph (A), the Secretary shall seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine, or another nonprofit, nongovernmental entity that the Secretary determines has similar expertise and objectivity as the National Academies, to conduct such data gathering and research.

(c) REPORTS.—

(1) For each evaluation conducted under subsection (b) where the Board determines that the evidence for positive association is categorized as either the sufficient or equipoise and above categories, the Board shall submit to the Secretary a report identifying the evidence found to reach such positive association determinations.

(2) In addition to submitting reports under paragraph (1), the Board shall submit to the Secretary reports, at such times and at such frequencies as the Board considers appropriate, containing such recommendations as the Board may have for additional or new research on matters relating to toxic exposures described in subsection (b)(1).

(d) RESPONSES FROM THE SECRETARY.—

(1) In response to each report received by the Secretary under subsection (c)(1), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives, and make publicly available, a report on the findings and opinions of the Secretary with respect to the report received under such subsection.

(2) Each report submitted under paragraph (1) of this subsection shall include, with respect to a report received under subsection (c)(1), the following:

(A) The findings and opinions of the Secretary with respect to the report received under subsection (c)(1).

(B) Whether the Secretary intends to nominate to the Working Group, established under section 1174(a) of this title, the work of the Science Review Board covered by the report received under subsection (c)(1) for further action, and if not, an explanation of why, including citations and sources.

§ 1174. Working group on presumptions of service connection

(a) ESTABLISHMENT.—The Secretary shall establish a working group (in this section referred to as the ‘Working Group’) to—

(1) evaluate—

(A) the conclusions of the Science Review Board contained in each report submitted under section 1173(c)(1) of this title; and

(B) evidence nominated by the Formal Advisory Committee on Toxic Exposure under section 1172(d)(2) regarding the periods and locations of exposure covered by an existing presumption of service connection; and

(2) develop and submit to the Secretary a recommendation with respect to whether—

(A) to establish a presumption of service connection for the toxic exposure and illness covered by the report described in subparagraph (A) of paragraph (1); or

(B) to modify an existing presumption of service connection described in subparagraph (B) of such paragraph.

(c) RECOMMENDATIONS.—

(1) In making a recommendation under subsection (a)(2), the Working Group shall—

(A) in cases where the evidence for a positive association is either the sufficient or equipoise and above categories, as described in subparagraph (A) or (B) of section 1173(b)(2) of this title, weigh such evidence heavily in favor of establishing a presumption of service connection;

(B) take into consideration such factors as may be determined appropriate by the Secretary; and

(C) if the Working Group determines that additional research, studies, or reports are appropriate before making a final recommendation with respect to establishing or modifying a presumption of service connection, submit to the Secretary a description of such appropriate additional research, studies, or reports.

(2) At the same time as when the Working Group submits to the Secretary a recommendation under paragraph (2) of subsection (a) with respect to an evaluation under paragraph (1) of such subsection, the Working Group shall submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a description of such recommendation.

(c) REPORT.—The Secretary shall periodically publish on the internet website of the Department a report identifying any factors for the Working Group to consider under subsection (b)(1)(B), as determined appropriate by the Secretary.

§ 1175. Regulations regarding presumptions of service connection based on toxic exposure

(a) ACTION UPON WORKING GROUP RECOMMENDATION.—Not later than 60 days after the date on which the Secretary receives a recommendation to establish or modify a presumption of service connection under section 1174(a)(2) of this title—

(1) if the Secretary determines that the presumption, or modification, is warranted, the Secretary shall issue proposed regulations setting forth the presumption or revise regulations to carry out such modification; or

(2) if the Secretary determines that the presumption, or modification, is not warranted, the Secretary shall publish in the Federal Register a notice of the determination, including the reasons supporting the determination.

(b) FINAL REGULATION.—Not later than 180 days after the date on which the Secretary issues any proposed regulations under subsection (a)(1), the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

(c) REMOVAL OF PRESUMPTION.—

(1) The Secretary may issue regulations to remove an illness from a presumption of service connection previously established pursuant to a regulation issued under subsection (b).

(2) Whenever an illness is removed from regulations pursuant to paragraph (1), or the periods and locations of exposure covered by a presumption of service connection are modified under subsection (a)—

(A) a veteran who was awarded compensation for such illness on the basis of the presumption provided under such regulations before the effective date of the removal or modification shall continue to be entitled to receive compensation on that basis; and

(B) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such illness on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.