

## Chapter Twelve

### Veterans Benefits

1. **Sources of law.** Federal veterans benefits laws and regulations are at [38 U.S.C. § 1 et seq.](#) and [38 C.F.R. § 1 et seq.](#) State veterans laws and rules are at [Government Code § 434.001 et seq.](#) (Texas Veterans Commission) and [40 Texas Administrative Code Part 5](#) (Veterans Land Board) and [40 Texas Administrative Code Part 15](#) (Texas Veterans Commission). In this chapter, when information has been taken from statutes, rules, or cases, the statutes, rules, or cases will usually be cited below the information toward the left margin.

2. **Agencies that administer programs for veterans.** At the federal level, the Department of Veterans Affairs administers programs for veterans. The Texas counterparts are the Texas Veterans Commission and the Veterans Land Board.

3. **Useful websites.** Useful websites include these:

- The Homeless Veteran's Resource Guide  
<http://www.statesidelegal.org/sites/default/files/Homeless%20Veteran%20Resource%20Guide.pdf>
- Services for Homeless Veterans  
<http://www.hud.gov/offices/cpd/about/hudvet/state/>
- U.S. Department of Veterans Affairs:  
<http://www.va.gov/>
- Location of VA facilities and offices in Texas:  
<http://www2.va.gov/directory/guide/state.asp?State=TX&dnum=ALL>
- VA forms are available at:  
<http://www.va.gov/vaforms/>

- Texas Veterans Commission:  
<http://www.tvc.state.tx.us/>
- Texas Veterans Commission Claims Representation and Counseling web page:  
<http://texas-veterans.com/>
- Court of Appeals for Veterans  
<http://www.uscourts.cavc.gov/>
- Administration on Aging  
<http://www.aoa.gov/>
- National Library of Medicine  
<http://www.nlm.nih.gov/>  
(For medical publications about disabilities and health matters)
- House Committee on Veterans Affairs  
<http://www.veterans.house.gov/>
- Senate Committee on Veterans Affairs  
<http://www.veterans.senate.gov/>

4. **Additional sources of advocacy.** There are numerous sources of advocacy for veterans. Given the discordance between having served the Nation and being homeless, the list of resources, above, mentions portals to information and assistance for homeless veterans, first. Most counties in Texas have a county service officer. Office hours will vary. The list of county service officers can be downloaded from [http://www.tvc.state.tx.us/images/uploads/about/cso\\_office\\_listing.pdf](http://www.tvc.state.tx.us/images/uploads/about/cso_office_listing.pdf). If a county has not appointed a veterans county service officer, the Texas Veterans Commission may have a Veterans Counselor available – the foregoing website will show that. There are also numerous

non-governmental organizations that provide advocacy for veterans. Some of these organizations are specific to particular cohorts of veterans (e.g. Vietnam Veterans, Purple Heart Awardees). Also, experience has shown that the extent of advocacy available through these non-governmental organizations varies from office to office. These non-governmental organizations include: The American Legion; American G.I. Forum of the U.S.; American Red Cross; AMVETS; Desert Shield/Desert Storm; Disabled American Veterans; Korean War Veterans Association, Inc.; Military Order of the Purple Heart; Non-Commissioned Officers Association; Paralyzed American Veterans; Pearl Harbor Survivors Association; Retired Enlisted Association; Retired Officers Association; Veterans of Foreign Wars; Vietnam Veterans Foundation of Texas; and Vietnam Veterans of America. Further contact information for each of these organizations is available at <http://www.tvc.state.tx.us/page/veterans-organizations/>.

5. **Who can provide representation.** There is now an accreditation process, in order for individuals to be able to represent Veterans in proceedings before the VA. [38 C.F.R. § 14.628](#). Representation is defined as “the acts associated with representing a claimant in a proceeding” before VA pursuant to a properly executed and VA Form 21-22, “Appointment of Veterans Service Organization as Claimant’s Representative,” or VA Form 21-22a, “Appointment of Individual as Claimant’s Representative.” [38 CFR §14.627](#). An attorney can represent a veteran before the VA. The attorney should have a signed Form 21-22a, unless the representation is just for one particular claim. [38 CFR §14.629\(c\)\(1\)](#). However, if the representation will be for more than one particular claim, the representative will have to go through the accreditation process that the VA has established.

6. Representation on a “particular claim” can occur pursuant to [38 CFR §14.630](#).

**§ 14.630 Authorization for a particular claim.**

(a) Any person may be authorized to prepare, present, and prosecute one claim. A power of attorney executed on VA Form 21–22a, “Appointment of Attorney or Agent as Claimant’s Representative,” and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the agency of original jurisdiction where the claim is presented. The power of attorney identifies to VA the claimant’s

appointment of representation and authorizes VA's disclosure of information to the person representing the claimant.

(b) Representation may be provided by an individual pursuant to this section one time only. An exception to this limitation may be granted by the General Counsel in unusual circumstances. Among the factors which may be considered in determining whether an exception will be granted are:

- (1) The number of accredited representatives, agents, and attorneys operating in the claimant's geographic region;
- (2) Whether the claimant has unsuccessfully sought representation from other sources;
- (3) The nature and status of the claim; and
- (4) Whether there exists unique circumstances which would render alternative representation inadequate.

(c) Persons providing representation under this section must comply with the laws administered by VA and with the regulations governing practice before VA including the rules of conduct in § 14.632 of this part.

(d) Persons providing representation under this section are subject to suspension and or exclusion from representation of claimants before VA on the same grounds as apply to representatives, agents, and attorneys in § 14.633 of this part.

#### § 14.631 Powers of attorney; disclosure of claimant information.

(a) A power of attorney, executed on either VA Form 21-22, "Appointment of Veterans Service Organization as Claimant's Representative," or VA Form 21-22a, "Appointment of Attorney or Agent as Claimant's Representative," is required to represent a claimant before VA and to authorize VA's disclosure of information to any person or organization representing a claimant before the Department. Without the signature of a person providing representation for a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney, the appointment is invalid, and the person appointed to provide representation is under no obligation to do so. The power of attorney shall meet the following requirements:

- (1) Contain signature by:
  - (i) The claimant, or
  - (ii) The claimant's guardian, or
  - (iii) In the case of an incompetent, minor, or otherwise incapacitated person

without a guardian, the following  
in the order named—spouse, parent,  
other relative or friend (if interests are  
not adverse), or the director of the hospital  
in which the claimant is maintained;  
and

(iv) An individual providing representation  
on a particular claim under  
§ 14.630 of this part or an accredited  
veterans service organization representative,  
agent, or attorney; and

(2) Shall be presented to the appropriate  
VA office for filing in the veteran's claims folder.

(b) VA may, for any purpose, treat a power of attorney naming as a claimant's representative an organization recognized under § 14.628, a particular office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant's representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for designation of the representative and must use the word "only" with reference to the individual representative.

### [38 CFR §14.631](#)

Thus, even representation in one sole proceeding before the VA requires use of a VA form in order to access the file of the veteran. Because of the accreditation process, it may be best for a Benefits Counselor, with whom a veteran is consulting regarding a proceeding before the VA, to refer the veteran to a Veterans County Service Officer, an accredited veterans organization, or an attorney who has become accredited.

7. The veterans service organizations identified above do not charge for their representation of veterans before VA Regional Offices and before the Board of Veterans' Appeals. Moreover, it is the duty of the VA to assist the veteran in developing the claim. [38 CFR § 3.103\(a\)](#). Indeed, several sections of the VA Adjudication Procedure Manual make clear that the VA must consider not only issues raised by the veteran, but also issues that can be inferred from the file. [VA Adjudication Procedure Manual M21-1](#). For all these reasons, if a veteran has a claim before a VA Regional Office or before the Board of Veterans' Appeals, the best service of a Benefits

Counselor likely will be to make sure the veteran receives zealous advocacy from an accredited veterans service organization or an accredited attorney.

8. Attorneys can receive a reasonable fee for representing veterans before a VA Regional Office, the Board of Veterans' Appeals, or the U.S. Court of Appeals for Veterans Claims. [38 U.S.C. §§ 5904](#); [38 U.S.C. §7263](#). Thus, attorney representation may now be feasible for veterans pursuing a claim for VA benefits. This is a further reason why a Benefits Counselor typically will not need to provide administrative representation directly on a VA claim. A good role for a Benefits Counselor will be to have an awareness of what benefits a veteran may qualify for, and to make sure that other accredited organizations (or attorneys) are zealously representing the veteran, if a dispute arises with the VA.

9. **Benefits available to veterans – overview.** The U.S. Supreme Court has remarked, Congress began providing veterans pensions in early 1789, and after every conflict in which the Nation has been involved Congress has, in the words of Abraham Lincoln, “provided for him who has borne the battle, and his widow and his orphan.” The VA was created by Congress in 1930, and since that time has been responsible for administering the congressional program for veterans’ benefits.

Walters v. National Association of Radiation Survivors, 473 U.S. 305, 309 (1985).

Today, the array of federal and state benefits that veterans can qualify for is extensive. However, the benefits available can be very dependent on the veteran’s period of service, character of discharge, nature of injury (service-connected or not service-connected), and financial circumstances. Medical benefits also will vary from locale to locale.

10. **Federal veterans benefits – the universe.** Federal VA benefits include in-patient hospital care, nursing home care, domiciliary care, outpatient treatment, pharmacy services, dental treatment, alcohol and drug-dependence treatment, home improvements and structural alterations, prosthetic devices, counseling, disability compensation, pension, education and training, vocational rehabilitation, mortgage loans, life insurance, and burial benefits. These are discussed in greater detail in paragraphs which follow.

11. **State veterans benefits – the universe.** State of Texas veterans benefits include Texas state veterans homes, property tax exemptions for disabled veterans and their surviving spouse, the Veterans Land Program, the Veterans Housing Assistance Purchase Program, the Veterans Home Improvement Program, free drivers licenses for disabled veterans, reduced-cost hunting and fishing licenses for disabled veterans, educational assistance for wartime veterans (up through the Persian Gulf War), free park admission for disabled veterans, and employment and reemployment rights. These are discussed in greater detail in paragraphs which follow.

12. **Federal benefits – concept of “period of war.”** For some federal veterans benefits, it is necessary that the veteran have served during wartime. Wartime is defined at [38 CFR §3.2](#). The periods of war listed there include, relevant to today’s veterans:

- (d) World War II. December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.
- (e) Korean conflict. June 27, 1950, through January 31, 1955, inclusive.
- (f) Vietnam era. The period beginning on February 28, 1961, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.
- (i) Persian Gulf War. August 2, 1990, through date to be prescribed by Presidential proclamation or law.

[38 CFR §3.2](#)

13. **Another important concept: Service-connected versus nonservice-connected.** Some federal veterans benefits require that the veteran have a service-connected disability. At [38 CFR § 3.1](#) (k) and (l), these definitions are provided:

- (k) Service-connected means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(l) Nonservice-connected means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

14. The federal VA regulations provide eligibility for benefits if the veteran was discharged under other than dishonorable conditions. Thus a dishonorable discharge issued by a general court martial disqualifies a person. In regard to a bad conduct discharge, if issued by a general court martial it is disqualifying. If issued by a special court martial, it may or may not be disqualifying. The VA uses standards at [38 CFR §3.12](#) to determine if a bad conduct discharge, issued by a special court martial, is disqualifying. It must be kept in mind that a discharge can sometimes be upgraded to general or honorable, resulting in eligibility.

15. The range of service that can qualify for federal veterans benefits includes service in the Army, Navy, Air Force, Marines, Coast Guard, Public Health Service (as a commissioned officer), Environmental Services Administration, or the National Oceanic and Atmospheric Administration.

16. There are 30 additional groups that are “considered to have performed active military, naval or air service.” These include Women Airforce Service Pilots (WASPs), Women’s Army Auxiliary Corps (WAACs), U.S. civilians who defended Bataan, World War II U.S. Merchant Marines, and other groups. The full list is at [38 CFR § 3.7](#).

17. **Eligibility for federal VA hospital, nursing home, and domiciliary care.** The VA is required to furnish hospital care to veterans according to a priority list set forth at [38 U.S.C. § 1710](#). The priority list is Appendix A.

18. The highest preference is for veterans needing care for a service-connected disability. A lower preference is for veterans who are unable to defray the expenses of necessary care as determined under [38 U.S.C. §1722\(a\)](#).

19. The term “unable to the expenses of necessary care” includes a veteran who receives Medicaid (even QI-2 or QDWI would suffice); a low-income veteran receiving a pension for a

non-service-connected disability; or a low-income veteran (whether or not disabled) whose income is not more than the annual income threshold rate. [38 U.S.C. §1722\(a\)](#). The thresholds in effect in 2012 are set forth in Appendix B.

20. Thus, VA health care for veterans focuses on serving those with service-connected conditions, ex-POWs, veterans of modest means, and aged veterans with wartime service. In recent years, the VA has also redirected its health care efforts toward preventive care and away from hospitalization, when feasible.

21. For health care, the VA uses an “enrollment” process. Through the enrollment process, the VA determines what priority a veteran has. Enrollment is never closed – a veteran who has never enrolled can do so. Enrollment is accomplished by completing VA Form 10-10EZ. Enrollment can occur at any VA facility that provides medical care, by mail, or over the internet. The website for enrollment is <https://www.1010ez.med.va.gov/sec/vha/1010ez/>.

22. The VA is only required to provide medical care “to the extent and in the amount provided in advance” by Congressional appropriations. [38 U.S.C. § 1710\(a\)\(4\)](#). Thus, each year, if the VA’s appropriations were to run out, the VA would not have to provide further medical care to veterans. The VA must publish in the Federal Register by August 1 of each year the groups of veterans who will have priority for the upcoming fiscal year (which starts on October 1).

23. If a veteran will be affected by a change in enrollment status, the VA must inform the veteran in writing. [38 CFR § 17.36\(d\)\(6\)](#).

24. A veteran who actually received VA medical benefits in the previous year normally is automatically re-enrolled. However, a veteran whose eligibility for medical care is based on low income must have a current VA Form 10-10EZ on file, or risk being placed in a lower priority. [38 CFR § 17.36\(d\)\(3\)\(iv\)](#). To be current, the Form 10-10EZ must be returned within 60 days of the date the VA mailed the form 10-10EZ to the veteran’s last known address. This allows the VA to reassess that veteran’s financial eligibility.

25. Under [38 CFR § 17.37](#), there are several exceptions to the enrollment requirement. These exceptions include:

- (A) A veteran rated for service-connected disabilities at 50 percent or greater will receive VA hospital and outpatient care provided for in the “medical benefits package” set forth in [38 CFR § 17.38](#);
- (B) A veteran who has a service-connected disability will receive VA hospital and outpatient care provided for in the “medical benefits package” set forth in § 17.38 for that service-connected disability;
- (C) A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty will receive VA hospital and outpatient care provided for in the “medical benefits package” set forth in § 17.38 for that disability for the 12-month period following discharge or release; and
- (D) When there is a compelling medical need to complete a course of VA treatment started when the veteran was enrolled in the VA healthcare system, a veteran will receive that treatment.
- (E) A veteran participating in VA’s vocational rehabilitation program may be able to receive care provided for in the medical benefits package. [38 CFR §17.37 \(e\)](#).
- (F) A veteran may be able to receive care provided for in the medical benefits package “based on factors other than veteran status.” [38 CFR §17.37\(f\)](#).
- (G) For care not provided in a state a veteran may receive care provided for in the medical benefits package if the VA authorizes this. [38 CFR §17.37\(g\)](#).
- (H) Certain individuals who served as Philippine “Commonwealth Army” members or “new Philippine Scouts” may receive care provided for in the medical benefits package. [38 CFR §17.37\(h\)](#). For a description of the Commonwealth Army and the new Philippine Scouts, see [http://www.va.gov/opa/publications/factsheets/fs\\_filipino\\_veterans.pdf](http://www.va.gov/opa/publications/factsheets/fs_filipino_veterans.pdf).
- (I) On humanitarian grounds, a veteran may receive certain types of VA care not included in the medical package. [38 CFR §17.37\(i\)](#). This can include Humanitarian emergency care for which the individual will be billed,

compensation and pension examinations, dental care, domiciliary care, nursing home care, readjustment counseling, care as part of a VA-approved research project, seeing-eye or guide dogs, sexual trauma counseling and treatment, special registry examinations).

- (J) A veteran may receive an examination to determine if the veteran is catastrophically disabled and therefore eligible for inclusion in priority category 4. [38 CFR §17.37\(j\)](#). Priority category 4 is found in [38 CFR §17.36\(b\)\(4\)](#), and it is: Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

26. In sum, because of the VA's requirement to provide medical care to those veterans that Congress' funding covers, and because of the variety among VA medical facilities, a veteran needing medical care can contact the nearest VA medical facility. That facility can inform the veteran if enrollment is necessary.

27. A veteran who is accepted by the VA for medical care has the prospect of receiving a wide range of services. The "medical benefits package" is described at [38 CFR §17.38](#). It includes:

- (A) Basic care, namely:
- (i) Outpatient medical, surgical, and mental healthcare, including care for substance abuse;
  - (ii) Inpatient hospital, medical, surgical, and mental healthcare, including care for substance abuse;
  - (iii) Prescription drugs, including over-the-counter drugs and medical and surgical supplies available under the VA national formulary system;
  - (iv) Emergency care;
  - (v) Bereavement counseling;
  - (vi) Comprehensive rehabilitative services;
  - (vii) Consultation, professional counseling, training, and mental health services for the members of the immediate family or legal guardian

of the veteran or the individual in whose household the veteran certifies an intention to live, if needed to treat:

- (a) The service-connected disability of a veteran; or
  - (b) The nonservice-connected disability of a veteran where these services were first given during the veteran's hospitalization and continuing them is essential to permit the veteran's release from inpatient care;
  - (viii) Durable medical equipment and prosthetic and orthotic devices, including eyeglasses and hearing aids;
  - (ix) Home health services;
  - (x) Reconstructive (plastic) surgery required as a result of disease or trauma, but not including cosmetic surgery that is not medically necessary;
  - (xi) Respite, hospice, and palliative care;
  - (xii) Payment of travel and travel expenses for veterans eligible under 38 C.F.R. § 17143 if authorized by that section;
  - (xiii) Pregnancy and delivery services; and
  - (xiv) Completion of forms (e.g., Family Medical Leave forms, life insurance applications, Department of Education forms for loan repayment exemptions based on disability, non-VA disability program forms) by healthcare professionals based on an examination or knowledge of the veteran's condition, but not including the completion of forms for examinations if a third party customarily will pay health care practitioners for the examination but will not pay VA.
- (B) Preventive care, namely:
- (i) Periodic medical exams;
  - (ii) Health education, including nutrition education;
  - (iii) Maintenance of drug-use profiles, drug monitoring, and drug use education;
  - (iv) Mental health and substance abuse preventive services;
  - (v) Immunizations against infectious disease;
  - (vi) Prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature;
  - (vii) Genetic counseling concerning inheritance of genetically determined diseases;
  - (viii) Routine vision testing and eye-care services; and
  - (ix) Periodic reexamination of members of high-risk groups for selected diseases and for functional decline of sensory organs, and the services to treat these diseases and functional declines.
- (C) The "medical benefits package" does not include the following:
- (i) Abortions and abortion counseling;
  - (ii) In vitro fertilization;
  - (iii) Drugs, biologicals, and medical devices not approved by the Food and Drug Administration unless the treating medical facility is conducting formal clinical trials under an Investigational Device Exemption (IDE) or

- an Investigational New Drug (IND) application, or the drugs, biologicals, or medical devices are prescribed under a compassionate use exemption;
- (iv) Gender alterations;
- (v) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services; nor
- (vi) Membership in spas and health clubs.

These inclusions and exclusions of the “medical benefits package” are set forth at [38 CFR § 17.38](#).

28. Domiciliary care is one service that the VA can provide. Domiciliary care provides rehabilitative and long-term health maintenance care for veterans who require minimal medical care but who do not need nursing home care. To be eligible for domiciliary care, the veteran must be able to:

- a. Perform without assistance daily ablutions, such as brushing teeth; bathing; combing hair; body eliminations;
- b. Dress self, with a minimum of assistance;
- c. Proceed to and return from the dining hall without aid;
- d. Feed Self;
- e. Secure medical attention on an ambulatory basis or by use of personally propelled wheelchair;
- f. Have voluntary control over body eliminations or control by use of an appropriate prosthesis;
- g. Share in some measure, however slight, in the maintenance and operation of the facility; and
- h. Make rational and competent decisions as to his or her desire to remain or leave the facility.

[38 CFR §17.46](#).

29. Because there may be more veterans enrolled for medical care than a particular facility can serve, VA medical facilities may have waiting lists.

30. For some (but not all) services, veterans who are not in a priority category may have copays. The various copays (and who is exempt from all copays) can be seen on Appendix C, which is from <http://www.va.gov/healthbenefits/cost/copays.asp> and [http://www.va.gov/healthbenefits/cost/copay\\_rates.asp](http://www.va.gov/healthbenefits/cost/copay_rates.asp). Copayments are governed by [38 CFR §§17.108 – 17.111](#).

31. The VA has the authority to reimburse the veteran for the cost of travel necessary to obtain VA medical care. This reimbursement can be made to veterans seeking treatment of a service-connected disability, or veteran receiving VA pension benefits, and a veteran with income at or below the maximum annual pension rate. The travel expenses which the VA can reimburse include lodging, subsistence, mileage, and tolls. The VA has published an extensive set of “[Frequently Asked Questions](#)” regarding travel reimbursement.

32. Depending on the needs and circumstances of the veteran, the VA has the authority to provide “sensori-neural aids” (eyeglasses, contact lenses, hearing aids), prosthetic and similar appliances, (such as artificial limbs, braces, orthopedic shoes, hearing aids, wheelchairs, medical accessories, similar appliances including invalid lifts and therapeutic and rehabilitative devices, and special clothing made necessary by the wearing of such appliances, may be purchased, made or repaired for any veteran upon a determination of feasibility and medical need), devices to assist in overcoming the handicap of deafness, and dog-guides and equipment for blind. [38 CFR §§ 17.149 –17.154](#).

33. The VA’s Prosthetic and Sensory Aids Services oversees a “[Home Improvement and Structural Alterations Program](#).” For veterans who qualify, up to \$6,800 in home improvement benefits may be available for a service-connected condition, or a non-service connected condition of a veteran rated 50 percent or more service-connected. For other veterans, if registered in the VA health care system, home improvement benefits up to \$2,000 may be available. The Prosthetic and Sensory Aids Service has produced a [video](#) on the Home Improvement and Structural Aids program.

34. Depending on the needs and circumstances of the veteran, the VA is authorized to provide automobile adaptive equipment and driver training. [38 CFR §§ 17.155 – 17.159](#).

35. The VA is authorized to provide dental examinations and dental care. [38 CFR §§ 17.160 – 17.166](#). Preference is given to veterans having a service-connected disability.

36. Alcohol and drug abuse treatment is also available through the VA. [38 CFR §§ 17.80 – 17.83](#). A veteran interested in this service should contact the nearest VA medical facility.

37. As has been seen above, there are many variables to whether a veteran can receive VA medical care. A Benefits Counselor's most effective role may often be to make sure that the client is being well-served by his or her county's veterans service officer.

38. Veterans can obtain information directly from the VA, through **1-800-827-1000**. This is a highly automated number. The veteran may be referred to his or her local medical facility for definitive information regarding what medical care is currently available in the locality.

39. In addition to VA health benefits, the VA is authorized to grant "compensation" to some veterans and their dependents and survivors and "pension" to some veterans and their dependents and survivors. One major difference between compensation and pension is this: Compensation requires a service-connected impairment; pension requires that the veteran have low income.

40. **Compensation.** Two statutes establish the compensation program. They are [38 U.S.C. §1110](#) and [38 U.S.C. §1131](#). The first statute states:

**Basic entitlement**

For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation

shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

[38 U.S.C. §1110.](#)

41. The second statute has essentially the same wording, except that “during a period of war” is replaced by “during other than a period of war.” Thus, [38 U.S.C. §1110](#) establishes the “Wartime Disability Compensation” program and [38 U.S.C. §1131](#) establishes the “Peacetime Disability Compensation” program.

42. In determining the amount of compensation, the VA uses a “ratings” schedule of 0% to 100%. The ratings schedule is set out at [38 U.S.C. §1114](#). The regulations at [38 CFR §§ 3.303 – 3.344](#) govern ratings and evaluations. The regulations at [38 CFR §§3.350 – 3.363](#) govern ratings for special purposes. The regulations at [38 CFR §§3.370 – 3.385](#) govern rating considerations relative to specific diseases.

43. An original claim for compensation can be filed online at the VA's [eBenefits](#) website.

44. The rates of payment for compensation are accessible at <http://www.vba.va.gov/bln/21/Rates/#BM01>. Rates effective from on and after 12-01-2011 are set forth in Appendix D.

45. Additional questions and answers about VA compensation are at [https://iris.custhelp.com/app/answers/detail/a\\_id/915/related/1](https://iris.custhelp.com/app/answers/detail/a_id/915/related/1).

46. **Pension.** For veterans who do not meet the criteria for compensation but who are of modest means, VA pension may be available. The statutory provisions regarding VA pension are at [38 U.S.C. §§1501 – 1544](#). The basic regulation governing VA pension at [38 CFR §3.3](#).

47. Regulations regarding income and resources are at [38 CFR §§3.271 – 3.277](#). In calculating the amount of VA pension, income (which reduces pension) has a broad definition. “Payments of any kind” count as income unless specifically excluded. [38 C.F.R. §3.271](#).

48. Income exclusions are listed at [38 C.F.R. § 3.272](#). Welfare payments, maintenance furnished by relatives, friends and charities, reimbursements for casualty losses, unreimbursed medical payments, Agent Orange settlement payments, radiation exposure compensation, and spina bifida allowances to children of Vietnam veterans, are examples of income that is excluded in calculating the amount of pension.

49. Countable income and the corpus of the veteran's estate are factors in determining the amount of pension. The homestead is excluded. [38 CFR §3.275](#). Potential income (if not excluded) which is not pursued will be considered available. Assets which are given away may still be considered available. [38 CFR §3.276](#).

50. The rates of payment for pension are accessible at <http://www.vba.va.gov/bln/21/Rates/#BM01>. Rates effective from on and after 12-01-2011 are set forth in Appendix E.

51. Appeals. The VA's decision on compensation or pension can be appealed. The appeal can be filed within one year of the initial VA decision. It is filed with the VA regional office. Texas has VA regional offices in Houston, Waco, and (for Texarkana) in Little Rock, AR. A veteran wanting to know which regional office to appeal to can call **1-800-827-1000**.

52. The Regional Office prepares a Statement of the Case. The veteran has 60 days from the date of mailing of the Statement of the Case to file [VA Form 9](#). (All VA forms can be accessed at <http://www.va.gov/vaforms/>.)

53. The regional office transfers the file to the Board of Veterans Appeals. The veteran has 90 days in which to submit additional evidence and to ask for a hearing.

54. If the veteran disagrees with the decision of the Board of Veterans Appeals, the veteran has 120 days to file an appeal in the Court of Appeals for Veterans Claims.

55. This same appeals process also applies to decisions of VA medical centers. The difference is that the first step – the veteran’s disagreement with the initial determination – is filed with the medical center.

56. The Board of Veterans Appeals has prepared an excellent [pamphlet](#) on the VA Appeals Process.

57. **The VA operates a Civilian Health and Medical Program.** CHAMPVA is the Civilian Health and Medical Program of the Department of Veterans Affairs and is administered by the Health Administration Center, Denver, Colorado. Pursuant to [38 U.S.C. §§1781 – 1786](#), VA is authorized to provide medical care in the same or similar manner and subject to the same or similar limitations as medical care furnished to certain dependents and survivors of active duty and retired members of the Armed Forces. The CHAMPVA program is designed to accomplish this purpose. Under CHAMPVA, VA shares the cost of medically necessary services and supplies for eligible dependents. [38 CFR §§17.270 – 17.278](#).

58. To be eligible for CHAMPVA, the dependent cannot be eligible for TRICARE (the health care program for dependents of active duty and retired members of the military). Eligibility for Medicare also rules out eligibility for CHAMPVA.

59. Eligible for CHAMPVA are:

- (A) The spouse or child of a veteran who has been adjudicated by VA as having a permanent and total service-connected disability;
  - a. The surviving spouse or child of a veteran who died as a result of an adjudicated service-connected condition(s); or who at the time of death was adjudicated permanently and totally disabled from a service-connected condition(s);
  - b. The surviving spouse or child of a person who died on active military service and in the line of duty and not due to such person’s own misconduct.

[38 CFR §17.271](#).

60. CHAMPVA covers only medically necessary services. There is a list of over 80 services that are excluded from coverage under CHAMPVA. [38 CFR §17.272](#). Thus, a CHAMPVA beneficiary will want to read his/her benefits booklet carefully to be sure if a service is or is not covered. Many CHAMPVA services require pre-authorization. [38 CFR §17.273](#).

61. CHAMPVA also has cost-sharing requirements. [38 CFR §17.274](#). In addition to the beneficiary cost share, an annual (calendar year) outpatient deductible requirement (\$50 per beneficiary or \$100 per family) must be satisfied prior to the payment of outpatient benefits. There is no deductible for inpatient services. CHAMPVA pays the CHAMPVA-determined allowable amount less the deductible, if applicable, and less the beneficiary cost share. To provide financial protection against the impact of a long-term illness or injury, an annual cost limit or “catastrophic cap” has been placed on the beneficiary cost-share amount for covered services and supplies. Credits to the annual catastrophic cap are limited to the applied annual deductible(s) and the beneficiary cost-share amount. Costs above the CHAMPVA-allowable amount, as well as costs associated with noncovered services are not credited to the catastrophic cap computation. [38 CFR §17.274](#).

62. There is a very truncated appeals process for CHAMPVA determinations. A beneficiary can request review of a CHAMPVA decision by asking for reconsideration from the Health Administration Center. If a beneficiary disagrees with the reconsideration decision, the beneficiary can request review by the Director of the Health Administration Center. [38 CFR §17.276](#).

63. CHAMPVA can be contacted toll-free at **1-800-733-8387**. The address is: Veterans Affairs Health Administration Center, P.O. Box 65023, Denver, CO, 80206-5023.

64. The VA’s Health Administration Center has [extensive information](#) about CHAMPVA. This includes a [publication describing](#) CHAMPVA including a [fillable application](#).

65. **Aid and attendance.** In the case of a veteran who is receiving service-connected compensation, and who is in need of aid and assistance provided by a spouse, family member,

friend, or neighbor, an additional payment can be made. If a veteran has a disability rating of 30% or more, additional payments can be made based on the veteran having a spouse, dependent child(ren), and/or parent(s). The VA publishes [guidance](#) on how to calculate the compensation benefit that a spouse or dependent may receive. There is similar [guidance](#) regarding pension calculation when the veteran has a spouse.

**66. Monetary and health benefits for children with spina bifida born to Vietnam and Korea veterans.** Children who have [spina bifida](#) (except spina bifida occulta) and are biological children of veterans who served in Vietnam or in the demilitarized zone in Korea during the Vietnam era may be eligible for benefits if the birth father or mother served

- In Vietnam during the period from January 9, 1962 through May 7, 1975, **or**
- In or near the Korean demilitarized zone between September 1, 1967 and August 31, 1971 and were exposed to herbicides. Veterans who served in a unit in or near the Korean demilitarized zone (DMZ) anytime between April 1, 1968 and August 31, 1971 are presumed to have been exposed to herbicides.

The affected child must have been conceived after the veteran first entered Vietnam or the Korean demilitarized zone during the qualifying service period. The VA maintains a [benefit table](#) regarding monetary benefits for children with spina bifida born to veterans, and for children with certain birth defects born to women Vietnam veterans. The VA also maintains [information](#) regarding health care for children with spina bifida born to veterans, and for children with certain birth defects born to women Vietnam veterans. This includes information on how to apply, and how to file a claim.

**67.** Survivors of veterans may be able to receive service-connected dependency and indemnity compensation (DIC) or death pension. [38 CFR §3.5](#). If a veteran's death is caused by a service-connected disability, the surviving spouse and dependent children are eligible for dependency and indemnity compensation (DIC). It suffices for the service-connected disability to be a contributing cause of death – it does not have to have been the principal cause of death. [38 CFR §3.312](#). The rate tables for Dependency and Indemnity Compensation are at <http://www.vba.va.gov/bln/21/rates/index.htm>. Information on how to read the rate tables is at <http://www.vba.va.gov/bln/21/rates/comp03b.htm>.

68. Veterans with a service-connected disability may receive a grant of up to \$63,780 to buy, build, or remodel a home. [38 U.S.C. §2101\(a\)](#). To qualify, the veteran must have lost the use of at least one arm or one leg. A veteran who is blind or who has lost the use of both hands can qualify for a grant of up to \$12,756 to adapt a home. [38 U.S.C. §2101\(b\)](#). The VA announced these amounts in an [alert](#). The VA can pay an [allowance](#) of up to \$18,900 to adapt a vehicle for use by a veteran who has a service-connected loss of a hand, foot, knee, or hip. Veterans whose service-connected disability causes a skin condition that requires the use of medications that irreparably damage outer garments can receive a clothing allowance. These rates are set forth in a [chart](#) maintained by the VA.

69. **Education benefits.** Veterans have from time to time been accorded educational benefits. The VA maintains a [GI Bill Web Site](#) with information regarding federal education benefits for veterans. Federal education benefits for veterans can be applied for [online](#). Texas has a state-funded program of education benefits for veterans, pursuant to the Hazlewood Act. The Texas Veterans Commission has published a [brochure](#) describing “Hazlewood” education benefits and eligibility.

70. The VA also guarantees loans to veterans, reservists, and unmarried surviving spouses for the purchase, repair, or refinancing of a home. The VA maintains [extensive information](#) regarding the home loan program at its website.

71. **Burial benefits.** Veterans are eligible for burial in a VA national cemetery, as long as the discharge was under conditions other than dishonorable and the veteran completed the required period of service. VA also provides headstones and markers upon request, even if the veteran is not buried in a VA national cemetery. If the remains have been cremated, a niche marker will be provided for placement in the columbaria. Presidential Memorial Certificates, to recognize honorably discharged deceased veterans, can be requested by next of kin. The VA can also arrange for military funeral homes for honorably discharged veterans. Information is available through <http://www.militaryfuneralhonors.osd.mil/>.

72. The VA provides an American flag for deceased veterans who were discharged under conditions other than dishonorable. VA Regional Offices, national cemeteries, and even post offices can provide these flags.

73. VA will reimburse certain burial and funeral expenses. The rates will vary, depending on whether the death was service-related (\$2000) or not service-related (\$700). Further information is available through <http://www.cem.va.gov/>.

74. **The Texas Veterans Commission.** The Texas Veterans Commission's website is at [www.tvc.state.tx.us](http://www.tvc.state.tx.us). An overview of the Texas Veterans Commission is at <http://www.tvc.state.tx.us/about/overview>. The Texas Veterans Commission encourages the use of its services so that duplication of advocacy is avoided. The Texas Veterans Commission has a wealth of brochures concerning its services and concerning Texas benefits for veterans. <http://www.tvc.state.tx.us/media-and-news/brochures>. The brochures include [Earn While You Learn](#), [State of Texas Benefits & Services for Veterans, Survivors & Dependents](#), [Federal Service-Connected Disability Benefits](#), the [Hazlewood Act](#), [Federal & State of Texas Burial Benefits for Veterans, Dependents and Survivors](#), and [Texas Veterans Commission Veteran Employment Services Brochure for the Veteran](#).

75. The nearest Texas Veterans Commission office can be found through the search function at <http://www.tvc.state.tx.us/locations/>.

76. Thus, a Benefits Counselor of the Texas Area Agencies on Aging may best help a veteran by making sure that the appropriate office of the Texas Veterans Commission has all the information it needs. The Benefits Counselor can assist the office of the Texas Veterans Commission, if it appears appropriate, in obtaining information to help the veteran receive services.

77. If the veteran is applying for benefits based on disability, the cost-free medical records provisions of [Texas Health and Safety Code §161.201 et seq.](#) are applicable.

78. The Texas Veterans Commission has a brochure at [www.tvc.state.tx.us](http://www.tvc.state.tx.us) titled “[State of Texas Benefits for Veterans, Dependents & Survivors](#).” The brochure describes several state benefits for veterans. One state benefit which the brochure describes is the Texas tax exemption for disabled veterans. These tax benefits are codified at Sections [11.22](#) and [11.43](#) of the Texas Tax Code. A veteran with a disability rating of 10% to 30% can claim the first \$5000 of appraised value of his or her property as exempt. If the disability rating is 31% to 50%, the first \$7,500 of appraised value can be claimed as exempt. If the disability rating is 51% to 70%, the first \$10,000 of appraised value can be claimed as exempt. If the disability rating is 71% or more, the first \$12,000 of appraised value can be claimed as exempt. A veteran whose disability rating is 10% or more and who is 65 years of age or older can claim the first \$12,000 of appraised value as exempt. A veteran who has lost a limb, or who is blind in one or both eyes, or who has paraplegia can claim the first \$12,000 in appraised value as exempt. Surviving spouses who are not remarried can claim the same exemption which the disabled veteran could claim. The surviving spouse of a person who dies on active duty can claim an exemption for the first \$5,000 of appraised value of property. Each of these exemptions must be claimed by applying at the local appraisal district office, between January 1 and April 30.

79. Numerous sections of the [Texas Transportation Code Chapter 502](#) and [Texas Transportation Code Chapter 504](#) provide vehicle registration and vehicle tag benefits for certain categories of veterans. The benefits will vary, depending on the veteran’s category. [http://www.txdmv.gov/vehicles/license\\_plates/qualifying/military.htm](http://www.txdmv.gov/vehicles/license_plates/qualifying/military.htm).

80. Veterans with a disability rating of 60% or more who are receiving VA compensation for the disability are eligible for a driver’s license without fee. This is provided for by [Section 521.426 of the Transportation Code](#).

81. A veteran who has suffered a service-connected loss of the use of a lower extremity or with a disability rating of 60% or more who is receiving VA disability compensation can apply for a “State Parklands Passport” and then enter any state park without fee. [Section 13.018 of the Parks and Wildlife Code](#) provides for this. A veteran with that same level of impairment or

worse is eligible for a free hunting license under [Section 42.012 of the Parks and Wildlife Code](#), and for a free fishing license under [Section 46.004 of the Parks and Wildlife Code](#).

82. A state education benefit is provided for wartime veterans under Chapter 54 of the Texas Education Code. Specifically, at [Section 54.203 of the Texas Education Code](#), the Hazlewood Act is set forth. Under the Hazlewood Act, a veteran who served in time of war and who was a legal resident of Texas at the time of entering the military, and who has exhausted all federal VA educational benefits, can receive a waiver of tuition at any State-supported college or university. “Wartime” under the Hazlewood Act includes World War I, World War II, the Korean War, the Cold War, the Vietnam era, the Grenada and Lebanon era, the Panama era, and the Persian Gulf War. Section 54.203(a) of the Texas Education Code sets out the precise dates when these conflicts began and ended for Hazlewood Act benefit purposes. The Texas Veterans Commission has an excellent [brochure](#) on the Hazlewood Act.

83. **The General Land Office, which includes the Veterans Land Board, has certain programs that assist veterans.** The website for the General Land Office is <http://www.glo.texas.gov/>.

84. **Texas State Veterans Homes** are operated by the Texas Veterans Land Board. There are four of these in the state. They are located in Amarillo, Big Spring, Bonham, El Paso, Floresville, McAllen, Temple, and Tyler. They are funded by a combination of Federal and State funds. These homes provide nursing care, physical, speech, and occupational therapy, and a wide range of activities. The homes have semi-private and private rooms, central dining areas, Alzheimer’s units with secured courtyard, libraries, meditation rooms, and gift shops. The basic rate for a semi-private room is \$142 in 2012. See “[What will I pay?](#)” That is approximately the daily rate used by the Texas Department of Aging and Disability Services as an estimate of the average cost of private pay nursing facility care.

85. The Texas State Veterans Homes offer recreational activities, social services, special diets, and community volunteer programs. The Texas Veterans Commission, county veterans

services offices, and veterans organizations in the localities participate in this partnership, along with the U.S. Department of Veterans Affairs and the Texas Veterans Land Board.

86. Eligibility for care at a Texas State Veterans Home requires that the veteran be an “eligible veteran” as defined by [38 CFR §51.50](#). That section has a preference for veterans who have service connected disabilities, former prisoners of war, veterans who receive disability compensation, veterans who cannot pay for their own care, very elderly veterans (those who served in World War I or the Mexican border period), and veterans afflicted with Agent Orange-related ailments and with toxic chemical ailments from the Gulf War. In addition, the veteran must require long-term care, must be a resident of Texas, must have been a resident of Texas at the time of entry into the military service (or have resided in Texas for one year before applying for admission), and must not have been dishonorably discharged. Spouses or unmarried surviving spouses of such veterans would also be eligible. [“Gold Star” parents are also eligible](#). These are parents, all of whose children died while serving in the Armed Forces of the United States.

87. Medicare and Medicaid funds can be used to pay for care at a State Veterans Home. See [“What Will I Pay?”](#)

88. Thus, veterans pay for care in a State Veterans Home through their own non-VA income (Social Security, private pensions, investment), through VA per diem payments, and through such Medicare and Medicaid coverage as will occur for the particular patient.

89. A veteran applies for admission to a Texas State Veterans Home directly to the location of choice. Additional information can be obtained from the Texas Veterans Land Board at **1-800-252-8387**, or **1-512-475-2336**. Excellent information about Texas State Veterans Homes is available in the [Veterans Homes](#) brochure of the Texas Veterans Land Board.

90. **The Veterans Housing Assistance Program** is also operated by the Texas Veterans Land Board. This program of low-interest loans can provide financing for up to \$325,000 of the purchase price of a home. This type of loan can be combined with a VA guaranteed loan, thus

increasing the amount of financing available to a veteran. For this program, it suffices for the veteran to have been discharged under other than dishonorable conditions; disability is not required. This program is described at “[Home Loans](#)” on the website of the Texas Veterans Land Board. The website has an [eligibility screen](#).

91. **Summary -- federal.** As can be seen, there is a wide range of health services available through the U.S. Department of Veterans Affairs. However, preference is given to those with service-connected disabilities, former prisoners of war, very elderly veterans, and veterans who cannot afford to pay for medical care. But, depending on funding availability in any particular year, other veterans may be able to access VA medical care. The VA also can approve compensation for veterans with service-connected disabilities, and pension for low-income veterans. Under certain circumstances, surviving spouses, children, and parents, may also be able to receive compensation. Surviving spouses and children may qualify for pension. The VA also can be the source for assistance with home purchases, home improvements, and home loans. The VA provides some services in regard to burial. The VA’s website is at [www.va.gov](http://www.va.gov).

92. **Summary – state.** The State of Texas offers certain veterans with disabilities (and surviving spouse) property tax benefits. The State of Texas also offers veterans with disabilities free vehicle registration, driver’s, hunting, and fishing licenses, and free entry into state parks. Certain Texas veterans can also receive care at a Texas State Veterans Home. The State of Texas also provides mortgage loan assistance to Texas veterans. The website of the Texas Veterans Commission is at [www.tvc.state.tx.us](http://www.tvc.state.tx.us). The website of the Texas Veterans Land Board is at <http://www.glo.texas.gov/vlb/index.html>.

93. As noted, there is a wealth of offices and organizations available to help Texas veterans. The website of the Texas Veterans Commission is at [www.tvc.state.tx.us](http://www.tvc.state.tx.us). The website of the Texas Veterans Land Board is at <http://www.glo.texas.gov/vlb/index.html>. Because of the expertise of those other offices and organizations, and because of their duties to serve veterans, a Benefits Counselor’s best role may often be to make sure the veteran receives the services due from other advocacy offices and organizations.

94. **A reminder about homeless veterans.** At the very outset of this Chapter, a link was provided to the [Homeless Veteran's Resource Guide](#). The Homeless Veteran's Resource Guide has very links that will lead to very useful information in serving veterans who are homeless, including a link to the [joint program between the VA and the Department of Housing and Urban Development](#) that provides services to homeless veterans through state and local organizations. The reader should become familiar with the resource guide and be aware that there are services in Texas for veterans who are homeless.

95. As with all other matters handled by Benefits Counselors, the Legal Hotline for Older Texans is available for back-up and support, at **1-800-880-9797**.