

## Limiting Liability at the VA

BY JIM VALE, VETERANS BENEFITS DIRECTOR

We are dealing with veterans, not procedures; with their problems, not ours.

— Gen. Omar Bradley, VA Administrator, 1946

The VA's motto is "to care for him who shall have borne the battle and for his widow, and his orphan." In practice, however, the mission for some VA bureaucrats is to limit the government's liability to our nation's veterans.

The Veterans Benefits Administration (VBA) Compensation Service recently published in the Federal Register its final rule to RIN 2900-AO81—Standard Claims and Appeals Forms. To view the proposed rule, go to [www.va.gov/ORPM/docs/20131031\\_AO81\\_StandardClaimsandAppealsForms.pdf](http://www.va.gov/ORPM/docs/20131031_AO81_StandardClaimsandAppealsForms.pdf). VBA received sixty-four comments about this proposed rule change; most were negative. To view the comments, go to [www.regulations.gov/#!documentDetail;D=VA-2013-VBA-0022-0001](http://www.regulations.gov/#!documentDetail;D=VA-2013-VBA-0022-0001). VA's final rule can be viewed at [www.va.gov/ORPM/docs/2014925\\_AO81\\_StandardClaimsandAppealsForms.pdf](http://www.va.gov/ORPM/docs/2014925_AO81_StandardClaimsandAppealsForms.pdf).

Although VVA is not opposed to the VA using standardized forms to obtain efficiency gains in claims and appeals processing, we are opposed to them abridging veterans' rights in the name of efficiency.

For example, under the final rule the VA is mandating use of the Notice of Disagreement (NOD) form (VA Form 21-0958). We are not opposed to the use of this form, but we object to some of the questions on it. In block 13 the VA asks, "Would you like to receive a telephone call or email from a representative at your local regional office regarding your NOD?" There is space to check "Yes" or "No." Yet nowhere does the VA direct the veteran to contact his or her appointed VSO or attorney representative for help.

Recently one of our represented veterans didn't talk to his VVA service officer and checked "Yes." He received a phone call from his VA regional office. The VA employee provided incorrect information on what could be appealed, and convinced the veteran to drop his appeal.

This is unethical. The VA should not be calling veterans to talk them out of their appeals. Instead, the VA should be directing veterans to contact their appointed representative for help and not interfere with the VSO-client or attorney-client relationship. Veterans should be advised to find a representative. Congress intended this to be a non-adversarial

process. If you need help filing your appeal, do *not* check "Yes" on block 13. Instead, contact your accredited VVA service officer for assistance with filing your appeal. If you receive a call from the VA about your appeal, tell the VA caller to contact your representative.

Watch out for box 15(c), which asks the veteran what the percent of disability should be, "Percentage (%) evaluation sought (if known)." *This is a trap.* Most veterans are not medical or legal experts, and they do not understand the VA Rating Schedule. Legally, it doesn't matter what the veteran thinks the percentage should be. What matters is what the evidence in the record supports. The way to reduce the appeals backlog is to rate a veteran based on the evidence of record, and not to shortchange or bargain with the veteran. VVA recommends writing "Max" in block 15(c).

When this final rule goes into effect on March 24, 2015, the NOD form will be mandatory. If the VA receives an incomplete NOD form, then the veteran will have 60 days, or until the end of the 12-month NOD submission period, to resubmit the form. If the incomplete NOD is received with less than 60 days remaining in the 12-month NOD submission period, then the VA will extend the deadline up to 60 days to allow the veteran a full 60 days to resubmit the form. If the form is incomplete, then the deadline will be up to sixty days to give the veteran extra time to resubmit the form. However, if the NOD is received in any format other than on this form, such as a personal letter or a VA Form 21-4138, then the NOD won't count, and the VA *will not* extend the NOD deadline.

VA officials say this is to "incentivize" the use of the form. We feel this is a heavy-handed departure from the non-adversarial claims process intended by Congress. It looks like an anti-veteran attempt to reduce the appeals backlog by preventing future appeals. If the VA is willing to grant one class of veterans an extra sixty days to redo an incomplete NOD form, then it should not be overly burdensome to grant the same sixty-day period to veterans who failed to use the NOD form, provided their appeal was otherwise timely submitted.

The VA missed an opportunity to shave two months off the processing time for veterans' appeals when the NOD form was developed. Currently, when a veteran submits an NOD, the VA regional office must respond by mailing a De novo review election letter, which asks the veteran if he or she wants the case reviewed by a decision review officer (DRO). If that option had been added to the NOD form, election letters would have been unnecessary. VVA strongly urges the VA to add the De novo election to the NOD form.

Although the title of the rule change is "Standard Claims," the VA is taking away the statutory right to file an "informal claim" by deleting the regulation that authorizes the VA to recognize medical evidence as informal claims.

As the change notes: "This rulemaking also eliminates the constructive receipt of VA reports of hospitalization or examination and other medical records as informal claims for increase or to reopen while retaining the retroactive effective date assignment for awards for claims for increase which are filed on a standard form within one year of such hospitalization, examination, or treatment."

Under this rule change, the VA requires submission of a "complete claim." Otherwise the claim will be identified as incomplete. This will prevent veterans from being able to receive retroactive awards over a year where medical evidence is identified in the record that was missed as informal claims by prior VA adjudications. This change has absolutely nothing to do with standardized forms; it's all about limiting the government's liability to veterans by eliminating large retroactive awards.

You earned your veterans benefits by serving our country. Don't let the VA limit the government's liability to your claim. It is critical under these new rules that the correct VA forms be used and filled out completely and correctly. Contact an accredited VVA service officer to help you every step of the way to avoid these bureaucratic landmines and to ensure your claim or appeal is properly submitted. [Click here](#) to find your nearest accredited VVA service officer.

During its October meeting the VVA National Board of Directors voted unanimously to authorize President John Rowan to file suit against the VA to prevent the implementation of these rule changes. Gen. Bradley had it right, and VVA will oppose anyone who tries to ease bureaucratic burdens by abridging veterans' rights.

