



U.S. Department
of Veterans Affairs

Expanding Access for Emergent Mental Health Care for Former Service Members

Former service members with an Other Than Honorable (OTH) administrative discharge, are now eligible for emergency mental health care within the VA, in addition to a 90-day episode of care following stabilization.

Key Messages

- *This fact sheet is intended to assist VAs internal and external stakeholders in educating patients and former service members on this initiative.*
- *Please see the patient guide specifically developed to guide current and future*

THE INITIATIVE

- As part of VA's ongoing commitment to provide quality care to those who served, Secretary Shulkin has implemented an initiative specifically focused on expanding access to assist former service members with OTH administrative discharges who are in mental health distress and may be at risk for suicide or other adverse behaviors.

SAVING LIVES

- We know that the rate of death by suicide among Veterans who do not use VA care is increasing at a significantly greater rate than that among Veterans who do use VA care.
- We view the decision to provide immediate care to these former service members as a moral and humanitarian obligation. The focus is on saving lives.
- It is estimated that there are a little more than 500,000 former service members with OTH administrative discharges.

FORMER SERVICE MEMBER ACCESS

- A former service member may decide when he/she is in distress and requires emergency mental health care. A VA provider will assess the patient to determine whether or not it is a true mental health emergency and requires immediate attention.
- Former service members may enter the system to use this benefit by calling the Veteran Crisis Line or visiting the VA Emergency Room/Urgent Care Center, or Vet

FORMER SERVICE MEMBER ACCESS, CONT.

Center.

- Former service members may be treated using VA's tentative eligibility authority, but will still need to submit a VA Form 7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action. If the former service member is subsequently found not to be eligible, they will be billed for services at the

EXPLANATION OF BENEFITS

- A former service member with an OTH Administrative Discharge may qualify for a 90-day episode of care under this initiative.
- Follow-up outpatient, residential, inpatient mental health and substance use disorder services may be provided for up to 90 days.
- When presenting for emergency mental health care, a request for an administrative decision regarding the character of service for VA health care purposes will be referred to the local VA Regional Office (VARO) on the former service members behalf. VHA will submit the VA Form 7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action to the VARO to facilitate this process. In making determinations of health care eligibility current criteria will be used to determine service connection.

Here's important information for you to know when seeking care under this initiative:

1

FOR PURPOSES OF THIS INITIATIVE, AN OTHER THAN HONORABLE (OTH) FORMER SERVICE MEMBER IS DEFINED AS:

- An individual with an OTH administrative discharge, whose eligibility for health care and benefits under title 38, United States Code, has not yet been finally adjudicated by the agency of original jurisdiction.
- When presenting for emergency mental health care, a request for an administrative decision regarding the character of service for VA health care purposes will be referred to the local VA Regional Office (VARO) on your behalf. VHA will submit the VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action to the VARO to facilitate this process. In making determinations of health care eligibility, current criteria will be used to determine service connection.
- Current character of discharge statutory still bars eligibility of this initiative to individuals with a dismissal, dishonorable discharge, or bad conduct discharge from a general court-martial.
- Humanitarian billing is legislatively mandatory for Former service members who are statutorily barred, and/or are ultimately deemed ineligible for VA health care consistent with VA authority.

Secretary Shulkin will exercise his existing authority, including 38 C.F.R. 17.34 and 38 U.S.C 1702, to provide this increased access to mental health care to former service members with OTH administrative discharges who are not subject to a legal bar to benefits.

To determine eligibility for this care, VA will apply existing legal presumptions related to service-connection, in particular the presumption that applies to certain individuals who develop mental illness within a defined period of time after discharge.

2

WHAT MAKES THIS INITIATIVE DIFFERENT FROM PAST ACCESS TO CARE FOR OTH FORMER SERVICE MEMBERS:

- If you fall in this category, you will be eligible for a 90-day episode of mental health care while your claim is adjudicated.
- We will assist you during your emergency, through stabilization and during your 90-day episode of mental health care. Your care team will help you coordinate a transition to longer term mental health services in the community if needed.

3

90 DAY EPISODE OF CARE

- If you have an OTH Administrative Discharge you may qualify for a 90-day episode of care under this initiative.
- Follow-up outpatient, residential, inpatient mental health and substance use disorder services may be provided for up to 90 days.
- Your care team will help you coordinate a transition to longer term mental health services in the community if needed.
- All care must be provided within the VA system. VA is not authorized to use CHOICE or Non-VA Care for this benefit.
- The 90-day episode will begin once you leave the ED. This is to ensure that all OTH administrative discharge service members receive the same period of care.

4

RURAL ACCESS

- The VA cannot pay for care provided at a community Emergency Department, but wants to encourage all OTH former service members to seek out the care they need. The VA will be able to pay for the 90-day episode of care once the former service member enters the VA system.
- If an OTH former service member lives in a rural areas and is experiencing a mental health emergency he/she should visit their your local ER for an assessment. The local ER should notify the local VA who will make all attempts to provide the 90-day benefit at a Community Based Outpatient Clinic, via telemedicine, where available or at a local Vet Center.
- If an OTH former service member lives in a rural area and thinks they may be in need of mental health care, but he/she is not sure if it is an emergency, he/she should call the Veterans Crisis Line at 800-273-TALK. They will notify the local VA who will make all attempts to provide the 90-day benefit at a Community Based Outpatient Center, via telemedicine, where available or at a local Vet Center if appropriate.

Frequently Asked Questions

CLAIMS INVOLVING OTHER THAN HONORABLE (OTH) ADMINISTRATIVE DISCHARGES

What is the definition of a “Veteran” for the purposes of VA benefits?

According to Title 38, United States Code (USC), Section 101(2), “The term “veteran” means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”

The Department of Veterans Affairs (VA) must determine the character of discharge of the individual on whose service a claim for entitlement to VA benefits is based. If the discharge issued by the military is characterized as an OTH administrative discharge, VA must make a determination as to whether the discharge is under dishonorable conditions under regulations governing eligibility for VA benefits.

What criteria does VA use to determine the character of discharge with respect to eligibility for VA benefits?

Title 38, Code of Federal Regulations (CFR), Section 3.12(a) states that a discharge, characterized by the military as under honorable conditions, is binding on VA and benefits are payable if other eligibility requirements are met. If a discharge was not characterized as under honorable conditions, benefits are not payable unless VA determines discharge was under conditions other than dishonorable. By law, certain reasons for release or discharge constitute a statutory bar to the payment of benefits.

What situations constitute a statutory bar to the payment of VA benefits?

A release or discharge for any of the following reasons constitutes a statutory bar to benefits, unless it is determined that the former service member was insane at the time he/she committed the offense that resulted in the less than honorable discharge:

- being a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful order of competent military authorities
- sentence of a general court-martial
- resignation of an officer for the good of the service
- desertion
- requesting release from service as an alien during a period of hostilities, or
- absence without official leave (AWOL) for a continuous period of 180 days or more, without evidence of compelling circumstances.

This means that if an individual is released or discharged for any of the above reasons, the law prohibits VA from paying any benefits. These prohibitions are described in 38 U.S.C. 5303.

Are there other situations, in addition to the statutory bars, in which the nature of discharge may prevent payment of VA benefits?

Yes. As established by VA regulation 38 CFR 3.12(d), VA may currently conclude an individual’s character of discharge was under dishonorable conditions if he/she was released under the following circumstances; among them:

- acceptance of an undesirable discharge to escape trial by general court-martial
- mutiny or spying
- an offense involving moral turpitude (generally including conviction of felony)
- willful and persistent misconduct

Before making a character-of-discharge determination, VA reviews facts and circumstances surrounding the incident(s) that led to the OTH administrative discharge, as reported by the military, as well as any supporting evidence furnished by the claimant or obtained from third parties. In cases where VA must make a character-of-discharge determination for purposes

of establishing eligibility, VA must afford the claimant due process and an opportunity to present evidence, to include a hearing if one is requested, prior to final disposition of the issue. On a case-by-case basis, VA determines whether the nature of the act(s) leading to the OTH administrative discharge falls into any of the above categories. If it does, VA cannot pay disability compensation benefits. If it does not, or there is sufficient evidence present showing mitigating circumstances, VA may find that the discharge is considered as honorable for VA eligibility purposes. It is important to note that this determination by VA does not overturn the Department of Defense's original discharge determination and does not entitle the claimant to benefits outside of VA.

What if the individual in question had more than one period of active military service?

If the individual completed an honorable period of service prior to the period for which the OTH administrative discharge was issued, VA benefits may be payable based on the prior period of service. The individual must have been eligible for complete separation from the earlier period of enlistment, even if a discharge never actually took place and the individual reenlisted or continued on active duty.

For example, if an individual enlisted for three years, completed the three years and reenlisted for two more years, then received an OTH administrative discharge during the second year of the second enlistment, VA benefits may be payable based on the first period of service, even if it is determined that the character of the second period of service precludes benefits. However, disability compensation would be payable only for disabilities incurred during the first period of service, not for disabilities that were incurred during the second period of service.

Are VA health care benefits available when disability compensation cannot be paid due to a discharge characterized as under dishonorable conditions?

Yes, in some situations: If an individual received an OTH administrative discharge, he or she will be eligible for treatment at a VA medical facility for any disabilities determined to be service-connected, unless one of the statutory bars specified in 38 U.S.C. 5303 applies.

When does VA consider the character of discharge?

VA does not consider character of discharge until it receives a claim for benefits. A claim for benefits may be in the form of a request for medical treatment received at a VA medical facility, or it may be an application for compensation or pension received at a VA regional office. Although preliminary action may be taken, such as development of evidence, VA cannot make a final decision regarding entitlement to benefits until the character-of-discharge issue is resolved.

How is an application for benefits submitted to VA?

An individual may apply for VA healthcare online, by mail, by phone, or by visiting the nearest VA medical center. If available records show an OTH administrative discharge, VHA will hold the application pending a decision by the local VA regional office regarding the character of discharge.

A claim for compensation for service-connected disabilities is normally submitted to a VA regional office, using one of a variety of formal applications. Claimants may mail the application or personally deliver it to a VA office, or they may transmit it to VA electronically via the Internet, using the Veterans Online Application in eBenefits at (<http://www.ebenefits.va.gov>).

Is a claimant offered due process before VA makes a decision about the character of discharge?

Yes. Under the provisions of 38 CFR 3.103, VA provides a claimant an opportunity to provide evidence to support his or her claim. The claimant may submit evidence directly to VA and/or request a hearing to present evidence before VA makes a decision.

How are claims involving a character of discharge issue processed?

VA submits a request to the appropriate service department for verification of an character of discharge and facts and circumstances surrounding the incident(s) resulting in the OTH administrative discharge. (VA is obligated to obtain evidence from Federal sources unless the custodian of those records reports the records do not exist or cannot be located.) Simultaneously, VA asks the claimant to furnish any evidence or statements pertaining to the OTH administrative discharge. The claimant is allowed a minimum of 60 days to respond to this request.

When requested Federal and/or private records have been received, or a good-faith effort has been made to obtain them, VA reviews all available evidence of record to determine whether the discharge was under conditions other than dishonorable. VA then documents its determination in a format referred to as an administrative decision.

How is the evidence obtained?

VA requests relevant service records, to include facts and circumstances surrounding the incident resulting in the OTH administrative discharge, from the appropriate service department. VA concurrently issues a letter to the claimant, which invites him/her to furnish any statements or evidence that may shed light on any extenuating circumstances regarding the OTH administrative discharge. Claimants often submit evidence via mail or hand deliver it to a VA office, but may submit it electronically. A claimant may also request a hearing for the purpose of presenting evidence. The hearing is held at a VA regional office.

VA also offers assistance to the claimant for obtaining third-party evidence. The claimant must provide a signed release of information, the name and mailing address of the third party, and the type of information to be released. While it is still the claimant's responsibility to ensure the evidence is provided, VA will use the release of information and attempt to obtain evidence on behalf of the claimant.

What does VA consider when determining whether the claimant is eligible for VA benefits based on the nature of his military discharge ?

VA reviews extracts from military service records, including facts and circumstances surrounding the incident(s) leading to the other-than-honorable discharge. VA also considers the following when making its determination:

- any mitigating or extenuating circumstances presented by the claimant
- any supporting evidence provided by third parties who were familiar with the circumstances surrounding the incident(s) in question
- length of service
- performance and accomplishments during service
- nature of the infraction(s), and
- character of service preceding the incident(s) resulting in the other-than-honorable discharge.

Do in-service disabilities, including post-traumatic stress disorder, have any direct effect on VA's determination of the character of discharge?

VA considers the sanity of an individual with an OTH administrative discharge when determining whether a statutory bar to benefits exists. When no statutory bar to benefits exists, in making its determination as to whether the discharge was issued under dishonorable conditions, the impact of medical issues and disabilities is considered during the analysis of any mitigating or extenuating circumstances that may have contributed to the OTH administrative discharge.

Where can you go to get the Other Than Honorable DD-214 or military discharge papers upgraded or reconsidered?

Claimant can contact the Boards for Correction of Military Records at the addresses listed below in order to request that military service records be upgraded or changed. Please contact your respective service Board for Correction of Military Records or fill out and mail a DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552. You may download the form at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0149.pdf>.

Contact information for each board is listed below and on the back of DD Form 149:

U.S. Army Army Review Boards Agency (ARBA)

251 18th Street South, Ste. 385

Arlington, VA 22202-3531

Web Site: <http://arba.army.pentagon.mil/>

U.S. Navy & U.S. Marine Corps Board for Correction of Naval Records

701 S. Courthouse Road, Building 12, Suite 1001

Arlington, VA 22204-2490

Phone: (703) 604-6884/(703) 604-6885

Web Site: <http://www.public.navy.mil/bupers-npc/career/recordsmanagement/Pages/BCNR.aspx>

The VA Form 10-7131, “Exchange of Beneficiary Information and Request for Administrative Adjudicative Action,” process can be inefficient, has VBA been engaged in this process so they can speed up these determinations?

VBA is exploring opportunities to expedite the adjudication process. As discussed in HEC’s training (see TMS 4219759), sites are encouraged to access the C & P tab in the VIS to see if a VBA determination has been made on the individual’s eligibility for VA health care under Chapter 17.

Is there a way to see if VA Form 10-7131 has been submitted?

The processes that VA Medical Facilities use to track the submission of VA Form 10-7131 vary. Please submit a VA Form 10-7131 if it is uncertain whether one was previously submitted.

CLINICAL QUESTIONS

Will I be able to receive care for my other medical conditions under this benefit?

If your provider deems your associated medical condition attributable to your mental health condition, this may also be covered under this benefit.

What clinical services are available for service members with less than honorable discharges?

A full-array of mental health services, including follow-up outpatient, residential, and inpatient mental health and substance use disorder services, may be provided for up to 90 days, with social work engagement to coordinate with treating clinician a community transition to longer-term services, if needed. Individuals treated under this authority are not considered eligible to receive long term services, such as Intensive Community Mental Health Recovery (ICMHR) and Compensated Work Therapy (CWT).

What clinical services are available for service members with Dishonorable Discharges?

Individuals with a dishonorable discharge are only eligible for inpatient care under humanitarian conditions. Social work engagement will be critical for coordinating the transfer of the service member to appropriate community services for follow-up, as needed.

Given that many who present as in mental health crisis often need treatment before the causation can be determined, will VA first ensure care rather than determining if the individual meets the program's criteria?

As with any crisis situation, the medical priority is to stabilize to ensure safety. Once stabilized, the appropriate follow up treatment plan can be developed. For those cases where the individual is not eligible for VA health care, follow-up care must be transferred to the community.

What if the crisis is not attributable to military service? How will VA ensure that they continue to receive mental health treatment outside of VA's healthcare system?

VA's authority to provide mental health care is limited to mental health issue(s) that are related to the service member's military service. If the crisis is not attributable to military service, emergent care, authorized under Humanitarian care, will be provided. Once stabilized, follow-up care must take place with community providers. Providers are able to use a broad interpretation of "related to military service". For example, if a Veteran presents in crisis after losing his job and states that he/she has had difficulties maintaining employment since military service, that may be interpreted as being related to military service.

