

118TH CONGRESS
1ST SESSION

S. 2718

To amend title 38, United States Code, to improve matters relating to medical examinations for veterans disability compensation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 5, 2023

Mr. TESTER (for himself and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve matters relating to medical examinations for veterans disability compensation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medical Disability
5 Exam Improvement Act of 2023”.

1 **SEC. 2. MODIFICATION OF ELIGIBILITY REQUIREMENTS**
2 **FOR MEDICAL NEXUS EXAMINATIONS FOR**
3 **TOXIC EXPOSURE RISK ACTIVITIES.**

4 Section 1168(a)(1) of title 38, United States Code,
5 is amended—

6 (1) by striking “with evidence of a disability
7 and evidence of participation in a toxic exposure risk
8 activity” and inserting “and expresses that such
9 claim is associated with a toxic exposure risk activ-
10 ity”; and

11 (2) by striking “and such evidence” and insert-
12 ing “and evidence of record before the Secretary”.

13 **SEC. 3. SPECIFICATION OF ACCOUNTS FOR CERTAIN EX-**
14 **PENSES RELATING TO MEDICAL EXAMINA-**
15 **TIONS FOR VETERANS DISABILITY COM-**
16 **PENSATION CLAIMS UNDER LAWS ADMINIS-**
17 **TERED BY SECRETARY OF VETERANS AF-**
18 **FAIRS.**

19 Section 5103A(d) of title 38, United States Code, is
20 amended by adding at the end the following new para-
21 graph:

22 “(3) Expenses of carrying out a medical examination
23 or obtaining a medical opinion under paragraph (1), in-
24 cluding payment for travel and incidental expenses under
25 the terms and conditions set forth by section 111 of this
26 title for the examination or medical opinion, shall be reim-

1 bursed to the accounts available for the general operating
2 expenses of the Veterans Benefits Administration and in-
3 formation technology systems from amounts available to
4 the Secretary for payment of compensation and pen-
5 sions.”.

6 **SEC. 4. STUDY ON IMPROVEMENTS TO DEPARTMENT OF**
7 **VETERANS AFFAIRS COVERED MEDICAL DIS-**
8 **ABILITY EXAMINATIONS IN RURAL AREAS.**

9 (a) **STUDY REQUIRED.**—Not later than one year
10 after the date of the enactment of this Act, the Secretary
11 of Veterans Affairs shall complete a study on access by
12 rural veterans to covered medical disability examinations.

13 (b) **ELEMENTS.**—

14 (1) **IN GENERAL.**—The study conducted under
15 subsection (a) shall include the following:

16 (A) A comparison of the average number
17 of days to complete covered medical disability
18 examinations for rural veterans compared to a
19 national non-rural average time to complete a
20 covered medical disability examinations, by ei-
21 ther contractors or employees of the Depart-
22 ment.

23 (B) A root cause analysis of differences
24 identified pursuant to subparagraph (A).

1 (C) The plan of the Secretary for the fol-
2 lowing year to improve access described in sub-
3 section (a), which shall include a plan for the
4 pursuit of a commercial or industry-standard
5 solution or technology that could enable rural
6 or housebound veterans to receive examinations
7 without traveling long distances.

8 (2) NATIONAL NON-RURAL AVERAGE DE-
9 FINED.—For purposes of paragraph (1)(A), the
10 term “national non-rural average” means the na-
11 tional average of all periods in the previous calendar
12 year—

13 (A) beginning on the date on which a con-
14 tractor or employee of the Department received
15 a request from the Secretary to conduct a cov-
16 ered medical disability examination for a vet-
17 eran who is not a rural veteran; and

18 (B) ending on the date on which the exam-
19 ination was completed.

20 (c) REPORT ON STUDY.—Not later than one year
21 after the date of the enactment of this Act, the Secretary
22 shall submit to the Committee on Veterans’ Affairs of the
23 Senate and the Committee on Veterans’ Affairs of the
24 House of Representatives a report on the findings of the

1 Secretary with respect to the study completed under sub-
2 section (a).

3 (d) ANNUAL REPORT ON PLANS.—Not later than two
4 years after the date of the enactment of this Act and not
5 less frequently than once each year thereafter, the Sec-
6 retary shall submit to the Committee on Veterans' Affairs
7 of the Senate and the Committee on Veterans' Affairs of
8 the House of Representatives a report evaluating the con-
9 duct of the plans of the Secretary to improve access de-
10 scribed in subsection (a) and a new or revised plan for
11 such improvement in the following year.

12 **SEC. 5. IMPROVEMENTS TO TRAINING FOR PROCESSING**
13 **MEDICAL DISABILITY EXAMINATIONS.**

14 (a) IN GENERAL.—Not later than 180 days after the
15 date of the enactment of this Act, the Secretary of Vet-
16 erans Affairs shall require additional training for employ-
17 ees of the Department of Veterans Affairs who order or
18 review covered medical disability examinations.

19 (b) TRAINING REQUIREMENTS.—The training re-
20 quired under subsection (a) shall include the following:

21 (1) Instruction on how to assess whether a cov-
22 ered medical disability examination is adequate for
23 purposes of adjudicating the particular claim for a
24 benefit under chapter 11 or 15 of title 38, United

1 States Code, for which the examination was ordered
2 by the Department.

3 (2) Instruction on how to assess whether a cov-
4 ered medical disability examination is necessary for
5 purposes of adjudicating the particular claim for a
6 benefit under chapter 11 or 15 of title 38, United
7 States Code, for which the examination was ordered
8 by the Department.

9 (3) Review of relevant statutes, judicial deci-
10 sions, regulations, and policies of the Department
11 regarding covered medical disability examinations,
12 including, at a minimum—

13 (A) the duty to assist;

14 (B) the relevance of causation compared to
15 other evidentiary standards in covered medical
16 disability examinations;

17 (C) the required elements of a covered
18 medical disability examination, with an empha-
19 sis on the requirement for reasoned analysis to
20 support medical opinions; and

21 (D) the relevance of a lack of a statutory
22 or regulatory presumption of service-connection
23 in covered medical disability examinations.

24 (c) FREQUENCY.—The Secretary shall ensure that
25 each employee of the Department who orders or uses a

1 covered medical disability examination to evaluate a claim
2 for a benefit under chapter 11 or 15 of title 38, United
3 States Code, completes training that incorporates the re-
4 quirements of subsection (b) not less frequently than once
5 each year.

6 (d) MODIFICATION OF REPORTS.—

7 (1) BOARD OF VETERANS' APPEALS.—Section
8 7101(d)(2) of title 38, United States Code, is
9 amended—

10 (A) in subparagraph (F), by striking “;
11 and” and inserting a semicolon;

12 (B) in subparagraph (G), by striking the
13 period at the end and inserting “; and”; and

14 (C) by adding at the end the following new
15 subparagraph:

16 “(H) a summary of recurring issues that the
17 Chairman believes could be resolved by better train-
18 ing for employees of the Department, increased over-
19 sight, or clarification from either the Department or
20 Congress.”.

21 (2) UNITED STATES COURT OF APPEALS FOR
22 VETERANS CLAIMS.—Section 7288(b) of title 38,
23 United States Code, is amended by adding at the
24 end the following new paragraph:

1 “(16) A summary of recurring issues that the
2 chief judge of the Court believes could be resolved by
3 better training for employees of the Department, in-
4 creased oversight, or clarification from either the
5 Department or Congress.”.

6 (e) DEFINITION OF COVERED MEDICAL DISABILITY
7 EXAMINATION.—In this section, the term “covered med-
8 ical disability examination” means a medical examination
9 or medical opinion that the Secretary determines nec-
10 essary for the purposes of adjudicating a benefit under
11 chapter 11 or 15 of title 38, United States Code, regard-
12 less of whether conducted by an employee or a contractor
13 of the Department.

14 **SEC. 6. REVIEW AND PRIORITY PROCESSING OF CLAIMS**
15 **WITH INADEQUATE OR UNNECESSARY EXAMI-**
16 **NATIONS.**

17 (a) REVIEW.—Not later than 1 year after the date
18 of the enactment of this Act and not less frequently than
19 once every calendar month thereafter, the Secretary of
20 Veterans Affairs shall review a statistically significant
21 sample of all covered medical disability examinations com-
22 pleted during the previous calendar month.

23 (b) FURTHER SAMPLE REQUIREMENTS.—Under
24 each review required by subsection (a), the Secretary shall
25 ensure the review includes—

1 (1) a statistically significant sample of covered
2 medical disability examinations completed by em-
3 ployees of the Department of Veterans Affairs; and

4 (2) a statistically significant sample of covered
5 medical disability examinations completed by each
6 contractor that provides such examinations for the
7 Department.

8 (c) ANALYSIS.—Under each review required by sub-
9 section (a), the Secretary shall analyze—

10 (1) the sample specified in subsection (b)(1)
11 and identify the percentage of examinations that
12 were adequate for purposes of adjudicating the par-
13 ticular claim for a benefit under chapter 11 or 15
14 of title 38, United States Code, for which the exam-
15 ination was ordered by the Department;

16 (2) the sample specified in subsection (b)(2)
17 and identify the percentage of examinations that
18 were adequate for purposes of adjudicating the par-
19 ticular claim for a benefit under chapter 11 or 15
20 of title 38, United States Code, for which the exam-
21 ination was ordered by the Department; and

22 (3) the overall sample specified in subsection
23 (a) and identify the percentage of examinations that
24 were necessary for purposes of adjudicating the par-
25 ticular claim for a benefit under chapter 11 or 15

1 of title 38, United States Code, for which the exam-
2 ination was ordered by the Department.

3 (d) PRIORITY PROCESSING.—If during a review
4 under subsection (a) the Secretary finds any covered med-
5 ical disability examination to be not adequate or not nec-
6 essary for adjudicating a claim of a claimant, the Sec-
7 retary may provide such claimant—

- 8 (1) another examination on a priority basis; and
- 9 (2) priority processing for the entirety of im-
10 pacted claim.

11 (e) COVERED MEDICAL DISABILITY EXAMINATION
12 DEFINED.—In this section, the term “covered medical dis-
13 ability examination” means a medical examination or med-
14 ical opinion that the Secretary determines necessary for
15 the purposes of adjudicating a benefit under chapter 11
16 or 15 of title 38, United States Code, regardless of wheth-
17 er conducted by an employee or a contractor of the De-
18 partment.

1 **SEC. 7. MECHANISM FOR CONTRACTORS CONDUCTING DIS-**
2 **ABILITY EXAMINATIONS UNDER CERTAIN DE-**
3 **PARTMENT OF VETERANS AFFAIRS PILOT**
4 **PROGRAM TO TRANSMIT MEDICAL EVIDENCE**
5 **INTRODUCED BY CLAIMANTS DURING EXAMI-**
6 **NATIONS.**

7 Section 504 of the Veterans' Benefits Improvements
8 Act of 1996 (Public Law 104–275; 38 U.S.C. 5101 note)
9 is amended—

10 (1) by redesignating subsections (d) and (e) as
11 subsection (e) and (f), respectively; and

12 (2) by inserting after subsection (c) the fol-
13 lowing new subsection (d):

14 “(d) MECHANISM FOR TRANSMITTAL OF EVIDENCE
15 INTRODUCED BY APPLICANTS DURING EXAMINATIONS.—
16 The Secretary shall establish a mechanism whereby a
17 health care professional can transmit to the Secretary, evi-
18 dence introduced by the applicant during a medical exam-
19 ination or in conjunction with such examination.”.

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