

September 22, 2000

PROVISION OF MEDICAL OPINIONS BY VA HEALTH CARE PRACTITIONERS

1. PURPOSE: This Veterans Health Administration (VHA) Directive establishes nationwide policy requiring VHA health care providers, when requested, and under certain limited circumstances, to provide descriptive statements and opinions for Department of Veterans Affairs (VA) patients with respect to patients' medical condition, employability, and degree of disability.

2. BACKGROUND: This policy rescinds all restrictions on VA physicians and other medical practitioners, defined in M-1, Part I, Chapter 9, section 9.50. Restrictions on the ability of VA health care providers to provide statements and opinions for VA patients are inconsistent with the goal of VHA to provide comprehensive care and place a serious burden on veterans who depend on VHA for their care. This policy must, however, be implemented in a way that avoids inappropriate VHA participation in the claims adjudication process that determines eligibility for VA disability benefits. It is anticipated that this policy area will be the subject of future notice and comment rulemaking.

3. POLICY: It is VHA policy to remove restrictions on the ability of VA health care providers to provide statements and opinions for VA patients.

4. ACTION: Medical facility Directors are to implement this directive immediately. Use the following guidelines:

a. **Support by Treating VA Practitioners of VA Benefits Claims**

(1) Veteran patients may request descriptive statements regarding their medical conditions and/or opinions concerning the "possible cause(s)" of an existing medical condition for VA disability claims purposes. VHA health care providers shall provide a statement or opinion describing a patient's medical condition. If the health care provider is the veteran's treating physician, and is unable, or deems it inappropriate, to provide an opinion or statement, such physician shall refer the veteran's request to another health care provider for the opinion or statement.

NOTE: For purposes of this policy, a note in the consolidated health record containing a statement such as, "in my medical opinion the currently existing medical condition is 'related to,' 'possibly related to,' or 'at least as likely as not related to' an injury, disease, or event occurring during the veteran's military service" constitutes a sufficient supportive statement. The injury, disease, or event can be something described by the veteran or shown in other records, but should be identified as such by the health care practitioner in the health care practitioner's statement. A statement to the effect of, "I am unable to determine whether a relationship exists" between the present disability and a described injury, disease, or event occurring during military service, is also acceptable.

(2) When providing medical statements and opinions, the veteran patient must be informed that decisions concerning VA compensation and/or pension benefits are:

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(a) Decided by VA regional office adjudication officials based upon the law, regulations, and the totality of medical evidence pertaining to the disability claimed, and

(b) Not controlled by the physician providing the veteran’s care or the medical facility furnishing treatment.

b. **Medical Opinions for Non-VA Purposes.** Veterans may also ask VA health care professionals for medical opinions to assist them in filing claims with other agencies, e.g., the Social Security Administration (SSA). These opinions may be provided in the same manner and under the same restrictions as opinions furnished for Veterans Benefits Administration (VBA) claims processing purposes. *NOTE: This does not include completion of Social Security Administration (SSA) forms for examinations where SSA would pay a private practitioner, but is prohibited from paying other Federal agencies such as VA (see Title 38 Code of Federal Regulations (CFR) 17.38 (a)(1)(xiv)).*

c. **Requirement for Disclaimer.** In all instances involving VA determinations, the veteran patient must be asked to sign a statement indicating the veteran’s understanding that the opinions of the VA physician do not constitute an official VA determination of service connection, degree of disability, or eligibility for VA benefits. The disclaimer documented below is being added to VA Form 10-5345, Request for and Consent to Release of Medical Records Protected by Title 38 United States Code (U.S.C.) 7332, to facilitate its use. In the meantime, for releases of information covered by this directive, incorporate a statement like the following, signed by the veteran, in the Consolidated Health Record:

“I understand that the VA health care practitioner’s opinions and statements are not official VA decisions regarding whether I will receive other VA benefits or, if I receive VA benefits, their amount. They may, however, be considered with other evidence when these decisions are made at a VA Regional Office that specializes in benefit decisions.”

5. REFERENCE: None.

6. FOLLOW-UP RESPONSIBILITY: The Office of Patient Care Services, Forensic Medicine Strategic Healthcare Group (11F) is responsible for the contents of this directive.

7. RESCISSIONS: M-1, Part I, Chapter 9, section 9.50 and VHA Directive 98-052 are rescinded. This VHA Directive expires September 31, 2005.

S/ Frances Murphy, M.D. for
Thomas L. Garthwaite, M.D.
Under Secretary for Health

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