

VSOs Call on President to Uphold 48-Hour Review

Apr 15, 2020



Paralyzed Veterans of America

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

On behalf of the millions of veterans, service members, families and survivors that our organizations represent, we call on you to instruct the Secretary of Veterans Affairs to maintain the policy of permitting accredited service officers from Veterans Service

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Organizations (VSOs) to review claims decisions for accuracy during the 48-hour period preceding final promulgation. The Department of Veterans Affairs (VA) has recently informed our organizations of its intent to rescind the 48-hour review policy. This decision will unjustly prejudice veterans by causing avoidable delay in the claims adjudication process. It will also unnecessarily burden the appeals infrastructure by preventing correctable errors from being resolved prior to promulgation. Contrary to VA's assertions, the end result will be a delay in benefits payments to veterans and additional cost to VA to prosecute the influx of appeals.

The 48-hour review period, outlined in VA's M21-1 Adjudication Procedures Manual, is an essential feature of the VA claims process. During this review process, VSOs have the opportunity to review VA decisions to ensure that all claimed conditions have been addressed and properly adjudicated. This process serves as an independent quality control check prior to VA's internal review procedure, known as Systematic Technical Accuracy Review (STAR).

After reviewing a rating decision, VSOs are permitted to notify VA of any irregularities, missed conditions, typographical errors, or other mistakes before a disability rating is formally promulgated. This process allows for errors to be resolved without requiring veterans to seek redress in the time-consuming and oftentimes costly claims appeals process. In sum, the 48-hour review procedure ensures a timely delivery of benefits to veterans and reduces the workload of VA's appeals infrastructure.

We received notice of VA's intent to rescind its 48-hour review policy in a memorandum on April 7, 2020. Initially, we were led to believe that this change would take effect on April 24, 2020. However, as indicated in correspondence between at least one VA Regional Office (VARO), this change may have already been effectuated on April 7, 2020, in some locations.

VA provided untenable reasons for this change. First, VA is responding to a decision from the Court of Appeals for Veterans Claims (CAVC), Rosinski v. Wilkie, 31 Vet. App. 1 (2019). In that case, the petitioner—an attorney who represents veteran clients seeking disability benefits from VA—sought a writ of mandamus to compel VA Secretary Robert Wilkie to provide him with access to the same 48-hour review period. In 2014, 2015, and 2017, the petitioner wrote to VA requesting access to claims decisions prior to formal promulgation. In 2017, VA responded via email that it would not provide the petitioner with access to unpromulgated claims decisions. Unlike VSOs, attorneys who represent veteran clients are not afforded access to 48-hour review prior to ratings promulgation.

The CAVC held that it was unable to grant the petitioner a writ of mandamus because VA had not yet issued a final decision regarding his request. Instead, the CAVC ordered Secretary Wilkie to issue a decision on the petitioner's request within 30 days of January 24, 2019. Accordingly, it appears that VA's decision to rescind the 48-hour review policy is an effort to make moot Mr. Rosinski's claim for access rather than revise internal IT systems

infrastructure to grant access to attorneys. Here, it seems VA has chosen the path of least resistance instead of expanding the 48-hour review process to accommodate attorneys. This decision will invariably harm veterans.

VA's reliance on the Rosinski decision belies its own argument. In Rosinski, Secretary Wilkie claimed that the 48-hour review policy is proper because a "historical special relationship" exists between VA and VSOs. The Secretary further argued that VSOs had a history of providing an additional layer of quality review during the claims process. In light of this special relationship and history of quality review, it is incomprehensible that VA would seek to rescind a policy from which VSOs, VA, and veterans have greatly benefited.

Second, VA believes that the *Veterans Appeals Improvement and Modernization Act of 2017* (AMA) has created a "feedback loop" between VSOs and VA to identify and correct errors through supplemental claims, higher level review, and appeals to the Board of Veterans Appeals (BVA). Many of our organizations agree that the AMA has yielded a more streamlined appeals process that leads to a timelier adjudication of veterans' claims. However, VA's argument is entirely without merit. Countless veterans have benefited from the 48-hour review policy since the implementation of the AMA on February 14, 2019.

VSOs see daily examples of why this process is necessary. Just last week, a VSO in Michigan reported that she was reviewing a decision for a veteran with multiple suicide attempts whose claim for PTSD was about to be denied. The VSO quickly recognized that the veteran's exam was not conducted properly, and she was able to stop the denial before it ever reached the veteran. This example demonstrates precisely how the 48-hour review period facilitates the timely delivery of veterans benefits.

It has been VA's decades-long policy to permit VSOs to review ratings decisions prior to their promulgation. VA formerly permitted this same quality review in a paper-based system, during which time VSOs were granted the opportunity to physically review individual claims folders for accuracy at each VARO. Once the VSO was satisfied that a rating was correct, or discussed necessary changes with the rater, the VSO then endorsed the rating to signify concurrence before it was forwarded for promulgation. This review process was an efficacious method of ensuring quality control prior to awarding disability ratings. This fact has remained unchanged by the advent of digital claims filing.

Unfortunately, since the inception of VA's National Work Queue (NWQ)—a digital workflow management program that permits VA to move claims to different offices based on capacity—our organizations have on many occasions seen claims disappear from our tracking systems, only to be promulgated incorrectly. This has resulted in extensive delay in the delivery of benefits and has forced claimants to file unnecessary appeals. VSOs have worked with VA to improve the tracking and notification of the 48-hour clock in VA's electronic Veterans Benefits Management System (VBMS), most recently resulting in a "Station of Origination" filter that permitted VSOs to track their work regardless of where

VA made its decision.

Although enhanced tracking and notification in VBMS did present a workable solution, VSOs have seen VA continuously seek to frustrate and undermine this process in asking stations to review work to which they were not assigned, and by asking VSOs to waive the 48-hour review period. VA's justification has been that veterans expect to receive their benefits in a timely manner, and that the 48-hour review creates unnecessary delay. What this response indicates is that VA fails to understand that our clients would prefer that their competent representatives take these critical 48 hours to ensure accuracy and quality control, rather than litigate their claims in the lengthy appeals process.

Mr. President, the 48-hour review period is an essential feature of the VA claims process. Without VSO review prior to formal ratings promulgation, countless veterans would receive incorrect ratings decisions, due only to correctable errors. Moreover, this abrupt policy change comes amidst the nationwide public health crisis caused by COVID-19. During these uncertain times, VA should not implement broad policy changes to veterans' claims adjudication, which will only bring about more uncertainty. In light of VA's refusal to pay heed to previous requests, we call on you to direct Secretary Wilkie to maintain the 48-hour review policy. Thank you for consideration of this request.

Sincerely,

