

Honoring Our PACT Act of 2021: New Provisions

- Expand VA health care eligibility to post-9/11 combat veterans, which is estimated to include more than **5 million toxic-exposed veterans**
- Create a **framework** for the **establishment of future presumptions of service connection** related to toxic exposure
- Add **23 burn pit and toxic exposure-related conditions** to VA's list of service presumptions, including **hypertension**
- Expand presumptions related to **Agent Orange exposure** to include **Thailand, Cambodia, Laos, Guam, American Samoa, and Johnston Atoll** as locations where in VA will concede Agent Orange exposure
- Strengthen **federal research** on toxic exposure
- Improve VA's **resources and training** for toxic-exposed veterans
- Invest in VA **claims processing, VA's workforce, and VA health care facilities**

Expand Health Care for Toxic Exposed Veterans and Other Veterans

The bill defines **toxic exposed veterans** as those who participated in a toxic exposure risk activity while serving active duty, active duty for training, or inactive duty training. These veterans could become eligible for expanded hospital care (including mental health services and counseling), medical services, and nursing home care for any illness. Veterans who were deployed in support of a contingency operation are also eligible for these health care services. Contingency operations include:

- Operation Enduring Freedom
- Operation Freedom's Sentinel
- Operation Iraqi Freedom
- Operation New Dawn
- Operation Inherent Resolve
- Resolute Support Mission

VA will also **provide health care** for veterans who may lack access. The legislation includes language indicating that VA must conduct a study on access to VBA and VHA benefits in **territories and freely associated states of the US** – including Federated States of Micronesia, Republic of the Marshall Islands,

Republic of Palau, American Samoa, Commonwealth of the Northern Marianas Islands, Guam, Puerto Rico, and the Virgin Islands. VA will assess deficits in the availability and accessibility of these benefits compared to elsewhere in the United States.

Create Framework for Adding/Removing Presumptive Conditions

The bill includes a framework that can be used going forward for **adding and removing presumptive conditions** to VA's list. Ultimately, the Secretary of VA "shall determine whether to establish or to remove presumptions of service connection based on toxic exposure." However, the Secretary must go through certain steps before making any changes to the presumptive list.

For example, the Secretary will need to **give the public an opportunity to comment** on proposed formal evaluations to add or remove a presumption. The Secretary will also need to hear advice from the **Working Group, a group consisting of personnel from the Veterans Health Administration and the Veterans Benefit Administration**. The Working Group can provide recommendations to the Secretary about which medical conditions should be added to the presumptive list.

The bill stipulates that "not later than 160 days after the date on which the Secretary receives a recommendation to establish a presumption of service connection," they need to commence issuing regulations to set forth the presumption and designate, in the regulations, any time frame during which a health effect must manifest.

In terms of removing a condition from the presumptive list, the Secretary shall **not consider the lack of evidence as sufficient to support a decision for removal of a presumption**. There are also some safeguards in place for veterans who are awarded benefits based on a presumption that is later removed. Specifically, these veterans shall maintain entitlement to compensation on that basis, as will surviving dependents receiving DIC benefits based on a presumption that is later eliminated. Ultimately, no veteran or survivor covered under a presumption shall have their compensation reduced solely because of the removal of an illness from the presumptive list.

Add 24 Conditions to the Presumptive List for Toxic Exposure

The following conditions have been added to the presumptive list for "covered veterans." The bill defines a **covered veteran** as one of the following:

1. A veteran who, on or after August 2, 1990, performed active military, naval, air, or space service while assigned to a duty station in, including air space above:
 - Bahrain
 - Iraq
 - Kuwait
 - Oman
 - Qatar
 - Saudi Arabia
 - Somalia
 - United Arab Emirates

1. A veteran who, on or after September 11, 2001, performed active military, naval, air, or space service, while assigned to a duty station, including the airspace above:
 - Afghanistan
 - Djibouti
 - Egypt
 - Jordan
 - Lebanon
 - Syria
 - Yemen
 - Uzbekistan
 - Any other country determined relevant by the VA Secretary

For these eligible veterans, the presumptive list will include 24 conditions:

- Asthma diagnosed after service
- Head cancer (of any type)
- Neck cancer (of any type)
- Respiratory cancer (of any type)
- Gastrointestinal cancer (of any type)
- Reproductive cancer (of any type)
- Lymphoma cancer (of any type)
- Lymphomatic cancer (of any type)
- Kidney cancer
- Brain cancer
- Melanoma
- Pancreatic cancer
- Chronic bronchitis

- Chronic obstructive pulmonary disease (COPD)
- Constrictive bronchiolitis or obliterative bronchiolitis
- Emphysema
- Granulomatous disease
- Interstitial lung disease
- Pleuritis
- Pulmonary fibrosis
- Sarcoidosis
- Chronic sinusitis
- Chronic rhinitis
- Glioblastoma

These presumptions would be effective on the date of enactment for claims involving Dependency and Indemnity Compensation, or if the veteran is terminally ill, homeless, under extreme financial hardship, 85 years or older, or can show other sufficient cause.

The presumption is also effective upon the date of enactment if the claimed condition is asthma, respiratory cancer of any type, brain cancer, constrictive bronchiolitis or obliterative bronchiolitis, emphysema, granulomatous disease, interstitial lung disease, pleuritis, pulmonary fibrosis, sarcoidosis, chronic sinusitis, chronic rhinitis, and glioblastoma.

Otherwise, the presumptions would become effective on:

- October 1, 2023 for claims of chronic bronchitis and COPD;
- October 1, 2024 for claims of head cancer, neck cancer, gastrointestinal cancer, reproductive cancer, lymphoma, lymphomatic cancer, and pancreatic cancer;
- October 1, 2025 for claims of kidney cancer and melanoma

Expand Presumptions for Herbicide and Radiation Exposure

The bill also includes language to expand presumptions for herbicide exposure, including updated conditions and additional locations.

Specifically, the legislation would amend 38 USC § 1116 to extend the presumption of herbicide exposure to service members with active military, naval, air, or space service who served in:

- The Republic of Vietnam from January 9, 1962 to May 7, 1975;

- Thailand, at *any US or Thai base from January 9, 1962 to June 30 1976, without regard to the Veteran's MOS or where on base they were located*;
- Laos from December 1, 1965 to September 30, 1969;
- Cambodia, specifically at Mimot or Krek, Kampong Cham Province from April 16, 1969 to April 30, 1969;
- Guam or American Samoa or in the territorial waters thereof from January 9, 1962 to July 30, 1980;
- Johnson Atoll or a ship that called at Johnston Atoll from January 1, 1972 to September 30, 1977.

If a claim is for Dependency and Indemnity Compensation, or the veteran is terminally ill; homeless; under extreme financial hardship; 85 years old or older; or can show other sufficient cause, then this presumption would become effective immediately. Otherwise, the presumption would become effective on October 1, 2022.

Additionally, the legislation adds monoclonal gammopathy of undetermined significance (abnormal protein in the blood) and hypertension to the presumptive list of conditions for herbicide exposure. Again, if the claim is for DIC, the veteran is terminally ill; homeless; under extreme financial hardship; 85 years old or older; or can show other sufficient cause, then this becomes effective immediately, otherwise it will become effective on October 1, 2022. However, this will ***only* apply retroactively for DIC claimants.**

For veterans exposed to radiation, the legislation would add **Enewetak Atoll from January 1, 1977 to December 31, 1980 to the list of presumptive locations** for radiation exposure. It also adds service members who participated in the response to the **Palomares, Spain B-52 plane crash from January 17, 1966 to March 31, 1967** to the list of presumptive locations for radiation exposure, as well as service members who responded to the **B-52 plane crash at Thule Air Force Base in Greenland from January 21, 1968 to September 25, 1968.**

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