

103D CONGRESS
2D SESSION

S. 1908

AN ACT

To provide for a study of the processes and procedures of the Department of Veterans Affairs for the disposition of claims for veterans benefits.

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To provide for a study of the processes and procedures of the Department of Veterans Affairs for the disposition of claims for veterans benefits.

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 “Veterans’ Claims Adju-
5 dication Improvement Act of 1994”.

1 **TITLE I—STUDY OF CLAIMS**
2 **ADJUDICATION**

3 **SEC. 101. STUDY OF SYSTEM OF DEPARTMENT OF VETER-**
4 **ANS AFFAIRS FOR DISPOSITION OF CLAIMS**
5 **FOR VETERANS BENEFITS.**

6 (a) **IN GENERAL.**—The Administrative Conference of
7 the United States shall carry out a study of the Depart-
8 ment of Veterans Affairs system for the disposition of
9 claims for veterans benefits. The Administrative Con-
10 ference shall carry out the study in accordance with this
11 title.

12 (b) **PURPOSE OF STUDY.**—The purpose of the study
13 required under this title shall be to evaluate the Depart-
14 ment of Veterans Affairs system for the disposition of
15 claims for veterans benefits in order to determine—

16 (1) the efficiency of processes and procedures
17 under the system for the adjudication, resolution, re-
18 view, and final disposition of claims for veterans
19 benefits and means of increasing such efficiency, in-
20 cluding the effect of judicial review on such system;

21 (2) means of reducing the number of claims
22 under the system for which final disposition is pend-
23 ing; and

24 (3) means of enhancing the ability of the De-
25 partment of Veterans Affairs to dispose of claims

1 under the system in a prompt and appropriate man-
2 ner.

3 (c) CONTENTS OF STUDY.—The study of the Depart-
4 ment of Veterans Affairs system for the disposition of
5 claims for veterans benefits under this title shall include
6 an evaluation and assessment of the following:

7 (1) The historical development of the system,
8 including the effect on such development of the pro-
9 vision under the Veterans' Judicial Review Act (divi-
10 sion A of Public Law 100–687; 102 Stat. 4105) of
11 authority for judicial review of claims disposed of
12 under the system.

13 (2) The preparation and submission of claims
14 by veterans under the system.

15 (3) The processes and procedures under the
16 system for the disposition of claims, including—

17 (A) the scope and nature of the respon-
18 sibility of the Secretary to assist veterans in the
19 development of claims;

20 (B) the scope and nature of the hearings
21 provided for at each stage in the claims disposi-
22 tion process under the system (including hear-
23 ings de novo, hearings before travelling mem-
24 bers of the Board of Veterans' Appeals, hear-
25 ings that are expedited for reason of illness or

1 financial need, and hearings that permit the
2 transmission of evidence or testimony by elec-
3 tronic means);

4 (C) the scope and nature of the review un-
5 dertaken with respect to a claim at each stage
6 in the claims disposition process;

7 (D) the number, Federal employment
8 grade, and experience and qualifications re-
9 quired of the persons undertaking such review
10 at each such stage;

11 (E) the effect on such review of the obliga-
12 tion of the Secretary to afford claimants with
13 the benefit of the doubt when there is an ap-
14 proximate balance of positive and negative evi-
15 dence with respect to a claim;

16 (F) opportunities for the submittal of new
17 evidence; and

18 (G) the availability of alternative means of
19 disposing of claims.

20 (4) The effect on the system of the participa-
21 tion of attorneys, members of veterans service orga-
22 nizations, and other advocates on behalf of veterans.

23 (5) The effect on the system of actions taken
24 by the Secretary to modernize the information man-

1 agement system of the Department, including the
2 utilization of electronic data management systems.

3 (6) The effect on the system of any work per-
4 formance standards utilized by the Secretary at re-
5 gional offices of the Department and at the Board
6 of Veterans' Appeals.

7 (7) The extent of the implementation in the
8 system of the recommendations of the Blue Ribbon
9 Panel on Claims Processing submitted to the Com-
10 mittees on Veterans' Affairs of the Senate and
11 House of Representatives on December 2, 1993, and
12 the effect of such implementation on the system.

13 (8) The effectiveness in improving the system of
14 any pilot programs carried out by the Secretary at
15 regional offices of the Department and of efforts by
16 the Secretary to implement such programs through-
17 out the system.

18 (9) The effectiveness of the quality control
19 practices and quality assurance practices under the
20 system in achieving the goals of such practices.

21 (d) CONSULTATION WITH NON-DEPARTMENT ENTI-
22 TIES.—Notwithstanding any other provision of law, the
23 Administrative Conference of the United States shall,
24 upon request, provide opportunities in the conduct of the
25 study under this title for consultation with appropriate

1 representatives of veterans service organizations and of
2 other organizations and entities that represent veterans
3 before the Department of Veterans Affairs.

4 (e) COOPERATION OF SECRETARY.—(1) Not later
5 than 90 days after the date of the enactment of this Act,
6 the Secretary shall submit to the Administrative Con-
7 ference of the United States, and to the Committees on
8 Veterans' Affairs of the Senate and House of Representa-
9 tives, such information as the Chairman of the Adminis-
10 trative Conference shall determine necessary to carry out
11 the study required under this title.

12 (2) The information referred to in paragraph (1)
13 shall include information on the claims disposed of by the
14 Department of Veterans Affairs during the 5-year period
15 ending on September 30, 1993, including the following:

16 (A) The total number of claims finally disposed
17 of during that period.

18 (B) The number of claims finally disposed of
19 during each fiscal year of that period.

20 (C) The number of claims referred to in sub-
21 paragraph (A) that were allowed by the Secretary
22 solely on the basis of information contained in the
23 initial claim for benefits.

24 (D) The number of claims referred to in sub-
25 paragraph (A) that were allowed by a regional office

1 of the Department at each of the various stages in
2 the claims disposition process.

3 (E) The number of claims referred to in sub-
4 paragraph (A) that were allowed by the Board of
5 Veterans' Appeals.

6 (F) The number of claims referred to in sub-
7 paragraph (E) that were reopened after a final deci-
8 sion by the Board of Veterans' Appeals.

9 (f) REPORTS ON STUDY.—(1) Not later than 1 year
10 after the date of the enactment of this Act, the Adminis-
11 trative Conference of the United States shall submit to
12 the Secretary and to the Committees on Veterans' Affairs
13 of the Senate and House of Representatives a preliminary
14 report on the study required under subsection (c). The re-
15 port shall contain the preliminary findings and conclusions
16 of the Administrative Conference with respect to the eval-
17 uation and assessment required under the study.

18 (2) Not later than 18 months after such date, the
19 Administrative Conference shall submit to the Secretary
20 and to such committees a report on such study. The report
21 shall include the following:

22 (A) The findings and conclusions of the Admin-
23 istrative Conference, including its findings and con-
24 clusions with respect to the matters referred to in
25 subsection (c).

1 (B) The recommendations of the Administrative
2 Conference for means of improving of the Depart-
3 ment of Veterans Affairs system for the disposition
4 of claims for veterans benefits.

5 (C) Such other information and recommenda-
6 tions with respect to the system as the Administra-
7 tive Conference considers appropriate.

8 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated \$150,000 to the Depart-
10 ment of Veterans Affairs for payment to the Administra-
11 tive Conference of the United States under section 1535
12 of title 31, United States Code, of the cost of carrying
13 out the study and report required under this title.

14 (h) DEFINITIONS.—For the purposes of this title:

15 (1) The term “Administrative Conference of the
16 United States” means the Administrative Conference
17 provided for under subchapter V of chapter 5 of title
18 5, United States Code.

19 (2) The term “Department of Veterans Affairs
20 system for the disposition of claims for veterans ben-
21 efits” means the processes and procedures of the
22 Department of Veterans Affairs for the adjudication,
23 resolution, review, and final disposition of claims for
24 benefits under the laws administered by the Sec-
25 retary.

1 (3) The term “Secretary” means the Secretary
2 of Veterans Affairs.

3 (4) The term “veterans service organizations”
4 means any organization approved by the Secretary
5 under section 5902(a) of title 38, United States
6 Code.

7 **TITLE II—IMPROVEMENTS TO** 8 **CLAIMS ADJUDICATION**

9 **SEC. 201. ELIMINATION OF REQUIREMENT FOR ANNUAL IN-** 10 **COME QUESTIONNAIRES.**

11 Section 1506 of title 38, United States Code, is
12 amended—

13 (1) in paragraph (2), by striking out “shall”
14 and inserting in lieu thereof “may”; and

15 (2) in paragraph (3), by striking out “file a re-
16 vised report” and inserting in lieu thereof “notify
17 the Secretary”.

18 **SEC. 202. DOCUMENTS TO BE ACCEPTED AS PROOF OF RE-** 19 **LATIONSHIPS.**

20 Notwithstanding any other provision of law, the Sec-
21 retary of Veterans Affairs shall accept from a claimant
22 a photocopy of an appropriate document as proof of the
23 existence of a marriage, the dissolution of a marriage, the
24 birth of a child, or the death of any family member for
25 the purpose of acting on such individual’s claim for bene-

1 fits under any law administered by the Secretary. The Sec-
2 retary may require the submission of additional docu-
3 mentation in support of any document submitted pursuant
4 to this section if the document on its face raises a question
5 as to its validity, or there is reasonable indication, in the
6 document or otherwise, of fraud or misrepresentation.

7 **SEC. 203. ACCEPTANCE OF PRIVATE PHYSICIAN EXAMINA-**
8 **TIONS.**

9 Notwithstanding any other provision of law, for pur-
10 poses of establishing a claim for disability compensation
11 under chapter 11 of title 38, United States Code, or a
12 claim for pension under chapter 15 of such title, a medical
13 examination report of a private physician provided by a
14 claimant in support of a claim for benefits may be accept-
15 ed without confirmation by an examination by a physician
16 employed by the Veterans Health Administration if such
17 report contains sufficient clinical data to support the diag-
18 nosis of a disability or to provide a reliable basis for an
19 evaluation of the degree of any such disability.

20 **SEC. 204. TRANSFER OF MILITARY SERVICE MEDICAL**
21 **RECORDS.**

22 Not later than 90 days after the date of the enact-
23 ment of this Act, the Secretary of Veterans Affairs shall
24 submit to the Committees on Veterans' Affairs of the Sen-
25 ate and House of Representatives a report setting forth

1 the status of an agreement between the Secretary and the
2 Secretary of Defense to provide for the immediate transfer
3 from the Department of Defense to the Department of
4 Veterans Affairs of the medical records of members of the
5 Armed Forces upon the separation of such members from
6 active duty.

7 **TITLE III—MISCELLANEOUS**

8 **SEC. 301. SERVICE CONNECTION FOR CERTAIN DISABIL-** 9 **ITIES RELATING TO EXPOSURE TO IONIZING** 10 **RADIATION.**

11 Section 5 of the Veterans' Dioxin and Radiation Ex-
12 posure Compensation Standards Act (Public Law 98-542;
13 98 Stat. 2725; 38 U.S.C. 1154 note) is amended by add-
14 ing at the end the following new subsection:

15 “(d) The regulations prescribed under this section
16 may not prohibit, or be construed to prohibit, a veteran
17 from establishing pursuant to section 1110 or 1131 of title
18 38, United States Code, service connection for a disease
19 or disability that the veteran claims to be the result of
20 the veteran's exposure to ionizing radiation during a pe-
21 riod of service referred to in subsection (a)(1), notwith-
22 standing that such regulations do not specify that the dis-
23 ease or disability is a radiogenic disease.”.

1 **SEC. 302. ADJUDICATION AND RESOLUTION OF CERTAIN**
2 **CLAIMS RELATING TO MEDICAL MAL-**
3 **PRACTICE.**

4 (a) ADJUDICATION AND RESOLUTION OF CLAIMS.—
5 The Secretary of Veterans Affairs shall—

6 (1) take appropriate actions to determine
7 whether the injury (or aggravation of an injury) of
8 any veteran as the result of the treatment of the vet-
9 eran was the result of medical malpractice on the
10 part of the Department of Veterans Affairs (and not
11 of the veteran's own willful misconduct); and

12 (2) in the case of any injury so determined,
13 provide appropriate compensation to the veteran in
14 accordance with section 1151 of title 38, United
15 States Code.

16 (b) STATEMENT OF INTENT AND CONSTRUCTION.—
17 Congress enacts the requirement set forth in subsection
18 (a) in order to ensure the adjudication and resolution of
19 certain claims following the decision in *Gardner v.*
20 *Derwinski*, 1 Vet.App. 584 (1991), *aff'd*, sub nom. *Brown*
21 *v. Gardner*, 5 F.3d 1456 (Fed. Cir. 1993), cert. granted,
22 62 U.S.L.W. 3657 (U.S. Apr. 4, 1994) (No. 93-1128).
23 The requirement may not be construed as an expression
24 of Congressional intent to limit the claims subject to adju-
25 dication under section 1151 of title 38, United States

1 Code, to claims related to injuries resulting from medical
2 malpractice.

3 (c) DEFINITIONS.—In this section:

4 (1) The term “treatment”, in the case of a vet-
5 eran, means any examination, hospitalization, medi-
6 cal or surgical treatment, or course of vocational re-
7 habilitation under chapter 31 of title 38, United
8 States Code, that is provided to the veteran by the
9 Department of Veterans Affairs.

10 (2) The term “medical malpractice” means any
11 carelessness, negligence, error in judgment, lack of
12 proper medical skill, or similar instance of indicated
13 fault in the treatment of a veteran.

Passed the Senate August 19 (legislative day, Au-
gust 18), 1994.

Attest:

Secretary.

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